

Mr. Speaker, I yield back the balance of my time.

Mr. MCKEON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCKEON) that the House suspend the rules and pass the Senate bill, S. 1793.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. GEORGE MILLER of California. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8, rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

AUTHORIZING SPEAKER TO ENTERTAIN MOTION TO SUSPEND THE RULES ON H.R. 2869

Mr. GILLMOR. Mr. Speaker, I ask unanimous consent that the Speaker be authorized to entertain a motion to suspend the rules relating to H.R. 2869, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. GEORGE MILLER of California. Mr. Speaker, reserving the right to object. I would also like to ask unanimous consent to add H.R. 3163 to the Suspension Calendar to provide student loan relief to surviving spouses of victims to the September 11 tragedies. I do not believe anybody would oppose this.

The SPEAKER pro tempore. Under the additional request by the gentleman from California (Mr. GEORGE MILLER) and under the guidelines consistently issued by successive speaker, as recorded in section 956 of the House Rules Manual, the Chair is constrained not to entertain the gentleman's request until it has been cleared by the bipartisan floor and committee leadership.

Is there objection to the original request of the gentleman from Ohio?

There was no objection.

SMALL BUSINESS LIABILITY PROTECTION ACT

Mr. GILLMOR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2869) to provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assist-

ance for brownfields revitalization, to enhance State response programs, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2869

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Liability Relief and Brownfields Revitalization Act".

TITLE I—SMALL BUSINESS LIABILITY PROTECTION

SEC. 101. SHORT TITLE.

This title may be cited as the "Small Business Liability Protection Act".

SEC. 102. SMALL BUSINESS LIABILITY RELIEF.

(a) EXEMPTIONS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following new subsections:

“(o) DE MICROMIS EXEMPTION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this Act if liability is based solely on paragraph (3) or (4) of subsection (a), and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

“(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

“(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply in a case in which—

“(A) the President determines that—

“(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

“(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

“(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

“(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

“(4) NONGOVERNMENTAL THIRD-PARTY CONTRIBUTION ACTIONS.—In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this Act, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

“(p) MUNICIPAL SOLID WASTE EXEMPTION.—

“(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

“(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

“(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

“(C) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term 'affiliate' has the meaning of that term provided in the definition of 'small business concern' in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

“(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that—

“(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

“(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act; or

“(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

“(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2) shall not be subject to judicial review.

“(4) DEFINITION OF MUNICIPAL SOLID WASTE.—

“(A) IN GENERAL.—For purposes of this subsection, the term 'municipal solid waste' means waste material—

“(i) generated by a household (including a single or multifamily residence); and

“(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

“(I) is essentially the same as waste normally generated by a household;

“(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

“(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

“(B) EXAMPLES.—Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

“(C) EXCLUSIONS.—The term ‘municipal solid waste’ does not include—

“(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

“(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

“(5) BURDEN OF PROOF.—In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under section 107 or 113 by—

“(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

“(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

“(6) CERTAIN ACTIONS NOT PERMITTED.—No contribution action may be brought by a party, other than a Federal, State, or local government, under this Act with respect to circumstances described in paragraph (1)(A).

“(7) COSTS AND FEES.—A nongovernmental entity that commences, after the date of the enactment of this subsection, a contribution action under this Act shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney’s fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o).”

(b) EXPEDITED SETTLEMENT.—Section 122(g) of such Act (42 U.S.C. 9622(g)) is amended by adding at the end the following new paragraphs:

“(7) REDUCTION IN SETTLEMENT AMOUNT BASED ON LIMITED ABILITY TO PAY.—

“(A) IN GENERAL.—The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

“(B) CONSIDERATIONS.—In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

“(C) INFORMATION.—A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

“(D) ALTERNATIVE PAYMENT METHODS.—If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall

consider such alternative payment methods as may be necessary or appropriate.

“(8) ADDITIONAL CONDITIONS FOR EXPEDITED SETTLEMENTS.—

“(A) WAIVER OF CLAIMS.—The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this Act) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

“(B) FAILURE TO COMPLY.—The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

“(C) RESPONSIBILITY TO PROVIDE INFORMATION AND ACCESS.—A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 104(e).

“(9) BASIS OF DETERMINATION.—If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

“(10) NOTIFICATION.—As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person’s eligibility for an expedited settlement.

“(11) NO JUDICIAL REVIEW.—A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

“(12) NOTICE OF SETTLEMENT.—After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.”

SEC. 103. EFFECT ON CONCLUDED ACTIONS.

The amendments made by this title shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act.

TITLE II—BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION

SEC. 201. SHORT TITLE.

This title may be cited as the “Brownfields Revitalization and Environmental Restoration Act of 2001”.

Subtitle A—Brownfields Revitalization Funding

SEC. 211. BROWNFIELDS REVITALIZATION FUNDING.

(a) DEFINITION OF BROWNFIELD SITE.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

“(39) BROWNFIELD SITE.—

“(A) IN GENERAL.—The term ‘brownfield site’ means real property, the expansion, re-

development, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

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

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

“(ii) a facility that is listed on the National Priorities List or is proposed for listing;

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

“(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

“(v) a facility that—

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

“(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

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

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

“(II) closure requirements have been specified in a closure plan or permit;

“(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

“(viii) a portion of a facility—

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

“(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

“(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

“(C) SITE-BY-SITE DETERMINATIONS.—Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposes.

“(D) ADDITIONAL AREAS.—For the purposes of section 104(k), the term ‘brownfield site’ includes a site that—

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

“(ii) (I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

“(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of ‘hazardous substance’ under section 101; and

“(bb) is a site determined by the Administrator or the State, as appropriate, to be—

“(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

“(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

“(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

“(III) is mine-scarred land.”.

(b) BROWNFIELDS REVITALIZATION FUNDING.—Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) is amended by adding at the end the following:

“(k) BROWNFIELDS REVITALIZATION FUNDING.—

“(1) DEFINITION OF ELIGIBLE ENTITY.—In this subsection, the term ‘eligible entity’ means—

“(A) a general purpose unit of local government;

“(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

“(C) a government entity created by a State legislature;

“(D) a regional council or group of general purpose units of local government;

“(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

“(F) a State;

“(G) an Indian Tribe other than in Alaska, or

“(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community.

“(2) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT GRANT PROGRAM.—

“(A) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to—

“(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

“(ii) perform targeted site assessments at brownfield sites.

“(B) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—

“(i) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to 1 or more brownfield sites.

“(ii) SITE CHARACTERIZATION AND ASSESSMENT.—A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 101(35)(B).

“(3) GRANTS AND LOANS FOR BROWNFIELD REMEDIATION.—

“(A) GRANTS PROVIDED BY THE PRESIDENT.—Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to—

“(i) eligible entities, to be used for capitalization of revolving loan funds; and

“(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under sub-

paragraph (C), to be used directly for remediation of 1 or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed \$200,000 for each site to be remediated.

