IB

103D CONGRESS
2D SESSION

H. R. 4916

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 8, 1994

Mr. SWIFT (for himself, Mr. DINGELL, Mr. MINETA, Mr. GIBBONS, Mr. APPLEGATE, and Mr. BOEHLERT) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Public Works and Transportation, and Ways and Means

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the ''Superfund Reform Act
5 of 1994''.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

Sec. 3. References to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH

Sec. 101. Public participation.
Sec. 102. Community working groups.
Sec. 103. Hazard ranking system.
Sec. 104. Disease registry and medical care providers.
Sec. 105. Substance profiles.
Sec. 106. Determining health effects.
Sec. 107. Public health at NPL facilities.
Sec. 108. Health studies.
Sec. 109. Distribution of materials to health professionals and medical centers.
Sec. 110. Grant awards, contracts, and community assistance activities.
Sec. 111. Public health recommendations in remedial actions.
Sec. 112. Clarification of ATSDR authority.
Sec. 113. Recruitment and training demonstration program.
Sec. 114. Transition.

TITLE II—STATE ROLES

Sec. 201. Contracts or cooperative agreements with States.
Sec. 202. State cost share.
Sec. 203. Siting.
Sec. 204. The State registry.
Sec. 205. Conforming and miscellaneous amendments.
Sec. 206. Study of authorization of States to carry out Superfund.
Sec. 207. State role at Federal facilities.

TITLE III—VOLUNTARY RESPONSE

Sec. 301. Voluntary response program.

TITLE IV—LIABILITY AND ALLOCATION

Sec. 401. Information gathering and access.
Sec. 402. Compliance with administrative orders.
Sec. 403. Limitations to liability for response costs.
Sec. 404. Liability.
Sec. 405. Civil proceedings.
Sec. 406. Limitations on contribution actions.
Sec. 407. Scope of rulemaking authority.
Sec. 408. Response action contractors.
Sec. 409. Enhancement of settlement authorities.
Sec. 410. Professional services.
Sec. 411. Final convenants.
Sec. 412. Expedited final settlements.
Sec. 413. Allocation procedures.
Sec. 414. Recycling transactions.

TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS

Sec. 501. Cleanup standards.
Sec. 502. Remedy selection.
Sec. 503. Miscellaneous amendments to section 121.
Sec. 504. Response authorities.

Sec. 505. Removal actions.
Sec. 506. Hazardous substance property use.
Sec. 507. Transition.

TITLE VI—MISCELLANEOUS

Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.
Sec. 602. Contents of certain deeds.
Sec. 603. Transfers of uncontaminated property.
Sec. 604. Agreements to transfer by deed.
Sec. 605. Alternative or innovative treatment technologies.
Sec. 606. Definitions.
Sec. 607. Response claims procedures.
Sec. 608. Small business ombudsman.
Sec. 609. Consideration of local government cleanup priorities.
Sec. 610. Consistent application among regional offices.
Sec. 611. Study of participants.
Sec. 612. Public comment.
Sec. 613. Certification of environmental training and certification organizations.
Sec. 614. Savings clause.
Sec. 615. Federal entities and facilities.
Sec. 616. Worker training and education grants.
Sec. 617. Report and oversight requirements.
Sec. 618. Remedial technologies.
Sec. 619. Reimbursement to State and local governments.
Sec. 620. Study of small disadvantaged business goals.
Sec. 621. Conforming amendment.

TITLE VII—FUNDING

Sec. 701. Authorization of appropriations.
Sec. 702. Orphan share funding.
Sec. 703. Agency for Toxic Substances and Disease Registry.
Sec. 704. Limitations on research, development, and demonstration programs.
Sec. 705. Authorization of appropriations from general revenues.
Sec. 706. Additional limitations.
Sec. 707. Uses of the fund.

TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND

Sec. 801. Short title.
Sec. 802. Definitions.
Sec. 803. Environmental Insurance Resolution Fund.
Sec. 804. Resolution offers.
Sec. 805. Documentation of claims and insurance coverage.
Sec. 806. Amount of resolution offers.
Sec. 807. Acceptance of resolution offer.
Sec. 808. Resolution payments.
Sec. 809. Rejection of resolution offer and reimbursement to insurer.
Sec. 810. Financial Statements, audits, investigations, and inspections.
Sec. 811. Stay of pending litigation.
Sec. 812. Regulations.
Sec. 813. Court jurisdiction and penalties.
Sec. 814. Miscellaneous provisions.

Sec. 815. Reports.
Sec. 816. Effective date.
Sec. 817. Termination of authority to offer and accept resolution.
Sec. 818. Termination of fund.

TITLE IX—TAXES

Sec. 901. Amendments to the Internal Revenue Code of 1986.
Sec. 902. Environmental fees and assessments on insurance companies.
Sec. 903. Funding provisions for Environmental Insurance Resolution Fund.
Sec. 904. Resolution Fund not subject to tax.

1 **SEC. 3. REFERENCES TO COMPREHENSIVE ENVIRON-**
2 **MENTAL RESPONSE, COMPENSATION, AND LI-**
3 **ABILITY ACT OF 1980.**

4 Except as otherwise expressly provided, whenever in
5 this Act an amendment or repeal is expressed in terms
6 of an amendment to, or repeal of, a section or other provi-
7 sion, the reference shall be considered to be made to a
8 section or other provision of the Comprehensive Environ-
9 mental Response, Compensation, and Liability Act of
10 1980 (commonly known as ''Superfund'') (42 U.S.C. 9601
11 and following).

12 TITLE I—COMMUNITY PARTICI-
13 PATION AND HUMAN HEALTH

14 **SEC. 101. PUBLIC PARTICIPATION.**

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

17 ''(e) GRANTS FOR TECHNICAL ASSISTANCE.—

18 ''(1) AUTHORITY.—In accordance with the rules
19 promulgated by the Administrator, the Adminis-
20 trator may make grants available to any group of in-

1 dividuals which may be affected by the release or
2 threatened release of hazardous substances, pollut-
3 ants, or contaminants at any facility on the State
4 Registry or the National Priorities List. Such grants
5 shall be known as Technical Assistance Grants. To
6 ensure that the application process is accessible to
7 all affected citizens, the Administrator shall periodi-
8 cally review such process and, based on such review,
9 shall implement appropriate changes to the applica-
10 tion process to improve access.

11 ''(2) SPECIAL RULES.—No matching contribu-
12 tion shall be required for a Technical Assistance
13 Grant. The Administrator shall make a portion of
14 the grant available to the grant recipient, in advance
15 of the expenditures to be covered by the grant, in
16 $5,000 installments.

17 ''(3) REPRESENTATIVE OF THE COMMUNITY.—
18 The Administrator shall publish guidance for deter-
19 mining that the recipient of any Technical Assist-
20 ance Grant award is a legitimate representative of
21 the community affected by the facility.

22 ''(4) LIMIT PER FACILITY.—Not more than one
23 grant may be made under this subsection with re-
24 spect to a single facility, but the grant may be re-
25 newed to facilitate public participation at all stages

1 of response action. Limits shall be established with
2 respect to the number of years for which grants may
3 be available based on the duration, type, and extent
4 of response activity at a facility.

5 ‘‘(5) FUNDING AVAILABILITY.—Subject to the
6 limitations provided in paragraph (6), grants shall
7 be made available to affected citizens who live in
8 communities containing facilities in the State Reg-
9 istry not listed on the National Priorities List.

10 ‘‘(6) FUNDING LIMIT.—Not more than 4 per-
11 cent of the funds made available for carrying out
12 this Act for any fiscal year may be used for grants
13 under this subsection in that fiscal year and not
14 more than one-eighth of the funds under this sub-
15 section may be used for grants with respect to facili-
16 ties not listed on the National Priorities List. If
17 such one-eighth portion is not needed for such facili-
18 ties, such portion may be used for grants with re-
19 spect to facilities listed on the National Priorities
20 List.

21 ‘‘(7) FUNDING AMOUNT.—The initial amount of
22 any grant under this subsection may not exceed
23 $50,000 for a single grant recipient. However, the
24 Administrator shall increase the amount of the ini-
25 tial grant, as appropriate, to reflect the complexity

1 of response action, the nature and extent of con-
2 tamination at the facility, the level of facility activ-
3 ity, projected total needs as requested by the grant
4 recipient, the size and diversity of the affected popu-
5 lation, and the ability of the grant recipient to iden-
6 tify and raise funds from other sources.

7 "(8) AUTHORIZED GRANT ACTIVITIES.—

8 "(A) INTERPRETATION OF INFORMA-
9 TION.—Grants awarded under this subsection
10 may be used to obtain technical assistance in
11 interpreting information with regard to (i) the
12 nature of the hazard at a facility; (ii) the reme-
13 dial investigation and feasibility study; (iii) the
14 record of decision; (iv) the selection, design, and
15 construction of the remedial action; (v) oper-
16 ation and maintenance; or (vi) removal activi-
17 ties at such facility.

18 "(B) ADDITIONAL ACTIVITIES.—Grants
19 awarded under this section also may be used (i)
20 to obtain technical assistance in gathering and
21 interpreting information used to rank facilities
22 according to the Hazard Ranking System, (ii)
23 for gathering information to assess a remedy
24 selection decision, (iii) to hire health and safety
25 experts to advise affected residents on health

assessment and contamination data gathering efforts and response activities, (iv) to hire a community liaison to potentially responsible parties and government agencies, (v) to hire experts to file comments with governmental agencies and generate other documents as necessary to ensure full participation by the grant recipient, (vi) to hire experts to provide input to the design of any health studies that a government agency performs, and (vii) for training funds for interested affected community members to enable them to more effectively participate in the remedy selection process.

''(C) LIMITATION.—Grants awarded under this section may not be used for the purposes of collecting field sampling data.

''(9) USE OF EXPERTS.—Technical or other experts hired by grant recipients under this subsection shall be hired by such recipients pursuant to guidelines developed by the Administrator.

''(10) NON-SITE-SPECIFIC GRANTS.—In accordance with the rules promulgated by the Administrator, the Administrator may make Technical Assistance Grant funds available to nonprofit organizations and citizens groups to enhance their participa-

tion in consensus-based rulemaking processes carried out in accordance with this Act. Total funding for all such grants shall not exceed $100,000.

''(f) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—(1)(A) In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the President shall provide the opportunity for public meetings and publish a notice of such meetings before or during performance of each of the following:

''(i) The health assessment and the preliminary assessment and site inspection, as appropriate. Where the President determines a meeting is not appropriate at the preliminary assessment and site inspection stage, the President shall provide adequate public notice of that decision.

''(ii) The Remedial Investigation and Feasibility Study (RI/FS).

''(iii) The announcement of the preferred remedial alternative.

''(iv) The completion of the work plan for the RI/FS, Remedial Design and Remedial Action.

''(B) Public meetings shall be designed to obtain information from the community and disseminate informa-

1 tion to the community concerning the President's facility
2 activities and pending decisions.

3 ''(2) The President also shall provide reasonable no-
4 tice of an opportunity for public participation in meetings
5 in which—

6 ''(A) the participants include Federal officials,
7 or State officials where the State is conducting re-
8 sponse activities, with authority to make significant
9 decisions affecting a response action, and any other
10 person or persons, unless the other person or per-
11 sons are all coregulators that are not potentially re-
12 sponsible parties, or government contractors; and

13 ''(B) the subject of the meeting involves the de-
14 velopment of the work plan for the preliminary as-
15 sessment and site inspection, the RI/FS, Remedial
16 Design or Remedial Action, or any other phase of
17 the remedial process for facilities on the National
18 Priorities List or in the State Registry.

19 ''(3) To the extent practicable, before or during the
20 health assessments and site inspection, the President shall
21 solicit and evaluate concerns, interests, and information
22 from the community likely affected by the facility. The
23 evaluation shall include, as appropriate, face-to-face com-
24 munity surveys to identify the location of private drinking
25 water wells, historic and current or potential use of water,

1 and other environmental resources in the community; a
2 public meeting; written responses to significant concerns;
3 and other appropriate participatory activities.

4 ''(4) During the remedial investigation and feasibility
5 study, the President shall solicit the views and preferences
6 of the affected community on the remediation and disposi-
7 tion of hazardous substances, pollutants, or contaminants
8 at the facility. The views and preferences of affected com-
9 munity members shall be described in the remedial inves-
10 tigation and feasibility study and considered in the screen-
11 ing of remedial alternatives for the facility.

12 ''(5) Members of the affected community may pro-
13 pose remedial alternatives to the President, and the Presi-
14 dent shall consider such alternatives in the same manner
15 as the President considers alternatives proposed by poten-
16 tially responsible parties.

17 ''(6) The President, with the assistance of the Citizen
18 Information and Access Office (as provided for in sub-
19 section (h)), shall provide information to the community
20 and seek comment from affected citizens throughout all
21 significant phases of the response action at the facility.
22 The President shall ensure that information gathered from
23 affected citizens during community outreach efforts
24 reaches appropriate technical staff in a timely and effec-
25 tive manner. The President also shall ensure reasonable

1 written or other appropriate responses to such informa-
2 tion.

3 ''(7) The President shall make all nonprivileged infor-
4 mation available to the public throughout all phases of re-
5 sponse action at the facility. Such information shall be
6 made available to the public for inspection and copying
7 without the need to file a formal request subject to reason-
8 able service charges as appropriate.

9 ''(8)(A) The President, in carrying out responsibil-
10 ities under this Act, shall ensure that the presentation of
11 information on risk is unbiased and informative. To the
12 extent feasible, documents made available to the general
13 public which purport to describe the degree of risk to
14 human health shall, at a minimum, state—

15 ''(i) the population or populations addressed by
16 any risk estimates;

17 ''(ii) the expected risk or central estimate of
18 risk for the specific population;

19 ''(iii) any appropriate upperbound and lower-
20 bound estimates; and

21 ''(iv) the reasonable range or other description
22 of uncertainties in the assessment process.

23 ''(B) To the extent practical and appropriate, the Ad-
24 ministrator shall provide comparisons of the level of risk
25 from hazardous substances found at facilities to com-

1 parable levels of risk from hazardous substances ordinarily
2 encountered by the general public through other routes of
3 exposure.

4 ''(9) Notwithstanding any other provision of this sub-
5 section, in the case of a removal action taken in accord-
6 ance with section 104 which is expected to extend beyond
7 180 days, the President shall comply with the require-
8 ments of this section. Whenever the planning period for
9 a removal action is expected to be greater than 6 months,
10 the Administrator shall provide the community with notice
11 of the anticipated removal action and a public comment
12 period of no less than 30 days.''.

13 **SEC. 102. COMMUNITY WORKING GROUPS.**

14 Section 117 (42 U.S.C. 9617) is amended by adding
15 after subsection (f) (as added by this Act) the following
16 new subsections:

17 ''(g) COMMUNITY WORKING GROUPS.—

18 ''(1) CREATION AND RESPONSIBILITIES.—The
19 President shall provide the opportunity for the es-
20 tablishment of a representative public forum, known
21 as a Community Working Group (CWG), to achieve
22 direct, regular, and meaningful consultation with all
23 interested parties throughout all stages of a response
24 action whenever—

1 "(A) the President determines such a
2 group will be helpful; or
3 "(B) 50 citizens, or at least 20 percent of
4 the population of a locality in which the Na-
5 tional Priorities List facility is located, petition
6 for a Community Working Group to be estab-
7 lished.
8 "(2) DUTIES.—Each Community Working
9 Group shall provide information and views to the
10 President, and, as appropriate, any or all of the fol-
11 lowing: the Agency for Toxic Substances and Dis-
12 ease Registry, State regulatory agencies, Federal
13 and State natural resource trustees, and potentially
14 responsible parties conducting response actions. The
15 information and views reported shall include the var-
16 ious subjects related to facility remediation, includ-
17 ing facility health studies, potential remedial alter-
18 natives, and selection and implementation of reme-
19 dial and removal actions. The Community Working
20 Group shall attempt to achieve consensus among its
21 members before reporting positions to agencies or
22 potentially responsible parties. In cases in which
23 consensus cannot be reached, the Community Work-
24 ing Group shall allow the presentation of divergent
25 views.

1 "(3) LAND USE RECOMMENDATIONS.—To ob-
2 tain greater community support for remedial deci-
3 sions affecting future land use, the President shall
4 consult with the CWG on a regular basis throughout
5 the remedy selection process regarding the reason-
6 ably anticipated future use of land at the facility
7 and any institutional controls required to assure that
8 land use determinations remain in effect. The CWG
9 may offer recommendations on the reasonably antici-
10 pated future use of land at the facility to the Presi-
11 dent at any time prior to the selection of a remedy
12 at the facility. The land use recommendation shall
13 consider at a minimum future facility waste manage-
14 ment needs and the criteria in section 121(b)(2).
15 The President shall not be bound by any rec-
16 ommendation of the CWG. However, the President
17 shall give substantial weight to the CWG's land use
18 recommendation when the CWG achieves consensus
19 on the reasonably anticipated future use of land at
20 the facility. In cases in which there is substantive
21 disagreement within the CWG over a recommenda-
22 tion regarding the reasonably anticipated future use
23 of land at the facility, the President shall make rea-
24 sonable efforts to reconcile the differences. In the
25 event of continued substantive disagreement, sub-

1 stantial weight shall be given to the views of the
2 residents in the affected community. Should the
3 President make a determination that is inconsistent
4 with a consensus CWG recommendation on the rea-
5 sonably expected future use of land at the facility,
6 the President shall issue a written explanation for
7 the inconsistency.

8 "(4) COMMUNITY WORKING GROUP INPUT.—
9 With the exception of land use recommendations,
10 input received from the Community Working Groups
11 shall be considered by the President to be of equal
12 weight with the advice received from the Technical
13 Assistance Grant recipients and other affected com-
14 munity members.

15 "(5) COMMUNITY WORKING GROUP MEM-
16 BERS.—Members shall serve on the Community
17 Working Group without pay. Membership on the
18 Community Working Group shall not exceed 20 per-
19 sons. The President shall solicit and accept nomina-
20 tions for the Community Working Group member-
21 ship. Ultimate selection of CWG members shall be
22 made by the President after consultation with the
23 Citizen Information and Access Office as provided
24 for in subsection (h). The President shall also pro-
25 vide notice and opportunity to participate to persons

1 who are or historically have been disproportionately
2 affected by facility contamination in their commu-
3 nity. Each Community Working Group shall, to the
4 extent practicable, reflect the composition of the
5 community near the facility and the diversity of in-
6 terest. Local residents shall comprise no less than
7 50 percent of the total membership of the CWG. In
8 general, the President shall allow members of the
9 following groups representation on a CWG:

10 ''(A) Persons residing or owning residen-
11 tial property near the facility or persons who
12 may be directly affected by the releases from
13 the facility. At least one person in this group
14 shall represent the Technical Assistance Grant
15 recipient if such a grant has been awarded
16 under subsection (e).

17 ''(B) Persons who, although not residing
18 or owning property near the facility, may be po-
19 tentially affected by releases from the facility.

20 ''(C) Members of the local medical commu-
21 nity practicing in the community.

22 ''(D) Representatives of local Indian tribes
23 or Indian communities.

1 ''(E) Local representatives of citizen, envi-
2 ronmental, or public interest groups with mem-
3 bers residing in the community.
4 ''(F) Local government which may include
5 pertinent city or county governments, or both,
6 and any other governmental unit which regu-
7 lates land use in the vicinity of the facility.
8 ''(G) Workers at the facility who will be in-
9 volved in actual response operations.
10 ''(H) Workers employed at the facility dur-
11 ing facility operation.
12 ''(I) Facility owners and local representa-
13 tives of the significant Potentially Responsible
14 Parties (PRPs), who represent, wherever prac-
15 ticable, a balance of PRP interests.
16 ''(J) Members of the local business com-
17 munity.
18 ''(6) TECHNICAL AND ADMINISTRATIVE SUP-
19 PORT FOR COMMUNITY WORKING GROUPS.—The
20 President shall provide administrative services and
21 meeting facilities for Community Working Groups.
22 The Administrator of Environmental Protection
23 Agency, the Administrator of the Agency for Toxic
24 Substances and Disease Registry and the State, as
25 appropriate, shall participate in Community Work-

1 ing Group meetings to provide information and tech-
2 nical expertise, but shall not be members of the
3 Community Working Group.

4 "(7) OTHER PUBLIC COMMENT.—The existence
5 of a CWG shall not diminish any other obligation of
6 the President to consider the views of any person in
7 selecting response actions under this Act.

8 "(h) CITIZEN INFORMATION AND ACCESS OF-
9 FICES.—

10 "(1) ESTABLISHMENT OF CITIZEN INFORMA-
11 TION AND ACCESS OFFICES.—Within 18 months
12 after the date of enactment of the Superfund Re-
13 form Act of 1994, a Citizen Information and Access
14 Office (CIAO) shall be established within each State
15 to perform the functions provided in this subsection.
16 The CIAO shall be an independent special purpose
17 unit of the government, subject to the administrative
18 laws of the State, including any sunshine laws. If a
19 CIAO has not been established in a State within
20 such 18 months, the Administrator shall establish an
21 office within the Agency to perform the functions of
22 the CIAO in that State until such time as a CIAO
23 is established.

1 ‘‘(2) PRIMARY FUNCTIONS.—Each Citizen In-
2 formation and Access Office shall have the following
3 primary functions:
4 ‘‘(A) The Citizen Information and Access
5 Office shall inform citizens and elected officials
6 at all levels of government of the existence of
7 State Registry and National Priorities List fa-
8 cilities in the State.
9 ‘‘(B) The Citizen Information and Access
10 Office shall provide citizens with a description
11 of the identification and response process under
12 this Act and citizens' legal rights within that
13 process. It may include identification of re-
14 sources, including Technical Assistance Grants,
15 that are available to assist affected citizens in
16 participating effectively in the Superfund proc-
17 ess. Information shall be disseminated in a
18 manner that is easily understood by the com-
19 munity, considering any unique cultural needs
20 of the community, including presentation of in-
21 formation orally and distribution of information
22 in languages other than English as appropriate.
23 Other information that the CIAO shall provide
24 to the public may include the following:

1 ‘‘(i) The possibility, where relevant,
2 that a community may qualify to receive
3 an alternative water supply or relocation
4 assistance.

5 ‘‘(ii) The potential for or existence of
6 a Community Working Group.

7 ‘‘(iii) A description of the facility’s lo-
8 cation and characteristics, the hazardous
9 substances, pollutants or contaminants
10 present, the known exposure pathways,
11 and the steps being taken to assess the
12 risk presented by the facility. The Citizen
13 Information and Access Office shall dis-
14 seminate information characterizing the
15 risks presented by a facility. Where a
16 CIAO receives conflicting information from
17 the President and the Community Working
18 Group, the CIAO will make every effort to
19 resolve any apparent difference in informa-
20 tion on the risks present at the facility be-
21 fore it distributes that information to the
22 public. Where no agreement is reached
23 among the Citizen Information and Access
24 Office, the President, and the Community
25 Working Group, the Citizen Information

1 and Access Office shall disseminate such
2 information reflecting the differing views
3 about the risk presented by the facility.
4 The Citizen Information and Access Office
5 shall seek to ensure that the information it
6 disseminates is based on the most current
7 technical and scientific data in its posses-
8 sion for any State Registry or National
9 Priorities List facility.

10 ''(C) The Citizen Information and Access
11 Office shall serve as an information clearing-
12 house in each State. Its functions also shall in-
13 clude maintaining records of each facility's sta-
14 tus and any health data generated concerning
15 National Priorities List facilities in each State.
16 The facility data maintained by the Citizen In-
17 formation and Access Office shall also in-
18 clude—

19 ''(i) a record of any institutional con-
20 trols at all facilities in the State;

21 ''(ii) any annual health data generated
22 in connection with the facility;

23 ''(iii) the location of each facility on
24 the State Registry;

1 ‘‘(iv) to the extent available, the haz-
2 ardous substances or pollutants or con-
3 taminants present at each facility in the
4 State, including the volume of the hazard-
5 ous substances or pollutants or contami-
6 nants;
7 ‘‘(v) the exposure pathways, current
8 exposure (if any), potential future expo-
9 sure, and risks to human health or the en-
10 vironment, after seeking to resolve any dis-
11 crepancies as provided in subparagraph
12 (B)(iii);
13 ‘‘(vi) protective concentration levels
14 established for the facility;
15 ‘‘(vii) the biennial Environmental Jus-
16 tice Report prepared pursuant to this sec-
17 tion; and
18 ‘‘(viii) any report generated during
19 the review conducted in accordance with
20 section 121(c).
21 ‘‘(D) The Citizen Information and Access
22 Office shall assist the Administrator in the Ad-
23 ministrator’s efforts to disseminate information,
24 notify citizens of public meetings, notify poten-

1 tial Community Working Group members, and
2 other tasks, as appropriate.
3 ‘‘(E) The Citizen Information and Access
4 Office shall collect available information from
5 the Administrator or other Federal or State
6 agencies regarding the continued effectiveness
7 of removal and remedial actions taken in the
8 State.
9 ‘‘(F) The Citizen Information and Access
10 Office shall conduct outreach activities and pro-
11 vide information to small disadvantaged busi-
12 nesses about Federal and State contracting and
13 (to the extent available) subcontracting oppor-
14 tunities at facilities in the State.
15 ‘‘(3) FUNDING.—Funding for all Citizen Infor-
16 mation and Access Offices, collectively, shall not ex-
17 ceed $50,000,000 per year. The Administrator shall
18 publish guidelines establishing a formula for deter-
19 mining the actual amount of funding for each Citi-
20 zen Information and Access Office and procedures
21 for awarding grants to any CIAO. The formula shall
22 include factors such as the number and complexity
23 of State Registry and National Priorities List facili-
24 ties in the State. The funding shall be available di-
25 rectly to each Citizen Information and Access Office

1 or, in States where no CIAO is established, the
2 funding shall be made available to the Administrator
3 to carry out the responsibilities of this subsection in
4 that State or for the use of the entity with whom the
5 Administrator contracts to perform the functions of
6 the CIAO.

7 ‘‘(4) CITIZEN INFORMATION AND ACCESS OF-
8 FICE GOVERNING BOARD.—

9 ‘‘(A) ESTABLISHMENT.—Each Citizen In-
10 formation and Access Office shall establish a
11 volunteer Citizen Governing Board which shall
12 have the ultimate responsibility for ensuring
13 that the Citizen Information and Access Office
14 is properly managed.