“(B) LOANS AND GRANTS PROVIDED BY ELIGIBLE ENTITIES.—An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of—

“(i) 1 or more loans to an eligible entity, a site owner, a site developer, or another person; or

“(ii) 1 or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

“(C) CONSIDERATIONS.—In determining whether a grant under subparagraph (A)(i) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration—

“(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

“(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

“(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

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

“(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

“(D) TRANSITION.—Revolving loan funds that have been established before the date of enactment of this subsection may be used in accordance with this paragraph.

“(4) GENERAL PROVISIONS.—

“(A) MAXIMUM GRANT AMOUNT.—

“(i) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT.—

“(I) IN GENERAL.—A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, \$200,000.

“(II) WAIVER.—The Administrator may waive the \$200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed \$350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

“(i) BROWNFIELD REMEDIATION.—A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed \$1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration—

“(I) the number of sites and number of communities that are addressed by the revolving loan fund;

“(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

“(III) the demonstrated ability of the eligible entity to use the revolving loan fund to

enhance remediation and provide funds on a continuing basis; and

“(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

“(B) PROHIBITION.—

“(i) IN GENERAL.—No part of a grant or loan under this subsection may be used for the payment of—

“(I) a penalty or fine;

“(II) a Federal cost-share requirement;

“(III) an administrative cost;

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

“(V) a cost of compliance with any Federal law (including a Federal law specified in section 101(39)(B)), excluding the cost of compliance with laws applicable to the cleanup.

“(ii) EXCLUSIONS.—For the purposes of clause (i)(III), the term ‘administrative cost’ does not include the cost of—

“(I) investigation and identification of the extent of contamination;

“(II) design and performance of a response action; or

“(III) monitoring of a natural resource.

“(C) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS.—A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include—

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

“(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

“(D) INSURANCE.—A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

“(5) GRANT APPLICATIONS.—

“(A) SUBMISSION.—

“(i) IN GENERAL.—

“(I) APPLICATION.—An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for 1 or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

“(II) NCP REQUIREMENTS.—The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

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

“(iii) GUIDANCE.—The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

“(B) APPROVAL.—The Administrator shall—

“(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

“(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under

the ranking criteria established under subparagraph (C).

“(C) RANKING CRITERIA.—The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

“(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which 1 or more brownfield sites are located.

“(ii) The potential of the proposed project or the development plan for an area in which 1 or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

“(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

“(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

“(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

“(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

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

“(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

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

“(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

“(6) IMPLEMENTATION OF BROWNFIELDS PROGRAMS.—

“(A) ESTABLISHMENT OF PROGRAM.—The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

“(B) FUNDING RESTRICTIONS.—The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

“(7) AUDITS.—

“(A) IN GENERAL.—The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

“(B) PROCEDURE.—An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General

Accounting Office, including chapter 75 of title 31, United States Code.

“(C) VIOLATIONS.—If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may—

“(i) terminate the grant or loan;

“(ii) require the person to repay any funds received; and

“(iii) seek any other legal remedies available to the Administrator.

“(D) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this subsection, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

“(8) LEVERAGING.—An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

“(9) AGREEMENTS.—Each grant or loan made under this subsection shall—

“(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

“(B) be subject to an agreement that—

“(i) requires the recipient to—

“(I) comply with all applicable Federal and State laws; and

“(II) ensure that the cleanup protects human health and the environment;

“(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;

“(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

“(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

“(10) FACILITY OTHER THAN BROWNFIELD SITE.—The fact that a facility may not be a brownfield site within the meaning of section 101(39)(A) has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

“(11) EFFECT ON FEDERAL LAWS.—Nothing in this subsection affects any liability or response authority under any Federal law, including—

“(A) this Act (including the last sentence of section 101(14));

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

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

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

“(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

“(12) FUNDING.—

“(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$200,000,000 for each of fiscal years 2002 through 2006.

“(B) USE OF CERTAIN FUNDS.—Of the amount made available under subparagraph (A), \$50,000,000, or, if the amount made avail-

able is less than \$200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 101(39)(D)(ii)(II).”

Subtitle B—Brownfields Liability Clarifications

SEC. 221. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

“(q) CONTIGUOUS PROPERTIES.—

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

“(A) IN GENERAL.—A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) solely by reason of the contamination if—

“(i) the person did not cause, contribute, or consent to the release or threatened release;

“(ii) the person is not—

“(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

“(II) the result of a reorganization of a business entity that was potentially liable;

“(iii) the person takes reasonable steps to—

“(I) stop any continuing release;

“(II) prevent any threatened future release; and

“(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

“(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

“(v) the person—

“(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

“(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

“(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this Act;

“(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

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

“(I) conducted all appropriate inquiry within the meaning of section 101(35)(B) with respect to the property; and

“(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of 1

or more hazardous substances from other real property not owned or operated by the person.

“(B) DEMONSTRATION.—To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

“(C) BONA FIDE PROSPECTIVE PURCHASER.—Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real property may qualify as a bona fide prospective purchaser under section 101(40) if the person is otherwise described in that section.

“(D) GROUND WATER.—With respect to a hazardous substance from 1 or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

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

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

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

“(3) ASSURANCES.—The Administrator may—

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

“(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f).”

SEC. 222. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION OF BONA FIDE PROSPECTIVE PURCHASER.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 211(a) of this Act) is amended by adding at the end the following:

“(40) BONA FIDE PROSPECTIVE PURCHASER.—The term ‘bona fide prospective purchaser’ means a person (or a tenant of a person) that acquires ownership of a facility after the date of enactment of this paragraph and that establishes each of the following by a preponderance of the evidence:

“(A) DISPOSAL PRIOR TO ACQUISITION.—All disposal of hazardous substances at the facility occurred before the person acquired the facility.

“(B) INQUIRIES.—

“(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

“(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.

“(iii) RESIDENTIAL USE.—In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility

inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

“(C) NOTICES.—The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

“(D) CARE.—The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—

“(i) stop any continuing release;

“(ii) prevent any threatened future release; and

“(iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

“(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

“(F) INSTITUTIONAL CONTROL.—The person—

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

“(ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

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

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

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

“(I) any direct or indirect familial relationship; or

“(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

“(iii) the result of a reorganization of a business entity that was potentially liable.”

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

“(r) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

“(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a)(1), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser’s being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

“(2) LIEN.—If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

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

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

“(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

“(4) AMOUNT; DURATION.—A lien under paragraph (2)—

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

“(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

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

“(D) shall continue until the earlier of—

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

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

SEC. 223. INNOCENT LANDOWNERS.

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

(1) in subparagraph (A)—

(A) in the first sentence, in the matter preceding clause (i), by striking “deeds or” and inserting “deeds, easements, leases, or”; and

(B) in the second sentence—

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

(ii) by striking the period at the end and inserting “, provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.”; and

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

“(B) REASON TO KNOW.—

“(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—

“(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

“(II) the defendant took reasonable steps to—

“(aa) stop any continuing release;

“(bb) prevent any threatened future release; and

“(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

“(ii) STANDARDS AND PRACTICES.—Not later than 2 years after the date of enactment of

the Brownfields Revitalization and Environmental Restoration Act of 2001, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

“(iii) CRITERIA.—In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

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

“(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

“(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

“(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

“(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

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

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

“(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

“(IX) Commonly known or reasonably ascertainable information about the property.