15 ‘‘(B) CITIZEN INFORMATION AND ACCESS
16 OFFICE GOVERNING BOARD MEMBERS.—

17 ‘‘(i) NOMINATIONS.—Citizens active
18 in State Registry and National Priorities
19 List facility communities shall nominate
20 persons for board membership.

21 ‘‘(ii) APPOINTMENTS.—The Governor
22 of each State shall appoint, from those
23 nominees put forward, between 7 and 15
24 citizens to serve as board members.

1 "(iii) MEMBERS QUALIFICATIONS.—
2 Where possible, the Governor shall ensure
3 that one-half of the appointees reside in
4 communities affected by a variety of Na-
5 tional Priorities List facilities in the State,
6 and the other half reside in communities
7 affected by a variety of non-NPL State
8 Registry facilities in the State. Board
9 members shall have a demonstrated com-
10 mitment to the needs of the citizens in
11 these communities, and shall reasonably
12 reflect the racial and ethnic composition of
13 these communities. Special efforts shall be
14 made to nominate citizens who are or his-
15 torically have been disproportionately ad-
16 versely affected by facility contamination.
17 "(iv) EXPERIENCE.—Where possible,
18 Board members should have a background
19 in a field of study related to the scientific
20 and technical issues common to Superfund
21 facilities, or have practical experience relat-
22 ed to the Superfund program.
23 "(v) TERMS.—Board members shall
24 serve for limited, staggered terms.

1 "(5) CITIZEN INFORMATION AND ACCESS OF-
2 FICE STAFF.—Each Citizen Information and Access
3 Office shall have a permanent staff to assist in car-
4 rying out its functions. Staff shall have dem-
5 onstrated qualifications for working with citizens in
6 communities located near State Registry or National
7 Priorities List facilities, and shall also meet other
8 criteria established by the President in consultation
9 with the Citizen Information and Access Office Citi-
10 zen Governing Board. An Executive Director or
11 President, selected by the full Governing Board,
12 shall be responsible for all Citizen Information and
13 Access Office staffing decisions.
14 "(6) FEDERAL OVERSIGHT OF CITIZEN INFOR-
15 MATION AND ACCESS OFFICE.—
16 "(A) REPORT.—The Citizens Information
17 and Access Office shall report annually to the
18 Administrator regarding performance of its du-
19 ties and shall provide a detailed accounting of
20 its use of funds under this section.
21 "(B) VERIFICATION BY INSPECTOR GEN-
22 ERAL.—The Inspector General of the Environ-
23 mental Protection Agency shall periodically re-
24 view the programs and reports made under this
25 section.

1 "(C) CONSEQUENCES OF FAILURE.—The
2 Administrator may withhold any funding au-
3 thorized under this section if the Administrator
4 determines, after notice to the affected CIAO,
5 that the CIAO has expended funds in a manner
6 inconsistent with this section.
7 "(7) CITIZEN INFORMATION AND ACCESS OF-
8 FICES AND COMMUNITY WORKING GROUPS FOR
9 TRIBAL PEOPLES.—Members of Indian tribes af-
10 fected by a facility on the National Priorities List
11 may petition the Administrator to form a body that
12 is the equivalent of a State Citizen Information and
13 Access Office. Notwithstanding the creation of a
14 tribal Citizen Information and Access Office, the
15 State Citizen Information and Access Office shall be
16 responsible for providing information and expertise
17 to tribal members as well as other citizens in the
18 State. Tribal members may establish Community
19 Working Groups under subsection (g) regardless of
20 whether there exists a tribal Citizen Information and
21 Access Office or other tribal program relating to this
22 Act.
23 "(i) ENVIRONMENTAL JUSTICE STUDY.—
24 "(1) REPORT BY THE ADMINISTRATOR.—The
25 Administrator shall prepare and submit to Congress

1 an Environmental Justice Study two years after the
2 date of enactment of the Superfund Reform Act of
3 1994 and every 2 years thereafter. Such study also
4 shall be provided to the Citizen Information Access
5 Offices. The Administrator and Citizen Information
6 Access Offices shall ensure that copies of such stud-
7 ies are made available to the public.

8 ''(2) CONTENT OF THE REPORT.—The Admin-
9 istrator's report shall include an analysis of each fa-
10 cility which shall compare information on priority
11 setting, response actions, and public participation re-
12 quirements conducted under this Act to the popu-
13 lation, race, ethnicity, and income characteristics of
14 each community affected by each facility.

15 ''(3) EVALUATION.—The Administrator shall
16 evaluate the information in the study to determine
17 whether priority setting, response actions, and public
18 participation requirements were conducted in a fair
19 and equitable manner and identify program areas
20 that require improvements or modification.

21 ''(4) ACTIONS BASED ON EVALUATION.—The
22 Administrator shall institute the necessary improve-
23 ments or modifications to address any deficiencies
24 identified in the study prepared under this section.''.

SEC. 103. HAZARD RANKING SYSTEM AND REVISION OF NATIONAL CONTINGENCY PLAN.

(a) IN GENERAL.—Section 105 (42 U.S.C. 9605(a)) is amended as follows:

(1) By inserting after subsection (g) the following new subsections:

''(h) HAZARD RANKING SYSTEM.—In setting priorities under subsection (a)(8), the President—

''(1) shall group facilities together, even if they are not adjacent or geographically juxtaposed, and score them as a single facility where more than one facility listed on the State Registry results in hazardous substances exposures to the same population;

''(2) may take into account to the maximum extent technically feasible any history of exposure to hazardous substances in the community regardless of the source of exposure, in placing facilities on the National Priorities List;

''(3) shall take into account the use of land or waterways for subsistence, religious, spiritual, or cultural practices where such use results in additional exposures, in placing facilities on the National Priorities List;

''(4) shall conduct interviews with persons affected by the facility and living in the community

1 and solicit their input and information in the hazard
2 ranking system evaluation; and
3 ''(5) shall place highest priority on facilities
4 with releases of hazardous substances which result
5 in actual ongoing human exposures at levels result-
6 ing in demonstrated adverse health effects as identi-
7 fied in a health assessment conducted by the Agency
8 for Toxic Substances and Disease Registry.
9 ''(i) ENVIRONMENTAL JUSTICE FACILITY SCOR-
10 ING.—The Administrator shall evaluate major urban areas
11 and any other areas where environmental justice concerns
12 may warrant special attention (such as tribal lands or poor
13 rural communities) and identify 5 facilities in each region
14 of the Environmental Protection Agency that are, or that
15 should be, on the State Registry and that are likely to
16 warrant inclusion on the National Priorities List. These
17 facilities shall be accorded a priority in evaluation for
18 NPL listing and scoring, and shall be evaluated for listing
19 within 2 years after the date of enactment of the
20 Superfund Reform Act of 1994.''.
21 (2) By striking the period at the end of para-
22 graph (10) of subsection (a) and inserting a semi-
23 colon and by adding the following new paragraphs
24 after such paragraph (10):

"(11) a process and procedure for reviewing petitions to reevaluate a facility not on the National Priorities List for inclusion on the National Priorities List where paragraphs (1), (2), and (3) of subsection (h) are relevant.".

(3) By inserting "(1)" after "PLAN.—" in subsection (b) and by adding at the end of that subsection the following new paragraph:

"(2) The Administrator shall undertake an effort to review new procedures for conducting remedial investigations and feasibility studies in an efficient, cost-effective and timely manner. Such review shall take into consideration a results-oriented approach in order to minimize the time required to conduct such investigations and studies. The Administrator shall, as part of the next proposed revision of the National Contingency Plan after the enactment of this paragraph, propose, as appropriate, to incorporate the new procedures for conducting the remedial investigations and feasibility studies.

SEC. 104. DISEASE REGISTRY AND MEDICAL CARE PROVIDERS.

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

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

1 ''(A) in cooperation with the States, for sci-
2 entific purposes and public health purposes, estab-
3 lish and maintain a national registry of persons ex-
4 posed to toxic substances;''.
5 (2) In subparagraph (E), by striking ''admis-
6 sion to hospitals and other facilities and services op-
7 erated or provided by the Public Health Service''
8 and inserting ''referral to accredited medical care
9 providers''.
10 **SEC. 105. SUBSTANCE PROFILES.**
11 Section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended
12 as follows:
13 (1) By inserting ''(A)'' after ''(3)''.
14 (2) By redesignating subparagraphs (A), (B),
15 and (C) as clauses (i), (ii), and (iii), respectively.
16 (3) By striking out the matter beginning with
17 ''Any toxicological profile or revision thereof'' and all
18 that follows through the end of such paragraph and
19 inserting in lieu thereof the following:
20 ''(B) Any toxicological profile or revision thereof shall
21 reflect the Administrator of ATSDR's assessment of all
22 relevant toxicological testing which has been peer re-
23 viewed. The profiles prepared under this paragraph shall
24 be for those substances highest on the list of priorities
25 under paragraph (2) for which profiles have not previously

1 been prepared or for substances not on the listing but
2 which have been found at non-National Priorities List fa-
3 cilities and which have been determined by ATSDR to be
4 of critical health concern. Profiles required under this
5 paragraph shall be revised and republished as necessary,
6 based on scientific need. Such profiles shall be provided
7 to the States and made available to other interested par-
8 ties.''.

9 **SEC. 106. DETERMINING HEALTH EFFECTS.**

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

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

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

23 (3) By striking ''and'' at the end of clause (iii).

24 (4) By inserting after clause (iii) the following
25 new clause:

1 ''(iv) laboratory and other studies which can
2 lead to the development of innovative techniques for
3 predicting organ-specific, site-specific, and system-
4 specific acute and chronic toxicity; and''.

5 **SEC. 107. PUBLIC HEALTH AT NPL FACILITIES.**

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

8 (1) By amending subparagraph (A) to read as
9 follows:

10 ''(A) The Administrator of ATSDR shall perform a
11 public health assessment for each facility, including those
12 facilities owned by any department, agency, or instrumen-
13 tality of the United States, on the National Priorities List
14 established under section 105 of this Act. The public
15 health assessment shall be commenced as soon as prac-
16 ticable after each facility is proposed for inclusion on the
17 National Priorities List and shall be completed not later
18 than the date of issuance of a remedial investigation and
19 feasibility study for the facility to allow full consideration
20 in selecting the remedial action of the public health
21 implicaitons of any release.''.

22 (2) In subparagraph (D), by inserting ''(i)''
23 after ''(D)'' and by adding the following at the end
24 of the subparagraph: ''The Administrator and the
25 Administrator of ATSDR shall develop strategies to

1 obtain relevant on-site and off-site characterization
2 data for use in the health assessment. The Adminis-
3 trator shall, to the maximum extent practicable, pro-
4 vide the Administrator of ATSDR with the data and
5 information necessary to make public health assess-
6 ments sufficiently prior to the initiation of remedial
7 actions to allow ATSDR to complete these assess-
8 ments. Where deemed appropriate, the Adminis-
9 trator of ATSDR shall provide to the Administrator
10 as soon as practicable after site discovery, rec-
11 ommendations for sampling environmental media for
12 hazardous substances of public health concern. To
13 the extent feasible, the Administrator shall incor-
14 porate such recommendations into its site investiga-
15 tion activities.

16 ''(ii) In order to improve community involvement in
17 health assessments, the Administrator of ATSDR shall
18 carry out each of the following duties:

19 ''(I) The Administrator of ATSDR shall ac-
20 tively collect data from Community Working Groups
21 ('Community Working Groups') and from other
22 sources in communities affected or potentially af-
23 fected by releases of hazardous substances, pollut-
24 ants, or contaminants regarding exposure, relevant
25 human activities, and other factors.

1 ‘‘(II) The Administrator of ATSDR shall design
2 health assessments that take into account the needs
3 and conditions of the affected community. Commu-
4 nity-based research models, building links to local
5 expertise and local health resources should be used.
6 Each Community Working Group (or affected com-
7 munity where no Community Working Group exists)
8 shall be permitted to play an active and early role
9 in reviewing health assessment designs. In preparing
10 such designs, emphasis shall be placed on collection
11 of actual exposure data and sources of multiple ex-
12 posure shall be considered.’’.
13 (3) In subparagraph (H), by striking ‘‘health
14 assessment’’ each place it appears and inserting
15 ‘‘public health assessment’’.
16 **SEC. 108. HEALTH STUDIES.**
17 Subparagraph (A) of section 104(i)(7) (42 U.S.C.
18 9604(i)(7)) is amended to read as follows: ‘‘(A) Whenever
19 in the judgment of the Administrator of ATSDR it is ap-
20 propriate on the basis of the results of a public health
21 assessment or on the basis of other appropriate informa-
22 tion, the Administrator of ATSDR shall conduct a human
23 health study of exposure or other health effects for se-
24 lected groups or individuals in order to determine the de-

1 sirability of conducting full scale epidemiologic or other
2 health studies of the entire exposed population.''.

3 **SEC. 109. DISTRIBUTION OF MATERIALS TO HEALTH PRO-**
4 **FESSIONALS AND MEDICAL CENTERS.**

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

7 ''(14) In implementing this subsection and other
8 health-related provisions of this Act in cooperation with
9 the States, the Administrator of ATSDR shall—

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

20 ''(B) assemble, develop as necessary, and dis-
21 tribute to the general public and to at-risk popu-
22 lations appropriate educational materials and other
23 information on human health effects of hazardous
24 substances.''.

1 **SEC. 110. GRANT AWARDS, CONTRACTS, AND COMMUNITY**
2 **ASSISTANCE ACTIVITIES.**

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

5 (1) By inserting ''(A)'' before ''The activities''.

6 (2) In the first sentence, by striking ''coopera-
7 tive agreements with States (or political subdivisions
8 thereof)'' and inserting ''grants, cooperative agree-
9 ments, or contracts with States (or political subdivi-
10 sions thereof), other appropriate public authorities,
11 public or private institutions, colleges, universities,
12 and professional associations giving consideration to
13 those colleges and universities that are historically
14 black colleges and universities and to other edu-
15 cational institutions that primarily serve minorities
16 or represent the interests of affected communities''.

17 (3) In the second sentence, by inserting ''pub-
18 lic'' before ''health assessments''.

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

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

1 that may be affected by the release or threatened release
2 of hazardous substances in the environment.
3 ''(C) The Administrator of the Agency for Toxic Sub-
4 stances and Disease Registry, pursuant to the grants, co-
5 operative agreements and contracts referred to in this
6 paragraph, is authorized and directed to provide, where
7 appropriate, health services to communities affected by the
8 release of hazardous substances. Such health services may
9 include diagnostic services, specialized treatment, health
10 data registries and preventative public health education.''.

11 **SEC. 111. PUBLIC HEALTH RECOMMENDATIONS IN REME-**
12 **DIAL ACTIONS.**

13 Section 121(c) (42 U.S.C. 9621(c)) is amended in the
14 first sentence by inserting after ''remedial action'' the sec-
15 ond time it appears the following: '', including public
16 health recommendations and decisions resulting from ac-
17 tivities under section 104(i),''.

18 **SEC. 112. CLARIFICATION OF ATSDR AUTHORITY.**

19 Section 111(c)(4) (42 U.S.C. 9611(c)(4)) is amended
20 by inserting ''and health services,'' after ''assessments,''.

21 **SEC. 113. RECRUITMENT AND TRAINING DEMONSTRATION**
22 **PROGRAM.**

23 (a) IN GENERAL.—The Administrator of the Envi-
24 ronmental Protection Agency is authorized to carry out
25 a demonstration program to assist in the recruitment and

1 training of individuals from areas affected by National
2 Priorities List facilities for employment in remediation ac-
3 tivities conducted at such facilities.

4 (b) INCENTIVES TO PARTIES.—As an element of the
5 demonstration program, the President shall encourage
6 parties conducting response actions under the Comprehen-
7 sive Environmental Response, Compensation, and Liabil-
8 ity Act of 1980 to have their contractors train minorities
9 and other disadvantaged persons from the affected com-
10 munity in remediation skills directly and in conjunction
11 with historically black colleges and universities and other
12 educational institutions that primarily serve minorities.

13 (c) FUNDING.—Of the amounts made available from
14 the Hazardous Substance Response Fund by section
15 111(q) of the Comprehensive Environmental Response,
16 Compensation, and Liability Act of 1980, $2,000,000
17 shall be available to carry out this section.

18 **SEC. 114. TRANSITION.**

19 (a) EFFECTIVE DATE IN GENERAL.—Except as pro-
20 vided in subsection (b), this title and the amendments
21 made by this title shall become effective upon the date of
22 enactment of this Act.

23 (b) SPECIAL RULE.—The requirements of para-
24 graphs (1) through (4) of section 117(f) and paragraph
25 (1) of section 117(g) of the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as added by sections 101 and 102, shall become effective 180 days after the date of enactment of this Act.

TITLE II—STATE ROLES

SEC. 201. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.

Title I is amended by adding after section 126 the following new section:

"SEC. 127. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.

"(a) IN GENERAL.—

"(1) APPLICATION FOR AUTHORITY TO TAKE PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A State may apply to the Administrator to take or require preremedial actions (including removal actions) under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is not listed on the National Priorities List (NPL).

"(2) APPLICATION FOR AUTHORITY TO TAKE RESPONSE ACTION AT NPL FACILITIES.—A State may apply to the Administrator to take or require response actions, including selection and enforcement of remedial actions and use of allocation proce-

1 dures under section 130, under a contract or cooper-
2 ative agreement as provided in this section at any
3 non-federally owned or operated facility within the
4 boundaries of the State that is listed on the National
5 Priorities List (NPL) or to take or require removal
6 actions at any facility proposed for listing on the
7 National Priorities List.

8 ''(3) APPROVAL OF APPLICATION.—The Admin-
9 istrator shall enter into a contract or cooperative
10 agreement under this section if the Administrator
11 determines that the State—

12 ''(A) meets the qualification requirements
13 set forth in the regulations promulgated pursu-
14 ant to subsection (b); and

15 ''(B) with respect to authority to select re-
16 medial actions and use allocation procedures,
17 meets the qualification requirements set forth
18 in subsection (c).

19 ''(b) REGULATIONS.—The Administrator, in con-
20 sultation with the States, shall promulgate regulations to
21 implement this section. The regulations shall provide such
22 additional qualifications for a contract or cooperative
23 agreement under this section as the Administrator consid-
24 ers reasonable, including qualifications applicable to par-
25 ticular types of preremedial or response actions. The regu-

lations shall include a requirement that, in order for a State to qualify for a contract or cooperative agreement with respect to a facility under this section, the State may not be a major potentially responsible party with respect to that facility.

''(c) QUALIFICATION REQUIREMENTS WITH RESPECT TO SELECTION OF REMEDIAL ACTION AND USE OF ALLOCATION PROCEDURES.—For purposes of subsection (a)(3)(B), with respect to a contract or cooperative agreement under this section for authority to select remedial action or to use the allocation procedures under section 130, the Administrator also shall make each of the following determinations:

''(1) The State has the capability to select remedial actions or to use the allocation procedures under section 130, including adequate legal authority, financial and personnel resources, organization, and expertise.

''(2) The State meets any other qualifications set forth in the regulations promulgated under subsection (b) for selecting remedial actions or using the allocation procedures.

''(3) The State demonstrates a historical record of performing similar response actions.

1 "(d) REQUIREMENTS FOR SELECTION OF REMEDIAL
2 ACTION.—In any contract or cooperative agreement that
3 allows a State to select remedial actions, the State shall
4 agree to select such remedial actions in accordance with
5 all of the procedures and requirements set forth in sec-
6 tions 117 and 121 of this Act, the National Contingency
7 Plan, and any other relevant regulations and guidelines
8 adopted by the Administrator.

9 "(e) STATE AUTHORITY REGARDING ENFORCEMENT
10 OF SELECTED REMEDIAL ACTION.—(1) A State that se-
11 lects a remedial action pursuant to a contract or coopera-
12 tive agreement entered into under subsection (a) shall
13 have the authority to enforce the requirements of such re-
14 medial action pursuant to section 121(f)(4).

15 "(2) Such State also shall have the authority to en-
16 force compliance with any standard, regulation, condition,
17 requirement, order, or final determination of the State
18 with respect to the remedial action. Such State also may
19 seek civil penalties not to exceed $25,000 per day for any
20 violation of such standard, regulation, condition, require-
21 ment, order, or final determination. Such State may com-
22 mence an action seeking such relief unless the standard,
23 regulation, condition, requirement, order, or final deter-
24 mination is arbitrary, capricious, or contrary to law when

1 reviewed upon the administrative record presented by the
2 State.

3 ''(3) In addition, if expressly provided in the contract
4 or cooperative agreement, such State may waive a Federal
5 requirement applicable to the remedial action in accord-
6 ance with section 121.

7 ''(f) REQUIREMENTS FOR ENFORCEMENT AND ALLO-
8 CATION.—

9 ''(1) ENFORCEMENT.—In the case of a contract
10 or cooperative agreement providing for a State to
11 initiate an enforcement action with respect to a facil-
12 ity for purposes of recovering costs or compelling
13 performance of a remedy at the facility, the contract
14 or cooperative agreement shall require the State to
15 provide for expedited settlements under section 122.

16 ''(2) USE OF ALLOCATION PROCEDURES.—(A)
17 In the case of a contract or cooperative agreement
18 providing for a State to initiate an enforcement ac-
19 tion with respect to a facility subject to mandatory
20 allocation pursuant to section 130(a)(1), the con-
21 tract or cooperative agreement shall require the
22 State to use allocation procedures with respect to
23 the facility. The contract or cooperative agreement
24 shall require the State to initiate the allocation proc-
25 ess by certifying each of the following:

1 "(i) The State has completed a potentially
2 responsible party search substantially consistent
3 with subsection (c) of section 130 and will make
4 the results of that search available to the allo-
5 cator and the parties.
6 "(ii) The State has notified Federal, State,
7 and tribal natural resource trustees of the com-
8 mencement of the allocation process and, pursu-
9 ant to section 104(b)(2), of potential damages
10 to natural resources.
11 "(iii) The facility would be subject to man-
12 datory allocation under section 130(a)(1) if the
13 President were conducting the response action.
14 "(B) After the State has made a certification
15 under subparagraph (A), the Administrator shall ini-
16 tiate an allocation in accordance with the terms of
17 section 130. The Administrator may assign to the
18 State, by cooperative agreement or otherwise, any
19 responsibilities to conduct the allocation, except that
20 the Administrator and Attorney General shall retain
21 their authority relating to orphan share funding as
22 provided by this paragraph and in section 130, in-
23 cluding the timing and terms of payment.
24 "(C) The State may accept or reject the alloca-
25 tion report on the same basis as provided in section

1 130(l). If the State does not reject the allocation, it
2 shall use the allocator's report as the basis of State
3 settlements. The State may recover the costs of the
4 allocation pursuant to State law or the provisions of
5 this Act.

6 ''(D) The President, through either the Admin-
7 istrator or the Attorney General, or both, may par-
8 ticipate in any phase of an allocation proceeding
9 where an orphan share is identified according to the
10 factors set forth in section 130.

11 ''(E) If the State accepts an allocation report
12 as the basis for its settlements, and the allocation
13 report identifies an orphan share subject to Federal
14 funding, the State shall apply for such funding by
15 certifying each of the following to the Administrator
16 and the Attorney General:

17 ''(i) The allocation presents a reasonable
18 basis for resolving responsibility for the facility.

19 ''(ii) The assignment of an orphan share
20 shall be in accordance with section 130.

21 ''(F) The Administrator and the Attorney Gen-
22 eral shall accept a State's request for orphan share
23 funding supported by an allocation report and the
24 certification described in subparagraph (E), unless
25 the Administrator and Attorney General determine,

1 within 120 days after the request by the State, that
2 the allocation does not meet the standards set forth
3 in section 130. Such determination shall be made in
4 the same manner, and shall be subject to the same
5 limitations, as set forth in section 130.

6 ''(G) The contract or cooperative agreement
7 shall provide the following:

8 ''(i) The Administrator may deduct from
9 orphan share funding the costs incurred in con-
10 ducting the allocation.

11 ''(ii) The State may use the orphan share
12 funding only to fund response actions through
13 settlement or to reimburse parties performing
14 work in excess of the share assigned to them in
15 allocation. No such reimbursement may exceed
16 the reimbursement level available under section
17 130.

18 ''(H) The State may recover funds provided
19 through orphan share funding from nonsettling re-
20 sponsible parties pursuant to State law or the provi-
21 sions of this Act. Seventy-five percent of such recov-
22 eries shall be returned to the Fund. The remaining
23 25 percent shall be used for any other response ac-
24 tion by the recovering State.

1 “(3) COVENANTS.—(A) In a case in which ei-
2 ther the President, acting under the authority of this
3 Act, or a State, acting pursuant to a contract or co-
4 operative agreement under this section, has respon-
5 sibility for selecting a response action at a facility
6 listed or proposed for listing on the National Prior-
7 ities List and enters an administrative or judicial
8 settlement to resolve the liability of responsible par-
9 ties at the facility, the President or the State may
10 confer, in accordance with requirements relating to
11 covenants of sections 122 and 130, a covenant that
12 will preclude some or all administrative or judicial
13 action by both the President and the State to re-
14 cover response costs or to compel response actions at
15 the facility with respect to matters addressed in the
16 settlement, except that such covenants shall not be
17 binding on the governmental entity that did not con-
18 fer the covenant to the extent that—
19 “(i) the covenant purports to address natu-
20 ral resource damages; or
21 “(ii) the President or the State has not
22 been provided notice of, and an opportunity to
23 participate in, the settlement concerning the re-
24 sponse action; or

1 "(iii) the President or the State objects to
2 the settlement within 120 days of the date of
3 signature for the record of decision or receipt of
4 notice of the settlement, whichever is later.
5 "(B) The covenants described by this para-
6 graph may be conferred by either the Administrator
7 or the State with respect to a facility owned or oper-
8 ated by any department, agency, or instrumentality
9 of the United States (including the executive, legisla-
10 tive, and judicial branches of government). The Ad-
11 ministrator may confer a covenant in an administra-
12 tive order, consent decree, or an interagency agree-
13 ment. The State may confer a covenant in an ad-
14 ministrative order or a consent decree.
15 "(g) TERMS AND CONDITIONS; ENFORCEMENT.—
16 "(1) IN GENERAL.—A contract or cooperative
17 agreement under this section shall be subject to such
18 terms and conditions as the Administrator may pre-
19 scribe. If a State fails to comply with a requirement
20 of a contract or cooperative agreement, the Adminis-
21 trator, after 90 days notice to the affected State,
22 may seek in the appropriate United States district
23 court to ensure performance of the response action,
24 or to recover any funds advanced or any costs in-
25 curred because of the breach.