“(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

“(iv) INTERIM STANDARDS AND PRACTICES.—

“(I) PROPERTY PURCHASED BEFORE MAY 31, 1997.—With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described of clause (i), a court shall take into account—

“(aa) any specialized knowledge or experience on the part of the defendant;

“(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

“(cc) commonly known or reasonably ascertainable information about the property;

“(dd) the obviousness of the presence or likely presence of contamination at the property; and

“(ee) the ability of the defendant to detect the contamination by appropriate inspection.

“(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997.—With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as ‘Standard E1527-97’, entitled ‘Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process’, shall satisfy the requirements in clause (i).

“(v) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.”.

Subtitle C—State Response Programs

SEC. 231. STATE RESPONSE PROGRAMS.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by this Act) is further amended by adding at the end the following:

“(41) ELIGIBLE RESPONSE SITE.—

“(A) IN GENERAL.—The term ‘eligible response site’ means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

“(B) INCLUSIONS.—The term ‘eligible response site’ includes—

“(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986; or

“(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 128 at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will—

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

“(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

“(C) EXCLUSIONS.—The term ‘eligible response site’ does not include—

“(i) a facility for which the President—

“(I) conducts or has conducted a preliminary assessment or site inspection; and

“(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or

“(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.”.

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

“SEC. 128. STATE RESPONSE PROGRAMS.

“(a) ASSISTANCE TO STATES.—

“(1) IN GENERAL.—

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

“(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

“(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

“(B) USE OF GRANTS BY STATES.—

“(i) IN GENERAL.—A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

“(ii) ADDITIONAL USES.—In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to—

“(I) capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or

“(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

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

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

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

“(i) a response action will—

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

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

“(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

“(C) Mechanisms and resources to provide meaningful opportunities for public participation, including—

“(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

“(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

“(iii) a mechanism by which—

“(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and

“(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

“(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

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

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

“(1) ENFORCEMENT.—

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

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

“(ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment;

the President may not use authority under this Act to take an administrative or judicial enforcement action under section 106(a) or to take a judicial enforcement action to recover response costs under section 107(a)

against the person regarding the specific release that is addressed by the response action.

“(B) EXCEPTIONS.—The President may bring an administrative or judicial enforcement action under this Act during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if—

“(i) the State requests that the President provide assistance in the performance of a response action;

“(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;

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

“(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

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

“(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

“(C) PUBLIC RECORD.—The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) shall maintain and make available to the public a record of sites as provided in this paragraph.

“(D) EPA NOTIFICATION.—

“(i) IN GENERAL.—In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

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

“(II)(aa) wait 48 hours for a reply from the State under clause (i); or

“(bb) if the State fails to reply to the notification or if the Administrator makes a de-

termination under clause (iii), take immediate action under that clause.

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

“(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

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

“(iii) IMMEDIATE FEDERAL ACTION.—The Administrator may take action immediately after giving notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that 1 or more exceptions under subparagraph (B) are met.

“(E) REPORT TO CONGRESS.—Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

“(2) SAVINGS PROVISION.—

“(A) COSTS INCURRED PRIOR TO LIMITATIONS.—Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to the date of enactment of this section or during a period in which the limitations of paragraph (1)(A) were not applicable.

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

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

“(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

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

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

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

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

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

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

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

SEC. 232. ADDITIONS TO NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended by adding at the end the following:

“(h) NPL DEFERRAL.—

“(1) DEFERRAL TO STATE VOLUNTARY CLEANUPS.—At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that—

“(A) the State, or another party under an agreement with or order from the State, is

conducting a response action at the eligible response site—

“(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

“(ii) that will provide long-term protection of human health and the environment; or

“(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

“(2) PROGRESS TOWARD CLEANUP.—If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

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

“(A) the complexity of the site;

“(B) substantial progress made in negotiations; and

“(C) other appropriate factors, as determined by the President.

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

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

“(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. GILLMOR) and the gentleman from New Jersey (Mr. PALLONE) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. GILLMOR).

GENERAL LEAVE

Mr. GILLMOR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. GILLMOR. Mr. Speaker, I ask unanimous consent that I may be permitted to yield one-half of my time to

the gentleman from Tennessee (Mr. DUNCAN).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. GILLMOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us, H.R. 2869, is the most important reform of the Federal superfund program in the past 15 years.

0430

In fact, it will be the most significant environmental reform legislation to pass Congress in several sessions. I am happy to see the strong bipartisan support for this bill.

I want to thank the cosponsors, the gentleman from Michigan (Mr. DINGELL), the ranking member of the Committee on Energy and Commerce; the gentleman from Louisiana (Mr. TAUZIN); my colleagues on the Subcommittee on Environment and Hazardous Materials, the gentleman from New Jersey (Mr. PALLONE); and I also want to single out the gentleman from Illinois (Mr. SHIMKUS) for the extraordinary work that he has done on the part of this bill dealing with small business liability, not only in this session but in the last session.

This legislation deals with Superfund, which is the Nation's major program dealing with dangerous hazardous waste sites. As good as the goals of Superfund have been, the actual way this program has worked has unfortunately been an example of what too frequently is wrong with government programs.

Some responsible observers have estimated that as much as half of all the money spent for Superfund goes not for cleaning up anything, but goes for attorney fees and regulatory costs.

The legislation before us today reforms two very important parts of Superfund. It provides relief for small businesses from Superfund liability in a number of cases, and it reforms the brownfields program.

Earlier this year, I introduced and the House passed by a margin of 419 to nothing the small business liability reform legislation. That legislation has not moved in the Senate, nor has it had any hearings.

Also earlier this year the Senate passed by a 99 to nothing vote a brownfields reform bill. We have held several hearings on this legislation in the Subcommittee on Environment and Hazardous Materials. What this legislation before us today does is combine those two bills in one package with the hope that we can facilitate getting those bills adopted by Congress as soon as possible and on to the President's desk.

There are approximately 500,000 brownfield locations in this country. Brownfield reform is necessary both to

protect the environment and to protect public safety. Too often today, current law produces an outcome that is very anti-environment.

Several witnesses testified before our committee that fear of liability kept them from cleaning up brownfields, and when people are afraid to use a brownfield because of the expense, because of the aggravation involved, they go out and acquire green spaces or virgin land for development instead of safely cleaning up and developing a brownfield.

At a minimum, reform is required to stop the unnecessary plowing up of green spaces in farmlands so they can be covered with asphalt and concrete.

I have been a Member of Congress for six terms, and throughout that time I have heard from Members of both parties, of the public, of three administrations talk about reforming Superfund, and it has yet to happen. Hopefully, today's action will result in a piece of that reform.

Among other things, the brownfields portion of the bill provides money and incentives for State clean-ups, includes limits on Federal enforcement, and protects contiguous property owners, prospective buyers, and innocent landowners. It also creates more liability in the brownfields program. The Senate passed a good bill. It is not perfect, but the perfect should not be the enemy of the good.