1 ''(2) SPECIFIC TERMS.—A contract or coopera-
2 tive agreement under this section shall include the
3 following requirements:
4 ''(A) A requirement that the State shall
5 exercise any authority conferred by this section
6 or the contract or cooperative agreement on be-
7 half of the State, and not on behalf of or in the
8 name of the Administrator, the President, or
9 the United States.
10 ''(B) A requirement that the State have
11 and maintain sufficient legal authority under
12 applicable State law to enter into the contract
13 or cooperative agreement.
14 ''(C) A requirement that the Administrator
15 retain authority to terminate and recoup fund-
16 ing, and to terminate the contract or coopera-
17 tive agreement, if the State fails to perform the
18 contract or cooperative agreement in a manner
19 consistent with this Act. At least 90 days before
20 terminating any contract or cooperative agree-
21 ment with a State, the Administrator shall pro-
22 vide to the State a written explanation of the
23 reasons for the proposed termination and afford
24 an opportunity to the State to discuss the ter-

1 mination and to propose actions to correct any
2 deficiencies.
3 ‘‘(D) A requirement imposing a non-
4 discretionary duty on the Administrator to per-
5 form or compel expeditious performance of re-
6 sponse actions under the contract or cooperative
7 agreement if the State fails to comply with the
8 terms of the contract or cooperative agreement.
9 ‘‘(h) SAVINGS CLAUSE.—Nothing in this section shall
10 affect the exercise by a State of any other authorities that
11 may be applicable to facilities in such State.’’.

12 **SEC. 202. STATE COST SHARE.**

13 Section 104(c) is amended by adding at the end the
14 following new paragraphs:
15 ‘‘(10) EXISTING CONTRACTS AND COOPERATIVE
16 AGREEMENTS.—The requirements of paragraphs (3), (6),
17 and (7) of this subsection shall apply only to contracts
18 and cooperative agreements pursuant to section 104(d)
19 entered into prior to the enactment of the Superfund Re-
20 form Act of 1994.
21 ‘‘(11) STATE COST SHARE.—After the date of enact-
22 ment of the Superfund Reform Act of 1994, the Adminis-
23 trator shall not provide any funding under this subsection
24 or section 127, or any response action pursuant to this
25 section, except for emergency removal actions, unless the

State in which the release or threatened release occurs has entered into a contract or cooperative agreement pursuant to this subsection or section 127 that provides assurances, deemed adequate by the Administrator, that—

''(A) the State will pay or assure payment of 15 percent of the cost of such response action or funding, including 15 percent of orphan share funding and operation and maintenance costs; and

''(B) the State will assure oversight of any operation and maintenance of funded response actions.''.

SEC. 203. SITING.

Section 104(c)(9) is amended to read as follows:

''(9) SITING.—Effective 1 year after the date of enactment of the Superfund Reform Act of 1994, the President shall not provide any remedial actions pursuant to this section or section 127 unless the State in which the release occurs submits a report describing its plans for adequate treatment, storage, and disposal capacity of hazardous wastes generated within the State, in accordance with guidelines issued by the Administrator.''.

SEC. 204. THE STATE REGISTRY.

Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8)) is amended by adding after subparagraph (B) the following new subparagraph:

1 "(C) STATE REGISTRY.—Each State shall
2 maintain and make available to the public a list of
3 facilities in the State that are believed to present a
4 current or potential hazard to human health or the
5 environment due to the release or threatened release
6 of hazardous substances or pollutants or contami-
7 nants. Each State, in consultation with the Adminis-
8 trator and other appropriate Federal agencies, shall
9 update such listing on an annual basis.".

10 **SEC. 205. CONFORMING AND MISCELLANEOUS AMEND-**
11 **MENTS.**

12 (a) TRANSFER OF SECTION 121(e)(2).—(1) Section
13 121(e) is amended—
14 (A) by striking out paragraph (2); and
15 (B) by striking out "PERMITS AND ENFORCE-
16 MENT.—(1)" and inserting "PERMITS.—".
17 (2) Section 121(f) is amended by adding at the end
18 the following new paragraphs:
19 "(4) A State may enforce any Federal or State stand-
20 ard, requirement, criteria, or limitation to which the reme-
21 dial action is required to conform under this Act in the
22 United States district court for the district in which the
23 facility is located.
24 "(5) The President shall provide to any State within
25 a 50-mile radius of a remedial action at a Federal facility

1 a reasonable opportunity to review and comment on each
2 of the following:
3 ''(A) The remedial investigation and feasibility
4 study and all data and technical documents leading
5 to its issuance.
6 ''(B) The planned remedial action identified in
7 the remedial investigation and feasibility study.
8 ''(C) The engineering design following selection
9 of the final remedial action.
10 ''(D) Other technical data and reports relating
11 to implementation of the remedy.
12 ''(E) Any proposed finding or decision by the
13 President to exercise the authority of subsection
14 (d)(7)(e).''.
15 (b) SECTION 126(a).—Section 126(a) is amended by
16 adding after ''section 104(i) (regarding health authori-
17 ties)'' the following: '', section 127 (regarding contracts
18 and cooperative agreements), section 128 (regarding vol-
19 untary response actions), subsection (f) of section 121 (re-
20 lating to cleanup standards), section 122(d)(1)(D) (relat-
21 ing to compliance with consent decrees),''.
22 (c) SECTION 310(a).—Section 310(a) is amended by
23 inserting ''(including any State)'' after ''person''.

1 (d) TRANSITION.—Subsection (d) of section 104 is
2 amended by adding at the end the following new para-
3 graph:
4 ''(5) TERMINATION.—This subsection shall cease to
5 be in effect on the effective date of regulations promul-
6 gated to implement section 127, as added by the
7 Superfund Reform Act of 1994.''.

8 **SEC. 206. STUDY OF AUTHORIZATION OF STATES TO CARRY**
9 **OUT SUPERFUND.**

10 The Administrator of the Environmental Protection
11 Agency shall conduct a study of the feasibility of authoriz-
12 ing States to use their own laws to carry out the provisions
13 of the Comprehensive Environmental Response, Com-
14 pensation, and Liability Act of 1980 in lieu of the Federal
15 program established under such Act.

16 **SEC. 207. STATE ROLE AT FEDERAL FACILITIES.**

17 Subsection (g) of section 120 is amended to read as
18 follows:
19 ''(g) TRANSFER OF AUTHORITIES.—
20 ''(1) STATE APPLICATION FOR TRANSFER OF
21 AUTHORITIES.—A State may apply to the Adminis-
22 trator to exercise the authorities vested in the Ad-
23 ministrator under subsections (e) and (h)(other than
24 (h)(2)) of this section at any or all facilities owned
25 or operated by any department, agency, or instru-

1 mentality of the United States (including the execu-
2 tive, legislative, and judicial branches of govern-
3 ment), including the authority—
4 ''(A) to publish a timetable and deadlines
5 for completion of any remedial investigation
6 and feasibility study;
7 ''(B) to review and approve all documents
8 prepared in connection with any such investiga-
9 tion and study;
10 ''(C) to review and select remedies pursu-
11 ant to subsection (e)(4)(A); and
12 ''(D) to enter into agreements with depart-
13 ments, agencies, and instrumentalities of the
14 United States in accordance with subsection
15 (e)(2), and to enter into consent decrees with
16 other potentially responsible parties in accord-
17 ance with subsection (e)(6).
18 ''(2) TRANSFER OF AUTHORITIES.—The Ad-
19 ministrator shall enter into a contract or cooperative
20 agreement to transfer the authorities described in
21 paragraph (1) if the Administrator determines the
22 following:
23 ''(A) The State has the ability to exercise
24 such authorities in accordance with this Act, in-
25 cluding adequate legal authority, financial and

1 personnel resources, organization, and exper-
2 tise.

3 ''(B) The State demonstrates experience in
4 exercising similar authorities.

5 ''(3) EFFECT OF AUTHORIZATION UNDER SOLID
6 WASTE DISPOSAL ACT.—In the review by the Admin-
7 istrator of an application of a State for transfer of
8 authorities under this subsection, if the State is au-
9 thorized to implement a State hazardous waste pro-
10 gram pursuant to section 3006 of the Solid Waste
11 Disposal Act (42 U.S.C. 6926), the following provi-
12 sions apply:

13 ''(A) With respect to a State that is a sig-
14 natory to an interagency agreement under sub-
15 section (e)(2) that is in effect on the effective
16 date of the Superfund Reform Act of 1994, the
17 Administrator, in making the determinations
18 referred to in paragraph (2), shall accord sub-
19 stantial weight to the State's hazardous waste
20 program authorization and the Administrator's
21 findings in approving such authorization.

22 ''(B) With respect to a State whose au-
23 thorization under such section 3006 includes
24 authorization to implement the corrective action
25 provisions of the Solid Waste Disposal Act, the

1 Administrator shall approve the application and
2 provide for the orderly transfer of authorities as
3 expeditiously as possible, but in no case later
4 than 6 months after the date of receipt of the
5 application, unless the parties agree to another
6 deadline.

7 ''(4) EFFECT OF TRANSFER.—Any State to
8 which authorities are transferred under this sub-
9 section shall not be deemed to be an agent of the
10 President but shall exercise such authorities in its
11 own name, and the Administrator may transfer to a
12 State only those authorities of the Administrator
13 identified in this subsection.

14 ''(5) DEADLINES.—Except as provided in para-
15 graph (3)(B), the Administrator shall make a deter-
16 mination on an application from a State under this
17 subsection not later than 90 days after the date the
18 Administrator receives the application.

19 ''(6) WITHDRAWAL OF AUTHORITIES.—(A) The
20 Administrator may withdraw the authorities trans-
21 ferred under this subsection in whole or in part if
22 the Administrator determines—

23 ''(i) that the State, in whole or in part, is
24 exercising such authorities in a manner clearly

1 inconsistent with the requirements of this Act;
2 or

3 ''(ii) in the case of a State that was ap-
4 proved under paragraph (3)(B), that the State
5 is no longer authorized to implement the correc-
6 tive action provisions of the Solid Waste Dis-
7 posal Act.

8 ''(B) At least 90 days before withdrawing any
9 such transferred authorities from a State, the Ad-
10 ministrator shall provide to the State a written ex-
11 planation of the reasons for the proposed withdrawal
12 and afford an opportunity to the State to discuss the
13 withdrawal and to propose actions to correct any de-
14 ficiencies.

15 ''(7) ENFORCEMENT AND REMEDY SELEC-
16 TION.—(A) An interagency agreement under this
17 section between a State (including States which are
18 parties to such agreements through the exercise of
19 the Administrator's authorities pursuant to a coop-
20 erative agreement or contract under this subsection)
21 and any department, agency, or instrumentality of
22 the United States, shall be enforceable by the State
23 or the Federal department, agency, or instrumental-
24 ity in the United States district court for the district
25 in which the facility is located. The district court

1 shall have the jurisdiction to enforce compliance with
2 any provision, standard, regulation, condition, re-
3 quirement, order, or final determination which has
4 become effective under such agreement, and to im-
5 pose any appropriate civil penalty provided for any
6 violation of the agreement, not exceed $25,000 per
7 day.

8 ''(B) At Federal facilities where the Adminis-
9 trator's authorities under subsection (e)(4) have
10 been transferred to the State pursuant to this sec-
11 tion, and the State does not concur in the remedy
12 selection proposed by the Federal agency, the parties
13 shall enter into dispute resolution as provided in the
14 interagency agreement, provided that the final level
15 for such disputes concerning remedy selection shall
16 be to the head of the Federal department, agency,
17 or instrumentality and the Governor of the State. If
18 no agreement is reached between the head of the
19 Federal department, agency, or instrumentality and
20 the Governor, the State may issue the final deter-
21 mination. In order to compel implementation of the
22 State's selected remedy, the State must bring a civil
23 action in the appropriate Federal district court. The
24 district court shall have jurisdiction as provided in
25 subparagraph (A) to issue any relief that may be

1 necessary to implement the remedial action, to im-
2 pose appropriate civil penalties not to exceed
3 $25,000 per day from the date the selected remedy
4 becomes final, and to review any challenges to the
5 State's final determination consistent with the
6 standards set forth in section 113(j) of this Act.

7 ''(8) LIMITATION.—Except for authorities that
8 are transferred by the Administrator to a State pur-
9 suant to this subsection, or that are transferred by
10 the Administrator to an officer or employee of the
11 Environmental Protection Agency, no authority vest-
12 ed in the Administrator under this section may be
13 transferred, by executive order of the President or
14 otherwise, to any other officer or employee of the
15 United States or to any other person. Except as nec-
16 essary to specifically implement the transfer of the
17 Administrator's authorities to a State pursuant to
18 this subsection, nothing in this subsection shall be
19 construed as altering, modifying, or impairing in any
20 manner, or authorizing the unilateral modification
21 of, any terms of any agreement, permit, administra-
22 tive, or judicial order, decree, or interagency agree-
23 ment existing on the effective date of the Superfund
24 Reform Act of 1994. Any other modifications or re-
25 visions of an interagency agreement entered into

under this section shall require the consent of all parties to such agreement, and absent such consent the agreement shall remain changed. Nothing in this subsection shall affect the exercise by a State of any other authorities that may be applicable to facilities in such State.''.

TITLE III—VOLUNTARY RESPONSE

SEC. 301. VOLUNTARY RESPONSE PROGRAM.

Title I is amended by adding the following new section after section 127:

"SEC. 128. VOLUNTARY RESPONSE PROGRAM.

''(a) PURPOSES AND OBJECTIVES.—The purposes and objectives of this section are to—

''(1) significantly increase the pace of response activities at contaminated sites by promoting and encouraging the creation, development, and expansion of State voluntary response programs; and

''(2) benefit the public health, welfare, and the environment by returning contaminated sites to economically productive or other beneficial uses.

''(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide technical, financial, and other assistance, including grants, to States to establish and expand voluntary response programs.

1 “(c) EPA ASSISTANCE TO STATES FOR STATE VOL-
2 UNTARY RESPONSE PROGRAMS.—The Administrator shall
3 assist States in the establishment and administration of
4 State voluntary response programs that—
5 “(1) provide opportunities for technical assist-
6 ance for voluntary response actions;
7 “(2) provide adequate opportunities for public
8 participation in selecting response actions, including
9 prior notice and opportunity for comment in appro-
10 priate circumstances;
11 “(3) provide streamlined procedures to ensure
12 expeditious voluntary response actions;
13 “(4) provide adequate oversight and enforce-
14 ment authorities to ensure that voluntary response
15 actions are protective of human health and the envi-
16 ronment, are conducted in accordance with an ap-
17 propriate response action plan and ensure comple-
18 tion of response actions if the person conducting the
19 response action fails or refuses to complete the nec-
20 essary response activities, including operation and
21 maintenance or long-term monitoring activities;
22 “(5) provide mechanisms for the approval of a
23 response action plan; and
24 “(6) provide for a certification or similar docu-
25 mentation from the State to the person conducting

1 the response action indicating that the response is
2 complete.
3 "(d) EPA REVIEW OF STATE PROGRAMS.—At any
4 time after the enactment of this Act, a State may submit,
5 for review by the Administrator, documents the State
6 deems appropriate to describe a State voluntary response
7 program, together with a certification that the program
8 is consistent with the elements set forth in subsection (c).
9 "(e) QUALIFICATION OF STATE PROGRAM.—
10 "(1) APPROVAL OR DISAPPROVAL.—A State vol-
11 untary response program submitted under sub-
12 section (d) shall be a qualified program under this
13 Act beginning on the date 120 days after the sub-
14 mittal of the certification under subsection (d) un-
15 less the Administrator determines before that date
16 that the State's submittal is not consistent with the
17 elements set forth in subsection (c). The Adminis-
18 trator shall seek public comment on the submittal of
19 a State voluntary response program under this sec-
20 tion and shall publish in the Federal Register the
21 reasons for the approval or disapproval of any such
22 program.
23 "(2) WITHDRAWAL OF APPROVAL.—Whenever
24 the Administrator determines after public hearing
25 that a State is not administering and enforcing a

1 qualified program in accordance with subsection (c),
2 the Administrator shall notify the State in writing of
3 such determination. If appropriate corrective action
4 is not taken by the State within 120 days after re-
5 ceipt of the notice, the Administrator shall withdraw
6 approval of the program and publish a notice of such
7 withdrawal in the Federal Register, after which the
8 State program shall cease to be a qualified program
9 under this section. If the State subsequently under-
10 takes corrective measures, the Administrator shall
11 reinstate the program as a qualified program under
12 this section. The Administrator shall not withdraw
13 approval of any such program unless the Adminis-
14 trator provides to the State in writing and publishes
15 in the Federal Register the reasons for such with-
16 drawal.

17 ''(f) NPL LISTING.—No portion of a facility subject
18 to a response action plan approved under a qualified pro-
19 gram under this section shall be proposed for listing on
20 the National Priorities List so long as substantial and con-
21 tinual response activities are being undertaken pursuant
22 to such plan to complete the response action in a timely
23 manner as set forth in the response action plan. Nothing
24 in this section shall be construed to limit the Administra-
25 tor's ability to list on the National Priorities List facilities

1 that have been proposed for listing, or to compel response
2 action under section 106 of the Act.

3 "(g) CONDUCT OF RESPONSE.—The Administrator
4 shall, after consultation with the State, and notice and op-
5 portunity for public comment, promulgate regulations de-
6 scribing circumstances in which any State having a quali-
7 fied program, and also authorized to issue permits under
8 Federal environmental statutes, may waive such permit re-
9 quirements with respect to activities conducted pursuant
10 to an approved voluntary response plan if (1) such State
11 has the authority under its own statutes or regulations
12 to grant such waivers, (2) the State waiver authority is
13 used in no less stringent a manner than allowed under
14 Federal permit waiver authority, and (3) the response ac-
15 tion plan requires compliance with the relevant substantive
16 requirements of the statute concerned.

17 "(h) EFFECT OF RESPONSE.—Performance of a vol-
18 untary response action pursuant to this section shall not
19 constitute an admission of liability under any Federal,
20 State, or local law or regulation or in any citizens suit
21 or other private action.

22 "(i) COMPLIANCE WITH NCP.—Response actions
23 conducted pursuant to a qualified program shall be pre-
24 sumed to be consistent with the National Contingency

1 Plan for the purposes of private cost recovery claims under
2 this Act.

3 ''(j) ANNUAL REPORTING.—

4 ''(1) REPORT BY STATE.—States with qualified
5 programs under this section shall report to the Ad-
6 ministrator at the end of each calendar year on the
7 status of their programs. Each such report shall in-
8 clude a statement regarding whether the program
9 continues to be consistent with the elements set
10 forth in subsection (c).

11 ''(2) REPORT BY ADMINISTRATOR.—The Ad-
12 ministrator shall report, not later than one year
13 after the enactment of this section, and annually
14 thereafter, to the Congress on the status of State
15 voluntary response program. The report shall in-
16 clude an analysis of whether qualified State vol-
17 untary response action programs continue to be con-
18 sistent with the elements set forth in subsection (c).

19 ''(k) STATUTORY CONSTRUCTION.—(1) This section
20 is not intended to impose any requirement on a State vol-
21 untary response program existing on or after the date of
22 the enactment of the Superfund Reform Act of 1994.

23 ''(2) This section is not intended to affect the liability
24 of any person or to affect other response authorities af-
25 forded under any law or regulation relating to environ-

1 mental contamination, including this Act, the Solid Waste
2 Disposal Act, the Clean Water Act, the Toxic Substances
3 Control Act, and title XIV of the Public Health Service
4 Act (the Safe Drinking Water Act), except that the suc-
5 cessful completion of a response action at a facility pursu-
6 ant to a qualified program under this section shall be con-
7 sidered for purposes of section 107(a)(6)(C) as evidence
8 that a person acquiring ownership of the facility is a bona
9 fide prospective purchaser of the facility within the mean-
10 ing of section 101(39).

11 ''(3) Nothing in this section shall be construed to re-
12 quire any person to participate in a qualified voluntary
13 response program under this section or in any other vol-
14 untary response program in order to qualify as a bona
15 fide purchaser for purposes of section 107(a)(6)(C).''.

16 TITLE IV—LIABILITY AND
17 ALLOCATION

18 **SEC. 401. INFORMATION GATHERING AND ACCESS.**

19 (a) ADDITIONAL INFORMATION.—Section 104(e)(2)
20 (42 U.S.C. 9604(e)(2)) is amended—

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

22 ''(C) The ability of a person to pay for or
23 to perform a response action.''; and

24 (2) by inserting after subparagraph (C) the fol-
25 lowing:

1 "(D) The identity of any persons engaged
2 in, responsible for, controlling, or having the
3 ability to control activities or operations at a
4 vessel or facility giving rise to liability under
5 this Act.
6 "(E) The potential liability or responsibil-
7 ity of any person to perform or pay for a re-
8 sponse action.
9 "(F) For a person conducting a response
10 action, an accounting of direct and indirect
11 costs the person has incurred in conducting
12 such response action.
13 "(G) Information that is otherwise relevant
14 to enforce the provisions of this Act.".
15 (b) CERTIFICATIONS.—Section 104(e) (42 U.S.C.
16 9604(e)) is amended—
17 (1) by redesignating paragraphs (3), (4), (5),
18 (6), and (7) as paragraphs (4), (5), (6), (7), and
19 (8), respectively; and
20 (2) by inserting after paragraph (2) the follow-
21 ing:
22 "(3) CERTIFICATION.—The President may re-
23 quire respondents to requests made pursuant to this
24 subsection to certify that—

1 ''(A) the responses are true, accurate, and
2 complete to the best of the respondent's knowl-
3 edge;
4 ''(B) the responses are based on a diligent,
5 good faith search of records in the possession or
6 control of the person to whom the request was
7 directed;
8 ''(C) the responses are based on a reason-
9 able inquiry of the current and former officers,
10 directors, employees, and agents of the person
11 to whom the request was directed;
12 ''(D) the responses accurately and com-
13 pletely reflect information obtained in the
14 course of conducting such search and inquiry;
15 ''(E) the respondent understands that
16 there is a continuing obligation to supplement
17 the response if any additional, new, or different
18 information relevant to the matters addressed
19 in the request or the response thereto becomes
20 known or available to the respondent; and
21 ''(F) the respondent understands that
22 there are significant penalties for knowingly
23 and willfully submitting false information, in-
24 cluding the possibility of fine and imprison-
25 ment.''.

1 (c) ADMINISTRATIVE SUBPOENAS.—Section 104(e)
2 (42 U.S.C. 9604(e)) is further amended by inserting after
3 paragraph (8) (as redesignated by subsection (b)) the fol-
4 lowing new paragraph:

5 ''(9) ADMINISTRATIVE SUBPOENAS.—When it
6 would assist in the collection of information nec-
7 essary or appropriate for the purposes of implement-
8 ing this Act, the Administrator may by subpoena re-
9 quire the attendance and testimony of witnesses and
10 the production of reports, papers, documents, an-
11 swers to questions, and other information listed in
12 paragraph (2) that the Administrator considers nec-
13 essary. Witnesses shall be paid the same fees and
14 mileage that are paid witnesses in the courts of the
15 United States. In the event of contumacy or failure
16 or refusal of any person to obey any such subpoena,
17 any district court of the United States in which
18 venue is proper shall have jurisdiction to order any
19 such person to comply with such subpoena. Any fail-
20 ure to obey such an order of the court is punishable
21 by the court as a contempt thereof.''.

22 (d) CONFIDENTIALITY OF INFORMATION.—Subpara-
23 graph (A) of section 104(e)(8) (as redesignated by sub-
24 section (b)), is amended to read as follows:

1 ‘‘(A) Any records, reports, documents, or infor-
2 mation obtained from any person under this section
3 (including records, reports, documents, or informa-
4 tion obtained by representatives of the President (or
5 the State as the case may be) and records, reports,
6 documents, or information obtained pursuant to a
7 contract, grant, or other agreement to perform work
8 pursuant to this section) shall be available to the
9 public not later than 45 days after the records, re-
10 ports, or information is obtained, except as follows:
11 ‘‘(i) Upon a showing satisfactory to the
12 President (or the State, as the case may be) by
13 any person that records, reports, documents, or
14 information, or any particular part thereof
15 (other than health or safety effects data), to
16 which the President (or the State, as the case
17 may be) or any officer, employee, or representa-
18 tive has access under this section if made public
19 would divulge information entitled to protection
20 under section 1905 of title 18, United States
21 Code, such information or particular portion
22 thereof shall be considered confidential in ac-
23 cordance with the purposes of that section, ex-
24 cept as otherwise provided in this clause. Any
25 such record, report, document, or information

1 may be disclosed to other officers, employees, or
2 authorized representatives of the United States
3 carrying out this Act, when relevant in any pro-
4 ceeding under this Act, including any allocator
5 appointed pursuant to section 130. If such
6 records, reports, documents, or information are
7 obtained or submitted to the United States (or
8 the State, as the case may be) pursuant to a
9 contract, grant, or other agreement to perform
10 work pursuant to this section, such record, re-
11 port, document, or information may be dis-
12 closed to persons from whom the President
13 seeks to recover costs pursuant to this Act.

14 ''(ii) This section does not require that in-
15 formation which is exempt from disclosure pur-
16 suant to section 552(a) of title 5, United States
17 Code, by reason of subsection (b) of such sec-
18 tion, be available to the public. The disclosure
19 of any such information pursuant to this sec-
20 tion shall not authorize disclosure to other par-
21 ties or be deemed to waive any confidentiality
22 privilege available under any Federal or State
23 law.''.

24 (e) CONFIDENTIALITY REQUIREMENTS FOR CON-
25 TRACTORS.—Paragraph (8) of section 104(e) (as redesig-

1 nated by subsection (b)) is amended by adding at the end
2 the following new subparagraph:
3 ''(G)(i) No person described in clause (ii) may
4 disclose any record, report, document, or other infor-
5 mation referred to in subparagraph (A)(i) without
6 the permission of the President (or the State, as the
7 case may be).
8 ''(ii) A person described in this clause is any
9 person—
10 ''(I) who is not an employee of the United
11 States Government; and
12 ''(II) who, by virtue of the person's duties
13 under a contract or cooperative agreement with
14 the United States under this section to perform
15 work for the United States Government or im-
16 plement the requirements of this Act, has re-
17 ceived information obtained under this section
18 (or any record, report, or document containing
19 such information) which, if requested from the
20 United States Government pursuant to section
21 552 of title 5, United States Code, would be ex-
22 empt from disclosure by reason of subsection
23 (b) of such section.''.