The small business liability relief part of this legislation, which passed earlier as H.R. 1831, that bill also enjoyed bipartisan support, and it seeks to end 20 years' worth of anguish and anxiety for individuals, for families, and for small business owners across our country.

It seeks to address the problems of people like Barbara Williams of Gettysburg, Pennsylvania, who has come before our committee in the past to tell how her former restaurant, the Sunny Ray, became enmeshed in the financial quagmire of Superfund liability because she threw chicken bones and other ordinary trash in the local dump. That outcome is not right, and it is not an isolated story.

Specifically, the bill before us provides relief to businesses of 100 people or less who should never have been brought into Superfund and its resultant litigation. This legislation protects small businesses which disposed of very small amounts of waste or ordinary garbage, and it shelters small businesses from serious financial hardship by offering the affected businesses expedited settlements. It does not save any business from Superfund liability if their waste stream caused serious environmental harm.

The bill provides an appropriate helping hand, while keeping the onus on all businesses to be responsible stewards of our environment.

This legislation is supported by the Bush administration, the National Fed-

eration of Independent Businesses, the Building and Construction Trade Unions, the U.S. Conference of Mayors, the National Association of Manufacturers, the Real Estate Round Table, including the National Association of Realtors and many other groups.

I would urge all of my colleagues in the House to support the legislation before us, which incorporates both brownfields reform and small business liability reform.

Mr. Speaker, I reserve the balance of my time.

Mr. PALLONE. Mr. Speaker, I ask unanimous consent to yield 10 minutes to the gentleman from Oregon (Mr. DEFAZIO), and that he may be permitted to yield time, as well.

The SPEAKER pro tempore (Mr. SHIMKUS). Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. PALLONE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased tonight that we are finally considering, after much delay, H.R. 2869, the Small Business Liability Relief and Brownfields Liability Act. The bill is actually a compilation of two popular pieces of legislation.

The first half of the bill is verbatim the provisions of H.R. 1381, the Small Business Protection Act. This bill, which gives Superfund liability exemptions for those small businesses that discarded ordinary household waste, was favorably reported from our committee and passed the House by a vote of 419 to zero on May 22 of this year.

The second half of the bill contains the provisions of S. 350, the Brownfields Revitalization Act, which passed the Senate on April 25 this year by a vote of 99 to 0.

Brownfields are a relatively recent complex and dynamic area of public policy. Government at all levels, local, State, and Federal, is grappling with liability, environmental and cost issues caused by brownfields reclamation, and is taking steps to resolve them.

Despite the popular image of brownfields as an urban problem they are found in suburbs and rural areas, too. In my home State of New Jersey, which is heavily affected probably with more brown field sites than any State in the Nation, but New Jersey, for that reason, has taken a leadership role in developing regulatory and funding tools for cleaning up brownfields.

The ability to reuse brownfields is important in implementing a smart growth agenda because it blunts pressures to develop untouched green spaces, and therefore helps contain sprawl.

However, brownfields redevelopment is also important because of the public policy perspective, which is essentially a tricky one. It is clear there is no such thing as a typical brownfields site, nor

is there one problem common to all sites. They vary greatly in the size, location, origin, marketability, and degree of contamination.

For the most part, none of the sites have been inventoried or assessed. Those two facts make it nearly impossible to prescribe a single solution which provides redevelopment incentives for the wide variety of brownfields sites that currently exist.

With these in mind, I believe the role for the Federal Government is to strike a balance between the desire to provide redevelopment incentives that will work for a variety of sites, while at the same time maintaining the assurance to affected citizens that these sites will no longer threaten the health of the community. This is essentially the basis for our legislation.

The bill provides critically needed funds to assess and clean up abandoned and underutilized brownfield sites which will create jobs, increase tax revenues, preserve and create open space and parks. In addition, it provides legal protections for innocent parties such as contiguous property owners, prospective purchasers, and innocent landowners. I expect or I hope that this legislation will not only pass the House tonight and then the Senate quickly, and then be sent on to the President for his approval.

I have to say, Mr. Speaker, this is really a bill that provides a win-win situation. The gentleman from (Mr. GILLMOR) talked about all the different groups that support it. It is kind of interesting to see environmental groups and the building trades and all the different business organizations all supporting the same bill, but it really, truly is supported by all of them because it is a win-win situation.

By cleaning up these brownfields sites, we provide an opportunity for more jobs while at the same time cleaning up the environment, protecting public health, and curbing suburban sprawl.

I just wanted to say before I conclude, in my home State of New Jersey, as I said, there are so many brownfield sites. Just last week I visited a site in my district called Edison Crossroads. It is a perfect example of the opportunities afforded our communities when this bill becomes law.

This once-abandoned eyesore of a former steel tubing and floor tile manufacturing facility. With the opportunity to recover 75 percent of its remedial costs and receive liability protection by performing a State-approved clean-up, the development company Arc Properties was encouraged to move forward with purchasing this site and conducting a massive clean-up and reuse project, including the excavation of more than 600 tons of tainted soil, nine underground storage tanks, and removal of several buildings filled with asbestos.

Today, and I was there, as I said, last week, the site has attracted a Home Depot, Edwards, World Carpet, and many other large companies, resulting in a positive source of economic growth for the local and regional communities.

We have a lot of those success stories like this in New Jersey: the New Jersey Performing Arts Center in Newark, the Jersey Gardens Mall in Elizabeth. This brownfield redevelopment, because of what my State is doing, is having a huge impact on the New Jersey landscape.

I am very pleased our subcommittee was able to move this important piece of bipartisan legislation. It is truly bipartisan, as the gentleman from Ohio (Mr. GILLMOR) mentioned.

I want to thank the gentleman from Ohio (Mr. GILLMOR) and the chairman of our full committee, the gentleman from Louisiana (Mr. TAUZIN), the gentleman from Michigan (Mr. DINGELL), and of course, the staffers that have been working so hard on this bill, as well as the members of the Committee on Transportation and Infrastructure, and the gentleman from Oregon (Mr. DEFAZIO).

I think we are on the threshold of this becoming law. We have been working with it on the Democratic side for at least 4 years, so I am really glad to say that the day has finally come when it is going to come to pass.

Mr. Speaker, I reserve the balance of my time.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2869 combines the text of H.R. 1831, the Small Business Liability Protection Act, with the text of S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001.

I strongly support title I of H.R. 2869. As the gentleman from Ohio (Chairman GILLMOR) mentioned, Title I earlier passed the House 419 to 0. Title I will protect small businesses from Superfund liability. It prevents lawsuits against people and businesses who should not be held liable for the costs of cleaning up a Superfund site, either because they send only a very small amount of waste to a site, or because their waste was ordinary trash.

I am very proud of this legislation, and was pleased to have sponsored this, along with the gentleman from Ohio (Chairman GILLMOR) and others.

Title II of this legislation is intended to encourage brownfields redevelopment. Brownfields redevelopment is very important, as previous speakers have mentioned. Our economy is changing. We have lost manufacturing jobs. Communities across America have lost thousands of jobs.