1 (f) AVAILABILITY OF INFORMATION TO CONGRESS.—
2 Subsection 104(e) is further amended by adding after
3 paragraph (9) the following new paragraph:
4 ''(10) AVAILABILITY OF INFORMATION TO CON-
5 GRESS.—Nothing in this subsection shall be con-
6 strued to authorize any person, including any allo-
7 cator appointed pursuant to section 130, to withhold
8 any documents or information from Congress, or any
9 duly authorized Committee thereof, or limit in any
10 manner the right of Congress, or any duly author-
11 ized Committee thereof, to obtain such documents or
12 information.''.

13 **SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.**

14 (a) ADDITIONAL AUTHORITY TO ISSUE ADMINISTRA-
15 TIVE ORDERS.—Section 106(a) (42 U.S.C. 9606(a)) is
16 amended by adding at the end the following: ''The Presi-
17 dent may amend such administrative orders and issue ad-
18 ditional orders relating to the facility, as appropriate,
19 without a subsequent finding of an imminent and substan-
20 tial endangerment, to complete all response actions nec-
21 essary to respond to an actual or threatened release or
22 to require additional response actions that are necessary
23 or appropriate to respond to the actual or threatened re-
24 lease that was the subject of the original administrative
25 order.''.

1 (b) REQUIREMENT TO PROVIDE PRPS EVIDENCE OF
2 LIABILITY.—Section 106(a) (42 U.S.C. 9606(a)) is fur-
3 ther amended by adding at the end the following: ''In any
4 case in which the President issues an order to a person
5 under this subsection, the President shall provide informa-
6 tion concerning the evidence that indicates that each ele-
7 ment of liability contained in section 107(a) is present.''.
8 (c) SUFFICIENT CAUSE.—Section 106(b)(1) (42
9 U.S.C. 9606(b)(1)) is amended—
10 (1) by inserting ''(A)'' after ''(b)(1)'';
11 (2) by striking ''to enforce such order'';
12 (3) by inserting before the period '', or be re-
13 quired to comply with such order, or both, even if
14 another person has complied, or is complying, with
15 the terms of the same order or another order per-
16 taining to the same facility and release or threatened
17 release''; and
18 (4) by inserting at the end the following:
19 ''(B) For purposes of this subsection, a 'sufficient
20 cause' requires—
21 ''(i) an objectively reasonable belief by the per-
22 son to whom the order is issued that the person is
23 not liable for any response costs under section 107;
24 or

1 "(ii) that the action to be performed pursuant
2 to the order is inconsistent with the national contin-
3 gency plan.
4 "(C) The existence or results of an allocation process
5 pursuant to section 130 shall not affect or constitute a
6 basis for a determination of 'sufficient cause' under this
7 paragraph or under section 107(c)(3).".
8 (d) REIMBURSEMENT.—Subsection (b) of section 106
9 (42 U.S.C. 9606(b)) is further amended in the first sen-
10 tence of paragraph (2)(A) by striking "completion of" and
11 inserting "the President determines that such person has
12 completed".

13 **SEC. 403. LIMITATIONS TO LIABILITY FOR RESPONSE**
14 **COSTS.**

15 (a) LIMITATIONS ON LIABILITY.—Section 107(a) (42
16 U.S.C. 9607(a)) is amended as follows:
17 (1) In paragraph (1), by striking "and" and in-
18 serting "or".
19 (2) In paragraph (3), by striking "person," and
20 inserting "person or".
21 (3) In paragraph (4)(A), by inserting ", includ-
22 ing the costs of overseeing response actions con-
23 ducted by potentially responsible parties," before
24 "incurred by the United States".
25 (4) In paragraph (4)(B)—

1 (A) by striking ''other'' both places it ap-
2 pears; and
3 (B) by inserting '', other than the United
4 States, a State, or an Indian tribe,'' before the
5 phrase ''consistent with the national contin-
6 gency plan''.
7 (5) In paragraph (4), by striking ''by such per-
8 son,'' and all that follows through ''shall be liable
9 for—'' and inserting in lieu thereof the following:
10 ''by such person—
11 from which there is a release, or a threatened release, that
12 causes the incurrence of response costs, of a hazardous
13 substance, shall be liable for—''.
14 (6) By designating the text beginning with
15 ''The amounts recoverable'' and ending with ''this
16 subsection commences.'' as paragraph (5) and align-
17 ing the margin of such text with paragraph (4).
18 (7) By adding the following new paragraphs
19 after paragraph (5):
20 ''(6) Notwithstanding paragraphs (1) through
21 (4) of this subsection, a person who does not impede
22 the performance of a response action or natural re-
23 source restoration at a facility shall not be liable:
24 ''(A)(i) To the extent liability at such facil-
25 ity is based solely on paragraph (3) or (4) of

1 this subsection, and the person arranged for
2 disposal, treatment, or transport for disposal or
3 treatment, or accepted for transport for dis-
4 posal or treatment of only municipal solid waste
5 or sewage sludge owned or possessed by such
6 person, and the person is—
7 ''(I) the owner, operator, or lessee of
8 residential property;
9 ''(II) a small business; or
10 ''(III) a small non-profit organization.
11 ''(ii) This subparagraph shall have no ef-
12 fect on the liability of any other person.
13 ''(B) To the extent liability at such facility
14 is based solely on paragraph (3) or (4) of this
15 subsection, and the person can demonstrate
16 that it arranged for disposal or treatment, or
17 transport for disposal or treatment or accepted
18 for transport for disposal or treatment, 55 gal-
19 lons or less of liquid materials containing haz-
20 ardous substances or pollutants or contami-
21 nants or less, 100 pounds or less of solid mate-
22 rials containing hazardous substances or pollut-
23 ants or contaminants, or such greater or lesser
24 amount as the Administrator may determine by
25 regulation, except where—

1 "(i) the Administrator has determined
2 that such material contributed or could
3 contribute significantly to the costs of re-
4 sponse at the facility, or

5 "(ii) the person has failed to respond
6 fully and completely to information re-
7 quests or administrative subpoenas by the
8 United States.

9 "(C) To the extent liability at such facility
10 is based solely on paragraph (1) of this sub-
11 section for a release or threat of release from
12 the facility, and the person is a bona fide pro-
13 spective purchaser of the facility. Not later than
14 18 months after the date of the enactment of
15 the Superfund Reform Act of 1994, the Admin-
16 istrator shall issue guidelines explaining criteria
17 by which a person may qualify as a bona fide
18 prospective purchaser. Such guidelines shall be
19 made readily available to the public.

20 "(D) To the extent liability at such facility
21 is based solely on the person's status as owner
22 under paragraph (1) for a release or threat of
23 release from the facility, and the person ac-
24 quired the facility by inheritance or bequest if
25 the person—

1 ''(i) acquired the real property on
2 which the facility concerned is located after
3 disposal or placement of the hazardous
4 substance took place;
5 ''(ii) did not cause or contribute to the
6 release or threat of release; and
7 ''(iii) exercised due care with respect
8 to the hazardous substance concerned, in-
9 cluding precautions against foreseeable
10 acts of third parties, taking into consider-
11 ation the characteristics of such hazardous
12 substance, in light of all relevant facts and
13 circumstances.
14 ''(E) To the extent the liability of a Fed-
15 eral or State governmental entity or municipal-
16 ity at such facility is based solely on its—
17 ''(i) ownership of a road, street, or
18 other right of way or public transportation
19 route (other than railroad rights of way
20 and railroad property) over which hazard-
21 ous substances are transported; or
22 ''(ii) granting of a license or permit to
23 conduct business.
24 ''(F) To the extent the liability of a de-
25 partment, agency, or instrumentality of the

1 United States at such facility is based on actions of such department, agency, or instrumentality taken in response to a natural disaster pursuant to the Act of August 18, 1941 (33 U.S.C. 701n) or The Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 and following).

''(7) Notwithstanding paragraphs (1) through (4), a person shall not be liable for more than 10 percent of total response costs at a facility, in aggregate, to the extent the person is liable solely under paragraph (3) or (4) of this subsection, and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. In any case in which more than one person at a facility comes within the coverage of this paragraph, the 10 percent limitation on liability shall apply to the aggregate liability of all such persons. Such limitation on liability shall apply only if either the acts or omissions giving rise to liability occurred before the date occurring 36 months after enactment of this paragraph, or the person asserting the limitation institutes or participates in a qualified household hazardous

1 waste collection program within the meaning of sec-
2 tion 101(43).
3 ''(8)(A) Notwithstanding paragraphs (1)
4 through (4) of this subsection, the liability of a per-
5 son who does not impede the performance of re-
6 sponse actions or natural resource restoration with
7 respect to a release or threatened release from a ves-
8 sel or facility shall be limited to the lesser of the fair
9 market value of the vessel or facility or the actual
10 proceeds of the sale of the vessel or facility received
11 by the person, to the extent such liability is based
12 solely on the person's status under paragraph (1) as
13 owner of the vessel or facility if the person—
14 ''(i) holding title, either outright or in
15 trust, to the vessel or facility is an organization
16 described in section 501(c)(3) of the Internal
17 Revenue Code of 1986 and exempt from tax
18 under section 501(a) of such Code and holds
19 such title as a result of a charitable donation
20 that qualifies under sections 170, 2055, or
21 2522 of such Code;
22 ''(ii) exercised due care with respect to the
23 hazardous substance concerned, including pre-
24 cautions against foreseeable acts of third par-
25 ties, taking into consideration the characteris-

1 tics of such hazardous substance, in light of all
2 relevant facts and circumstances;
3 ''(iii) did not cause or contribute to the re-
4 lease or threat of release; and
5 ''(iv) acquired the real property on which
6 the facility concerned is located, or acquired the
7 vessel, after disposal or placement of the haz-
8 ardous substance took place.
9 ''(B) At any facility to which the provisions of
10 this paragraph apply, the owner or operator of the
11 vessel or facility within the meaning of paragraph
12 (1) shall include any person who owned or operated
13 the facility immediately prior to the person described
14 in subparagraph (A).
15 ''(9) A person who owns or operates real prop-
16 erty that is contiguous to or otherwise situated with
17 respect to real property on which there has been a
18 release of a hazardous substance and that is or may
19 be contaminated by the release shall not be consid-
20 ered an owner or operator of a facility under para-
21 graph (1)(A) solely by reason of such contamination
22 if such person establishes by a preponderance of the
23 evidence that—
24 ''(A) such person exercised due care with
25 respect to the hazardous substance, taking into

1 consideration the characteristics of such haz-
2 ardous substance, in light of all relevant facts
3 and circumstances;
4 ‘‘(B) such person took precautions against
5 foreseeable acts or omissions that resulted in
6 the release and the consequences that could
7 foreseeably result from such acts or omissions;
8 ‘‘(C) such person did not cause or contrib-
9 ute to the release; and
10 ‘‘(D) such person provides full cooperation,
11 assistance, and facility access to persons au-
12 thorized to conduct response actions at the fa-
13 cility, including the cooperation and access nec-
14 essary for the installation, integrity, operation,
15 and maintenance of any complete or partial re-
16 sponse action at the facility.
17 The President may issue assurances of no enforce-
18 ment action under this Act to such person and may
19 grant such person protection against cost recovery
20 and contribution actions pursuant to section
21 113(f).’’.
22 (b) PROSPECTIVE PURCHASER AND WINDFALL
23 LIEN.—Section 107 is amended by inserting after sub-
24 section (m) the following new subsection:

1 "(n) PROSPECTIVE PURCHASER AND WINDFALL
2 LIEN.—(1) In any case in which there are unrecovered
3 response costs at a facility for which an owner of the facil-
4 ity is not liable by reason of subsection (a)(6)(C), and the
5 conditions described in paragraph (2) are met, the United
6 States shall have a lien upon such facility for such unre-
7 covered costs. Such lien—
8 "(A) shall not exceed the increase in fair mar-
9 ket value of the property attributable to the response
10 action at the time of a subsequent sale or other dis-
11 position of property;
12 "(B) shall arise at the time costs are first in-
13 curred by the United States with respect to a re-
14 sponse action at the facility;
15 "(C) shall be subject to the requirements for
16 notice and validity established in paragraph (3) of
17 subsection (l); and
18 "(D) shall continue until the earlier of satisfac-
19 tion of the lien or recovery of all response costs in-
20 curred at the facility.
21 "(2) The conditions referred to in paragraph (1) are
22 the following:
23 "(A) A response action for which there are un-
24 recovered costs is carried out at the facility.

1 ‘‘(B) Such response action increases the fair
2 market value of the facility above the fair market
3 value of the facility that existed within six months
4 before the response action was taken.’’.

5 ‘‘(3) No lien under this section shall arise (A) with
6 respect to property for which the property owner preceding
7 the first bona fide prospective purchaser is not a liable
8 party or has resolved its liability under this Act, or (B)
9 where an audit or inquiry required under section
10 101(39)(B) by an environmental professional certified
11 under section 612 of the Superfund Reform Act of 1994
12 gives the bona fide prospective purchaser no knowledge or
13 reason to know of the release of hazardous substances.’’.