I held a subcommittee hearing on this issue of brownfields redevelopment earlier this year, and I agree that we should be doing everything we can to encourage the redevelopment of these

brownfields sites. Unfortunately, the brownfields title of this bill is not drafted as clearly as I would like, but let me make clear the intent of title II is to encourage brownfields redevelopment, and it needs to be read with that goal in mind.

Nothing in this bill should be read to narrow the scope of properties eligible for assistance under the bill. All brownfields sites are eligible, including properties contaminated by petroleum releases, asbestos, or lead paint. Nothing in this bill should be read to make it easier to bring lawsuits against innocent landowners.

The gentleman from Ohio (Chairman GILLMOR) mentioned earlier that some estimates have been as high as half of the amount of the Superfund money that has been spent on lawyers and consultants and so forth. I have seen estimates much higher even than that.

The intent of this bill is to increase liability protections for people who own property that is next to a contaminated site, and people who buy property after all disposal activities have taken place. Nothing in this bill should be read to encourage Federal intervention when brownfields sites are being cleaned up under State programs.

The intent of the bill is to prevent unnecessary Federal involvement. As with most legislation, its successes or failures will depend on how it is implemented. As chairman of the Subcommittee on Water Resources and Environment, I will be keeping a careful watch on the EPA. I expect the EPA to use the discretion given to it under this legislation to remove red tape from brownfields sites.

To date, the EPA has never brought a lawsuit to second-guess a State clean-up decision. I do not expect this deference to States to change after passage of this legislation.

Since 1995, the EPA has viewed the Superfund national priorities list as a last resort for managing contaminated property. In fact, since income taxes, the EPA has had a formal policy of seeking the concurrence of a State government before listing a site on the Superfund list. I do not expect these policies to change after passage of this legislation.

Let me say to the EPA, it should not look at this bill as an excuse or an opportunity to build its bureaucracy or expand its mission.

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The funding in this bill is intended to go into communities around the country to encourage and achieve brownfields redevelopment, not simply to expand the Federal bureaucracy or add to Federal red tape.

Finally, I would like to express concern over the applicable to Davis Bacon prevailing wage rates to brownfields projects under this bill. Davis Bacon wage rates can add unnecessarily to

clean up costs. Our goal is to get as many sites as possible cleaned up and returned to productive use. The higher the cost, the fewer the number of sites that can be addressed and actually cleaned up.

There are mixed feelings about this bill from a number of groups, the National Federation of Independent Businesses strongly supports the small business liability relief but does not support the expansion of Davis Bacon. The National Association of Home Builders and the U.S. Chamber of Commerce call the bill the first step for addressing the brownfields but the Chamber expresses serious concerns over David Bacon liability.

Other groups, like the National Association of Realtors, the National Association of Industrial and Office Properties and at least 7 other real estate groups strongly support the election. After weighing the matter carefully, I believe that this litigation, if implemented properly, could go a long way towards protecting small businesses from Superfund liability and is a significant first step towards encouraging the redevelopment of brownfields.

For these reasons, I support H.R. 2869 and encourage all of my colleagues to do likewise.

Mr. Speaker, I reserve the balance of my time.

Mr. DEFAZIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased at this very late early hour, however anyone wants to look at it, that we are finally doing some real work on the floor of the House having spent the rest of the morning engaged in an extended fantasy partisan one-upmanship from the other side of the aisle where they jammed through a bill that will not do anything to stimulate the economy. It will never become law.

But this will become law and this is necessary legislation. It should be part of a comprehensive Superfund reform. Unfortunately, we have been unable to move that legislation through this body. But that said, we do have here one key part of Superfund reform, and I just want to emphasize one point.

Legislation will provide needed Federal funding for site assessments to determine whether or not those brownfields are, in fact, contaminated as well as provide funding for the remediation of contaminated property. The technical changes to the Senate bill which I referred to earlier in my prepared statement, involved integrating these funding operations as an amendments to section 104 of CERCLA, change that has been agreed to by all parties involved in negotiations on this bill. By amending section 104 of CERCLA we are hoping to expedite the implementation of this new program by modeling it after one already in operation by the Environmental Protection Agency in order that funds au-

thorized by this legislation get to the cities and the communities that need them as expeditiously as possible and we move ahead with the necessary cleanup.

Mr. Speaker, I yield back the balance of my time.

Mr. GILLMOR. How much time remains, Mr. Speaker?

The SPEAKER pro tempore (Mr. SHIMKUS). The gentleman from Ohio (Mr. GILLMOR) has 3½ minutes remaining. The gentleman from New Jersey (Mr. PALLONE) has 4 minutes remaining. The gentleman from Tennessee (Mr. DUNCAN) has 4½ minutes remaining.

Mr. GILLMOR. Mr. Speaker, I yield as much time as he may consume to the gentleman from Ohio (Mr. NEY).

Mr. NEY. Mr. Speaker, I rise this morning in strong support of this legislation. This much needed bill will help bring confidence to the many developer and contractors who fear lawsuits and intense Federal oversight of the clean up effort.

As a lifelong supporter of Davis Bacon, I also want to thank the gentleman from Louisiana (Mr. TAUZIN) and the gentleman from Ohio (Mr. GILLMOR) for keeping this fundamentally fair provision in the bill.

The Davis Bacon Act provides working men and women with critical worker protections. Davis Bacon is one of few Federal laws that truly prevents further erosion of living standards for millions of working families and that is so important during these times. At a time of economic uncertainty, brownfields legislation will help to stimulate development in communities across the country. This bill will clean up the environment, maintain the living standards of working families and create jobs. I urge our colleagues to vote yes.

Mr. DUNCAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. SHIMKUS).

Mr. SHIMKUS. Mr. Speaker, first I rise to thank everyone who has worked so hard on both the brownfields and Superfund business liability relief provisions.

Today we have an opportunity to pass landmark legislation which has a very real chance of becoming law. The first portion of this bill deals with Superfund small business liability relief. This issue first came to my attention when a landfill in Quincy, Illinois was declared a Superfund site. Quincy is a small community of 42,000 people located in my district of the banks of the Mississippi River.

The residents of this town have experienced firsthand the unfairness of the Superfund law to innocent small businesses punishing them for legally disposing their trash. Greg Shiering, a franchisee of two McDonalds was asked by the EPA to pay \$47,000 for disposing of hamburgers and french fries into the

town dump. Mike Nobis, part owner of a 30-year owned family business, JK Creative Printers was asked to pay \$42,000 for legally sending trash to the dump in the 70's and 80's. One hundred fifty nine small businesses in the community were offered settlements with the EPA totaling \$3 million.

The EPA based these payments purely on volume of waste, not on whether there was hazardous material in the waste. If the business did not settle, they would be open to lawsuits from six large companies. Court costs alone could bankrupt some of these small mom and pop shops that were targeted.

Today we have the opportunity to make sure what happened in Quincy does not happen in other communities. Any many times in my statements in debate of this bill, I just warn my colleagues that this scourge would visit their congressional districts some time sooner or later. I encouraged them to join me to make sure that this does not happen and I am pleased to say that we are almost there. We are almost there. So other members will not have to go through this problem of what has affected their small businesses.

I would also like to commend my colleagues' work on brownfields reform. This legislation is an important first step in addressing problems with the brownfields program. However, I do look forward to the opportunity to address this program again. I am really excited and concerned about the finality provisions and I think they could be made a little bit stronger. We will address that sometime in the future. Tighter finality will encourage this business to clean up brownfields in order for the program to be as successful as possible.

I also support the fact that we have not increased but we have just certified current law as far as the Davis Bacon provisions. It has been successful and it has brought together this great bipartisan agreement to move this legislation forward and I think everyone benefits from it.

At this late hour I am pleased to be here to speak on support of this bill in the floor and thank the chairman of the full committee, the gentleman from Louisiana (Mr. TAUZIN), the ranking member, the gentleman from Michigan (Mr. DINGELL) and then the subcommittee chairman, the gentleman from Ohio (Mr. GILLMOR). I thank them for their help. The gentleman from New Jersey (Mr. PALLONE), I appreciate your diligent efforts on this behalf.

Mr. PALLONE. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. GILLMOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to, in closing, just touch very briefly on this Davis Bacon question which a few groups have risen. There is no expansion of Davis Bacon in this bill.

Brownfields grants are now done under section 104 of the CERCLA Act. Those are covered by Davis Bacon. All this bill does is increase the funding from about 100 million to 200 million and Davis Bacon applies the same as it did before.

Increasing funding for a program that is already covered is not an expansion. I think most of the Members of this Chamber vote for the education bill last week. They voted for all the appropriations bills. All those appropriations bills increase funding for various programs to which Davis Bacon applies. And we do not consider that an expansion. So for those who say it is an expansion in this bill, it is not logical but then it is Congress.

Let me just conclude by saying this is very important legislation, reforming brownfields, reforming small bills liability. I very much appreciate the broad support of bipartisan support in this Chamber, broad support outside of this Chamber this legislation has received and I urge all of my colleagues to vote for it.

Mr. Speaker, I yield back the remainder of my time.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would simply close by saying I view the main intentions of this legislation to be, number one, to make sure that no small businesses are unfairly driven out of existence by unintended and unfair liability under Superfund. And, secondly, and very importantly, to see that more brownfields sites across this Nation are cleaned up and put back into productive use in this country. I simply want to say that I commend all of the Members and the staff that were involved in bringing this very important legislation to the floor of this House.

Mr. DOOLEY of California. Mr. Speaker, while I appreciate that H.R. 2869 is a first step towards addressing the clean up of brownfields, it is unfortunate that this bill does not provide the adequate incentives and protection to those willing to take the risk associated with brownfields remediation. Specifically, this bill does not address the entire universe of brownfields sites in this country. H.R. 2869 only includes a prospective purchaser liability exemption for sites contaminated with a "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Petroleum is not considered a hazardous substance under CERCLA and is regulated specifically under the Resource Conservation and Recovery Act (RCRA) statute.

The Environmental Protection Agency (EPA) estimates that approximately one half of the 500,000 brownfields sites in this country are contaminated with petroleum. By excluding RCRA liability protection for petroleum sites, I am concerned that half of the sites in the country may remain contaminated, undeveloped and devoid of any productive use. Without the prospective purchaser liability protections for petroleum sites, developers will likely

avoid remediating these sites. I am disappointed that we have not addressed this issue in this pending legislation and I encourage this House to address this issue as soon as possible.

Mr. OBERSTAR. Mr. Speaker, I rise in support of H.R. 2869, the Small Business Liability Relief and Brownfields Revitalization Act. This important bipartisan, bicameral brownfields redevelopment legislation, a long time in coming, will help significantly in the redevelopment of many abandoned and long-forgotten properties dotting our nation's city and community centers.

Mr. Speaker, back in the early 1990's, several members of the Democratic caucus began talking about the problems faced in many of our urban centers. Many of our members had spoken with their mayors and other interested constituents about the great number of former commercial and industrial sites left underutilized or abandoned—with no real prospects of redevelopment. These "brownfields", which once housed the machinery and the manpower that helped this country grow throughout the last century, were vacant—generating little tax revenue for the cities, and serving as breeding grounds for crime, vandalism, and a poor quality-of-life for neighboring communities. In 1992, members of the Democratic caucus proposed the idea of using the power of the Federal government to help rejuvenate these brownfields properties—cleaning up the legacy of the industrial age, and returning these forgotten properties to productive use. Unfortunately, these efforts were blocked for a variety of reasons—both substantive and political. Now, almost a decade later, I am pleased that we finally have reached agreement on a package that will achieve those original goals.

Mr. Speaker, this is not, in my opinion, the best bill that we could offer. In fact, few here today can say that they support everything in this legislation. This bill represents a compromise in the constructive sense of that word—almost exactly the same as one that achieved a vote of 99-0 in the other body, and one that will proceed expeditiously to the President's desk for his signature.

Very briefly, this legislation is divided into two titles. The first title contains the text of the Small Business Liability Protection Act that passed the House back in May by a vote of 419-0. This bipartisan legislation seeks to protect small businesses from being sued by overzealous polluters at Superfund sites, as well as protects homeowners and charitable organizations that simply put out the trash.

The second title contains, almost verbatim, the text of S. 350, the Senate brownfields legislation that passed the other body last April. This proposal carves out limited Superfund liability exemptions for innocent landowners, prospective purchasers of contaminated properties, and contiguous property owners—the individuals who should never be subject to Superfund liability for these properties. The bill also preserves the vital federal safety net that allows the Environmental Protection Agency to require additional cleanup of properties when there is a threat to human health or the environment following a cleanup under a state program. This provision will ensure that local residents will be protected should a cleanup plan

fail to protect human health or the environment.

Finally, this legislation will provide much needed funding for brownfields site assessment and cleanup to move brownfields properties into productive reuse as quickly as possible. The bill will make Federal monies available for brownfields site assessment and remediation by amending section 104 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—the only change in legislative text from S. 350. By placing the legislative funding authority directly in section 104 of CERCLA, this legislation aims to take advantage of Environmental Protection Agency's experiences gained through its current brownfields program, and attempts to build upon these successes through explicit legislative brownfields authority, increased authorizations, and greater flexibility in the case of Federal dollars. Accordingly, we expect EPA to closely model its implementation of this legislation on the Agency's existing brownfields program, and to get these desperately needed funds out the door and directly to the cities and communities as soon as possible.

Mr. Speaker, as I said earlier, I am pleased to support this important brownfields revitalization legislation. While it has been a long time coming, I believe that this legislation will greatly assist in the redevelopment of brownfields properties that have troubled our nation for too long. I urge my colleagues to support the bill.

Mr. GARY G. MILLER of California. Mr. Speaker, although H.R. 2869 represents a step forward in addressing brownfields reform, I am concerned that the legislation before us does not encourage the clean up and redevelopment of all brownfields sites. Specifically, although H.R. 2869 includes prospective purchaser federal liability protection for "hazardous substances" defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), it does not include prospective purchaser liability exemption for petroleum based contaminants under the Resource Conservation and Recovery Act (RCRA). This is a critical issue that is being overlooked in this legislation.

It is my understanding that the EPA has estimated that there are approximately 200,000 petroleum-based brownfields sites in this nation. If Congress is to address this important environmental issue, it is critical that we pass meaningful reform. I am disappointed that we have chosen not to do so with this legislation. I have to imagine that each one of us has an abandoned gas station in our district that could be cleaned up and redeveloped were it not for liability uncertainty. The reality is that without prospective purchaser liability protections for petroleum sites, developers—who did not cause the contamination—will not be willing to take the risk of cleaning up these sites and legislation will fail to meet its goal. I encourage the House to address this oversight as soon as possible.

Mr. CANTOR. Mr. Speaker, While I am pleased that Congress has chosen to address the important issue of brownfields reform, I am concerned that the House has not chosen to fully address liability protection for all brownfields sites.

While H.R. 2869 is a first step in addressing brownfields reform, the legislation lacks a critical component that will prevent the clean up and redevelopment of brownfields on a meaningful scale. H.R. 2869 does not include federal liability protections for the clean up of petroleum-contaminated sites under the Resource Conservation and Recovery Act.

By not addressing petroleum liability, half of the brownfields sites in this country have the potential to remain undeveloped under H.R. 2869. EPA has estimated that 200,000 of the 500,000 brownfields sites in the country are petroleum based. It is probably safe to say that almost every congressional district has an abandoned gas station that could be remediated and redeveloped. However, developers will not likely tackle these projects.

Redevelopment of brownfields presents an opportunity to combine Smart Growth principals with economic development. Many brownfields, especially petroleum-based sites, are located in urban areas, like my district, or close-in suburbs where whole communities stand to be revitalized through new building and the economic activity it will stimulate. Further, petroleum-contaminated sites are obvious targets for redevelopment because of the well-known and cost-effective remediation technologies currently available for petroleum contamination.

Without liability protections developers will not be willing to take the risk of cleaning up these sites and legislation will fail to meet its goal. Congress needs to address liability protections for petroleum-based sites if we are to achieve meaningful, effective brownfields reform.

Mr. BOEHLERT. Mr. Speaker, I rise in support of H.R. 2869, a comprehensive brownfields and targeted Superfund small business liability relief bill. This is a bipartisan, bicameral compromise that will help protect the environment, restore brownfields, revitalize local economies, and return a little bit of basic fairness to Superfund's liability regime. Unfortunately, the bill does not include a reauthorization of Superfund's corporate environmental income tax and more comprehensive reform of the Superfund statute; and so my enthusiasm today is tempered by feelings of "missed opportunities" and growing concerns about the future of the Superfund Program.

Nonetheless, today's bill is a feat in itself and I want to thank and congratulate all of those who helped over the years and recent months. The nation's mayors and their constituencies see the tremendous opportunities for economic development and environmental protection embodied in brownfields revitalization and they are rallying behind this legislation, just as they did when they began their initiative to "recycle America's land." The leadership of the House and Senate, the Chairs and ranking members of the authorizing committees and subcommittees, and the administration should all be commended for making today's action possible. Special thanks should go to the committee staff, such as Susan Bodine and Jim Barnette, who have endured the torturous legislative process for years.

It has taken far too long to get to this point. I myself have quite a few "scars" from the many battles that began in the early 90's and culminated in the 105th and 106th Con-

gresses, when I chaired the Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment. We moved my comprehensive bill (H.R. 1300) through the committee on an unprecedented, bipartisan vote of 69 to 2. It brought people together because it provided broad-based reform, brownfields revitalization, and called for a responsible reauthorization of Superfund taxes to help maintain the "polluter pays" principle.

I continue to believe such an approach is the right one and that is why I reintroduced the bill as H.R. 324. However, given the complications of moving a more comprehensive bill, I support moving forward today with this more targeted compromise, as long as we also continue to work on other important components of reforming and financing Superfund. H.R. 2869 should be viewed as the first of several steps in securing the fairness, effectiveness, and funding for improving the Nation's approach to hazardous and abandoned waste sites.

Title I of H.R. 2869 responds to the need for Superfund liability reform relating to small businesses. It includes the text of the House-passed bill, H.R. 1831. It provides a "demicromis" exemption for those who were contributors of truly tiny amounts of waste. It also exempts those who contributed nonhazardous garbage ("municipal solid waste"). Finally, it encourages faster and fairer settlements through "ability to pay" procedures.

Mr. Speaker, the inequities and inefficiencies of the current liability regime continue. One recent example, involving a local newspaper in my district, illustrates the need for limited exemptions and fair share allocations of responsibility. The Rome Sentinel, which disposed of waste at a landfill many decades ago, was notified that it was a potentially responsible party. Under the current strict, joint, and several liability system, there are not many incentives for a fair and efficient allocation process. Instead, the Government may focus on "deep pockets" who then sue everyone else, large and small, culpable and not-so-culpable, to recover their costs. Even though the newspaper may have contributed only minor amounts of waste (and did so lawfully at the time of the disposal), it faced the prospects of being dragged into a tremendously costly and protracted legal battle in third party lawsuits.

H.R. 2869 will make some modest improvements to the current liability system. More comprehensive reform is needed, however.

Title II includes brownfields legislation that passed the Senate earlier this year by a vote of 99 to 0. It is not perfect legislation, but it is legislation we can and should support. Like the brownfields provisions from my bill last Congress (H.R. 1300), it not only removes barriers to cleanup and redevelopment but it retains a "safety net" for environmental protection and governmental enforcement. It also allows for the application of Davis-Bacon labor protections.

Where should we go from here? Congress and the administration should honor the polluter pays principle. It should heed the findings and conclusions of the July 2001 report by Resources for the Future, "Superfund's Future, What Will it Cost," that a "ramp-down" of

the Superfund program is not imminent and that the total estimated cost to EPA of implementing the Superfund program from FY 2000 through FY 2009 ranges from \$14 billion to \$16.4 billion.

Therefore, to meet the goals of the cleanup program, to remain true to the polluter pays principle, and to finance the needed liability reforms, Congress should reauthorize the corporate environmental income tax, which expired on December 31, 1995. This broad-based tax of .12% of all corporate income above \$2 million could generate needed funds in a fair and responsible manner. Contrary to what some might believe, the oil industry would not pay a disproportionate amount. For example, in 1995 oil companies paid \$37.7 million in corporate environmental income taxes, only 5.3 percent of the total amount collected in that year.

In response to my request, the Joint Committee on Taxation estimated on September 24, 2001 that a re-imposed corporate environmental income tax would generate over \$3 billion over a 5-year period. This is exactly the type of revenue needed for a program that continues to deliver public health, environmental, and economic development benefits.

Mr. Speaker, I urge my colleagues not only to support passage of H.R. 2869 today but to work towards enactment of broader Superfund reform, including reauthorization of the expired corporate environmental income tax.

Mrs. WILSON of New Mexico. Mr. Speaker, I rise today to express my concern about legislation that the House passed by voice vote early this morning H.R. 2869, the "Small Business Liability Relief and Brownfields Revitalization Act."

Brownfields redevelopment effectively marries the principles of economic development and environmental protection by slowing the developing of open space by presenting property owners and developers with access to brownfields sites located in desirable locations, with existing infrastructure and affordable pricing. While I am a strong supporter and advocate of brownfields clean up, I am disheartened that H.R. 2869 did not go further to address the entire brownfields problem in this country.

The Environmental Protection Agency (EPA) estimates that approximately one half of the 450,000 brownfields sites in this country are contaminated with some type of petroleum pollution. Unfortunately, H.R. 2869 ignored petroleum-contaminated sites by only including a liability exemption for brownfields sites contaminated with a "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Petroleum contamination, which is not considered a "hazardous substance" under CERCLA, is regulated under the Resource Conservation and Recovery Act (RCRA). While H.R. 2869 does include federal grant money for a very specific set of petroleum contaminated sites, I fear that these grants alone will not be an incentive to spur the clean up of petroleum brownfields sites. Without a RCRA liability exemption for petroleum contaminated sites, only half of the brownfields sites in this country have the potential to be redeveloped.

It is my sincere hope that H.R. 2869 only represents a beginning of our intent to address brownfields redevelopment. I hope this Congress will address liability protection for petroleum-contaminated brownfields sites next year so we can truly address the entire brownfields problem in this country. I look forward to working with the leadership and the committees to make comprehensive brownfields redevelopment a reality.

Mr. DINGELL. Mr. Speaker, I am an original co-sponsor of H.R. 2869. This bill combines the brownfields provisions of S. 350 that unanimously passed the Senate on April 25, 2001, and the small business liability protection provisions of H.R. 1831 that unanimously passed the House on May 22, 2001. This bill is a good piece of legislation. It deserves the support of all members.

In the past two Congresses, members on this side of the aisle have put forward, and strongly supported, stand-alone brownfields legislation and targeted relief for small business. Those policies are contained in this bill. The passage of this legislation will help revitalize and redevelop our communities. Using the provisions of this bill, local governments will be able to obtain increased funding and remove urban eyesores and create new jobs. At the same time, risks to the public health from petroleum and hazardous substances contamination will also be addressed at these lesser-contaminated brownfield sites.

In the Detroit metropolitan area alone, which has been home to our country's industrial strength for over 100 years, brownfields cover tens of thousands of acres of lands once occupied by mighty manufacturing facilities and thriving communities. Brownfields development is occurring in Michigan communities like Taylor and Monroe, as local governments, developers, and citizens are finding creative ways to rebuild our communities.

This bill maintains the policies of EPA's current and very successful brownfields program. Adoption of this brownfields legislation is a top priority for our Nation's mayors, who have testified that it meets all of their fundamental needs.

I congratulate Subcommittee Chairman GILLMOR, Ranking Member PALLONE, and our former Ranking Member from New York, Mr. TOWNS, for their hard work over several years on this important legislation.

I strongly urge adoption of H.R. 2869 as amended.

Mr. DUNCAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. GILLMOR) that the House suspend the rules and pass the bill, H.R. 2869, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

NATIVE AMERICAN BREAST AND CERVICAL CANCER TREATMENT TECHNICAL AMENDMENT ACT OF 2001

Mr. GILLMOR. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1741) to amend title XIX of the Social Security Act to clarify that Indian women with breast or cervical cancer who are eligible for health services provided under a medical care program of the Indian Health service or of a tribal organization are included in the optional medicaid eligibility category of breast or cervical cancer patients added by the Breast and Cervical Cancer Prevention and Treatment Act of 2000.

The Clerk read as follows:

S. 1741

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001".

SEC. 2. CLARIFICATION OF INCLUSION OF INDIAN WOMEN WITH BREAST OR CERVICAL CANCER IN OPTIONAL MEDICAID ELIGIBILITY CATEGORY.

(a) TECHNICAL AMENDMENT.—The subsection (aa) of section 1902 of the Social Security Act (42 U.S.C. 1396a) added by section 2(a)(2) of the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106-354; 114 Stat. 1381) is amended in paragraph (4) by inserting " , but applied without regard to paragraph (1)(F) of such section" before the period at the end.

(b) BIPA TECHNICAL AMENDMENTS.—

(1) Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 702(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A-572) (as enacted into law by section 1(a)(6) of Public Law 106-554), is amended by redesignating the subsection (aa) added by such section as subsection (bb).

(2) Section 1902(a)(15) of the Social Security Act (42 U.S.C. 1396a(a)(15)), as added by section 702(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A-572) (as so enacted into law), is amended by striking "subsection (aa)" and inserting "subsection (bb)".

(3) Section 1915(b) of the Social Security Act (42 U.S.C. 1396n(b)), as amended by section 702(c)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A-574) (as so enacted into law), is amended by striking "1902(aa)" and inserting "1902(bb)".

(c) EFFECTIVE DATES.—

(1) BCCPTA TECHNICAL AMENDMENT.—The amendment made by subsection (a) shall take effect as if included in the enactment of the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106-354; 114 Stat. 1381).

(2) BIPA TECHNICAL AMENDMENTS.—The amendments made by subsection (b) shall take effect as if included in the enactment of section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A-572) (as enacted into law by section 1(a)(6) of Public Law 106-554).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Ohio (Mr. GILLMOR) and the gentleman from New Jersey (Mr. PALLONE) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio (Mr. GILLMOR).

GENERAL LEAVE

Mr. GILLMOR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative day within which to revise and extend their remarks and include extraneous material on this legislation.

The SPEAKER pro tempore. Is their objection to the request of the gentleman from Ohio?

There was no objection.

Mr. GILLMOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 1741, the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001.

Mr. Speaker, I reserve the balance of my time.

Mr. PALLONE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am also in support of the legislation. While this bill is technical in nature, it does basically fill a vacuum and it offers real benefits to low income Native American women who are diagnosed with breast or cervical cancer.

Basically what happened is that in a bill that was passed last year, the interpretation of it has been made so that it excludes Native American women have Medicaid coverage. The legislation today would resolve this problem by clarifying that they would indeed come under the coverage of that initial legislation.

I would point out that Native American and Alaskan Native women have a higher incidence of breast and cervical cancer than the U.S. population generally. So it really is important that we enact this bill to ensure that they receive needed assistance.

The Senate already passed the legislation by unanimous consent. It is supported by a number of health care groups. And I just again want to extend my appreciation and recognition to the lead sponsor, the gentleman from New Mexico (Mr. TOM UDALL) and also commend the gentlewoman from California (Ms. ESHOO) who worked tirelessly on this.

Mr. Speaker, I yield back the balance of my time.

Mr. GILLMOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to point out I do want to express my appreciation to the tremendous work that our staff did on the previous legislation we passed.

Mr. PALLONE. Mr. Speaker, I am pleased to speak today in support of S. 1741, the "Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001." This legislation makes a simple but extremely important technical change to the "Breast and Cervical Cancer Treatment and