14 **SEC. 404. LIABILITY.**

15 (a) LIABILITY.—Section 107(a) (42 U.S.C. 9607(a))
16 (as amended by section 403) is further amended by adding
17 the following new paragraph at the end thereof:

18 ‘‘(10) The Administrator shall calculate the En-
19 vironmental Protection Agency response action over-
20 sight costs for which potentially responsible parties
21 are liable under this section (pursuant to paragraph
22 (4)(A)) on a national basis as a percentage of total
23 response costs incurred by potentially responsible
24 parties (in this paragraph referred to as the ‘na-
25 tional oversight rate’). The calculation shall be based

1 on data comparing oversight expenditures of the En-
2 vironmental Protection Agency to estimated or ac-
3 tual response costs incurred by potentially respon-
4 sible parties. The Administrator shall periodically re-
5 view and update the national oversight rate. In no
6 case shall the rate exceed 10 percent of total re-
7 sponse costs incurred by potentially responsible par-
8 ties. The national oversight rate shall be applied to
9 all settlements under section 130.''.

10 (b) POLLUTANT AND CONTAMINANT LIABILITY.—(1)
11 Section 107(a) (42 U.S.C. 6907A(a)) (as amended by sub-
12 section (a)) is further amended by adding at the end the
13 following new paragraph:

14 ''(11) When the President responds under the
15 authority of section 104(a)(1)(B) at facilities on the
16 National Priorities List, liability for response costs
17 under this section for pollutants and contaminants
18 shall be identical to that for hazardous substances
19 only if such pollutants and contaminants (A) con-
20 stitute an imminent and substantial danger to
21 human health, and (B) are not associated with the
22 production or extraction of any hydrocarbon, includ-
23 ing natural gas, petroleum, crude oil, or any fraction
24 thereof.''.

1 (2) Such section is further amended by inserting ''or
2 pollutant or contaminant'' after ''hazardous substance''
3 and ''hazardous substances'' each place they appear in
4 subsection (b), paragaphs (1) and (2) of subsection (c),
5 paragraphs (1) and (2) of subsection (d), subsection (i),
6 subsection (j), and paragraph (1)(B) of subsection (k).

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

9 (1) by inserting '', in addition to liability for
10 any response costs incurred by the United States as
11 a result of such failure to take proper action,'' after
12 ''person'' the second time it appears; and

13 (2) by striking ''at least equal to,'' and all that
14 follows through the end of the sentence and insert-
15 ing ''up to three times the amount of such response
16 costs.''.

17 (d) CLARIFICATION OF COMMON CARRIER LIABIL-
18 ITY.—Section 107(b)(3) is amended by striking out ''from
19 a published tariff and acceptance for'' and inserting ''ex-
20 clusively from a contract for''.

21 (e) SMALL BUSINESS CONSTRUCTION CONTRAC-
22 TORS.—Section 107 is amended by adding at the end the
23 following:

24 ''(o) SMALL BUSINESS CONSTRUCTION CONTRAC-
25 TORS.—There shall be no liability under subsection (a) of

1 this section based solely on a person's construction activi-
2 ties at a facility if such person can demonstrate by a pre-
3 ponderance of evidence that—
4 ''(1) such construction activities were specifi-
5 cally directed by and carried out in accordance with
6 a contract with an owner or operator of the facility;
7 and
8 ''(2) the person is a small business construction
9 contractor as defined by section 101(49).''.

10 **SEC. 405. CIVIL PROCEEDINGS.**

11 (a) PETITIONS.—Section 113(a) (42 U.S.C. 9613(a))
12 is amended as follows:
13 (1) By striking ''upon application by any inter-
14 ested person'' and inserting ''by any interested per-
15 son through the filing of a petition for review''.
16 (2) By striking ''application shall be made'',
17 and inserting ''petition shall be filed''.
18 (b) PERIOD IN WHICH ACTION MAY BE BROUGHT.—
19 Section 113(g) (42 U.S.C. 9613(g)) is amended by strik-
20 ing paragraphs (2) and (3) and inserting in lieu thereof
21 the following:
22 ''(2) ACTIONS FOR RECOVERY OF COSTS.—(A)
23 Except as provided in subparagraph (C), an initial
24 action for recovery of costs referred to in section
25 107 must be commenced—

1 "(i) for a removal action, within 3 years
2 after completion of all removal action taken
3 with respect to the facility, including off-site
4 disposal of any removed materials, except that
5 if physical on-site construction of the remedial
6 action is initiated within 3 years after the com-
7 pletion of all removal action taken with respect
8 to the facility, costs incurred for removal action
9 may be recovered in a cost recovery action
10 brought under clause (ii); and
11 "(ii) for a remedial action, within 6 years
12 after initiation of physical on-site construction
13 of the remedial action.
14 "(B) In any such action described in this para-
15 graph, the court shall enter a declaratory judgment
16 on liability for response costs or damages that will
17 be binding in such action or in any subsequent ac-
18 tion or actions to recover further response costs or
19 damages. A subsequent action or actions under sec-
20 tion 107 for further response costs at the vessel or
21 facility may be maintained at any time during the
22 response action, but must be commenced no later
23 than 3 years after the date of completion of all re-
24 sponse action. Except as otherwise provided in this
25 paragraph, an action may be commenced under sec-

1 tion 107 for recovery of costs at any time after such
2 costs have been incurred.
3 ''(C) An action by any potentially responsible
4 party against another potentially responsible party
5 for recovery of any response costs or damages must
6 be commenced within the later of—
7 ''(i) the time limitations set forth in sub-
8 paragraph (A); or
9 ''(ii) where recovery is sought for costs or
10 damages paid pursuant to a judgment or settle-
11 ment, 3 years after—
12 ''(I) the date of judgment in any ac-
13 tion under this Act for recovery of such
14 costs or damages, or
15 ''(II) the date of any administrative
16 order or judicial settlement for recovery of
17 the costs or damages paid or incurred pur-
18 suant to such a settlement.
19 ''(3) CLAIMS BY THE UNITED STATES OR
20 STATES.—Claims by the United States under section
21 106 and claims by the United States or a State
22 under section 107(a) shall not be deemed compul-
23 sory counterclaims in an action against the United
24 States or a State seeking response costs, contribu-

1 tion, damages, or any other claim by any person
2 under this Act.''.
3 (c) JUDICIAL REVIEW.—Section 113(j)(1) (42 U.S.C.
4 9613(j)(1)) is amended by striking ''or ordered by the
5 President'' and inserting ''or selected by the President
6 pursuant to this Act, or ordered or sought by the Presi-
7 dent,''.

8 **SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.**

9 Section 113(f) (42 U.S.C. 9613(f)) is amended as fol-
10 lows:
11 (1) By amending paragraph (1) as follows:
12 (A) By striking ''Any person'' in the first
13 sentence and inserting ''Except as provided in
14 paragraph (4), any person who is liable or po-
15 tentially liable under section 107(a)''.
16 (B) By striking '', during or following any
17 civil action under section 106 or under section
18 107(a).'' and inserting ''in a claim asserted
19 under section 107(a).''.
20 (C) In the second sentence, by striking
21 ''this section'' and inserting ''section 107(a),
22 this section,''.
23 (D) By striking the sentence beginning
24 with ''Nothing in this subsection''.

1 (2) By amending paragraph (2) to read as fol-
2 lows:
3 "(2) SETTLEMENTS.—A person who has re-
4 solved its liability to the United States in an admin-
5 istrative or judicially approved settlement shall not
6 be liable for contribution or any other claims by any
7 person other than a State acting under section
8 107(a)(4)(A) (and not as a potentially responsible
9 party) regarding response actions, response costs, or
10 damages addressed in the settlement. A person who
11 has resolved its liability to a State or an Indian tribe
12 in an administrative or judicially approved settle-
13 ment shall not be liable for contribution or any other
14 claims by persons other than the United States Gov-
15 ernment acting under section 107(a)(4)(A) (and not
16 as a potentially responsible party) regarding re-
17 sponse costs or damages addressed in the settlement
18 for which the State or Indian tribe has a claim
19 under this title. Such settlement does not discharge
20 any other potentially responsible persons unless its
21 terms so provide, but it reduces the potential liabil-
22 ity of such other persons by the amount of the set-
23 tlement. The protection afforded by this subsection
24 shall include protection against claims, under Fed-
25 eral or State law, that may be asserted against the

1 settling party for recovery of response costs or dam-
2 ages incurred or paid by another person, if such
3 costs or damages are addressed in the settlement,
4 but shall not include protection against claims based
5 on contractual indemnification or other express con-
6 tractual agreements to pay such costs or damages.''.
7 (3) By adding at the end the following new
8 paragraph:
9 ''(4) LIMITATIONS ON CONTRIBUTION AC-
10 TIONS.—(A) There shall be no right of contribution
11 under this subsection in any of the following cir-
12 cumstances:
13 ''(i) The person asserting the right of con-
14 tribution has waived the right in a settlement
15 pursuant to this Act.
16 ''(ii) The person from whom contribution
17 is sought is not liable under this Act.
18 ''(iii) The person from whom contribution
19 is sought has entered into a settlement with the
20 United States pursuant to section 122(g), with
21 respect to matters addressed in that settlement.
22 ''(B) Any person who commences an action for
23 contribution shall be liable to the person against
24 whom the claim of contribution is brought for all
25 reasonable costs of defending against the claim, in-

cluding all reasonable attorneys' and expert witness fees, if—

''(i) the action is barred by subparagraph (A);

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

''(iii) the action is brought during the moratorium pursuant to section 130.''.

SEC. 407. SCOPE OF RULEMAKING AUTHORITY.

(a) IN GENERAL.—Section 115 (42 U.S.C. 9615) is amended to read as follows:

''SEC. 115. PRESIDENTIAL DELEGATION AND ASSIGNMENT OF DUTIES OR POWERS AND PROMULGATION OF REGULATIONS.

''The President (or the Administrator where applicable) is authorized to promulgate such regulations as the President (or the Administrator where applicable) deems necessary to carry out the provisions of this Act, and to delegate and assign any duties or powers imposed upon or assigned to him by this Act, including the authority to promulgate regulations. The preceding sentence includes authority to clarify or interpret all terms and to implement any provision of this Act.''.

1 (b) LENDER LIABILITY RULE.—(1) Effective on the
2 date of enactment of this section, the final rule issued by
3 the Administrator of the Environmental Protection Agen-
4 cy on April 29, 1992 (57 Fed. Reg. 18344), shall be
5 deemed to have been validly issued pursuant to the author-
6 ity of the Comprehensive Environmental Response, Com-
7 pensation, and Liability Act of 1980, and to have been
8 effective according to the final rule's terms. No additional
9 administrative or judicial proceedings shall be necessary
10 with respect to such final rule.

11 (2) Notwithstanding section 113(a) of the Com-
12 prehensive Environmental Response, Compensation and
13 Liability Act of 1980, no court shall have jurisdiction to
14 review the final rule issued by the Administrator of the
15 Environmental Protection Agency on April 29, 1992 (57
16 Fed. Reg. 18344).

17 (3) Nothing in this subsection shall be construed to
18 limit the authority of the President or his delegate to
19 amend the final rule issued by the Administrator of the
20 Environmental Protection Agency on April 29, 1992 (57
21 Fed. Reg. 18344), in accordance with applicable provi-
22 sions of law.

23 **SEC. 408. RESPONSE ACTION CONTRACTORS.**

24 (a) CLARIFICATION OF RESPONSE ACTION CONTRAC-
25 TOR LIABILITY.—Section 119(a) (42 U.S.C. 9619(a)) is

1 amended by inserting after paragraph (4) the following
2 new paragraph:
3 ''(5) LIABILITY.—Any liability of a person
4 under this Act as a response action contractor aris-
5 ing solely from the performance by such person of
6 a response action contract at any facility shall be de-
7 termined solely in accordance with this section with
8 respect to such facility.''.
9 (b) IMPLEMENTATION OF ALTERNATIVE OR INNOVA-
10 TIVE TECHNOLOGIES.—Section 119(a) (42 U.S.C.
11 9619(a)) is further amended by adding at the end the fol-
12 lowing:
13 ''(6) IMPLEMENTATION OF ALTERNATIVE OR
14 INNOVATIVE TECHNOLOGIES.—No response action
15 contractor shall be liable under this Act solely as a
16 result of such contractor's testing or implementation
17 of alternative or innovative treatment technologies
18 (as defined in section 311(b)) or alternative or inno-
19 vative containment technologies with respect to a re-
20 sponse action if use of the technology in connection
21 with the response action has been approved by the
22 authorized Federal regulatory agency or State regu-
23 latory agency acting under a contract or cooperative
24 agreement with the Administrator pursuant to sec-
25 tion 127. This paragraph shall not apply in the case

1 of negligence, gross negligence, or intentional mis-
2 conduct by such contractor in implementing the ap-
3 proved technology, including any noncompliance with
4 the approved process for implementing the tech-
5 nology.''.
6 (c) INDEMNIFICATION CLARIFICATION.—Section
7 119(c)(1) (42 U.S.C. 9619(c)(1)) is amended by inserting
8 ''under Federal, State, or common law'' after ''any liabil-
9 ity''.
10 (d) INDEMNIFICATION FOR THREATENED RE-
11 LEASES.—Section 119(c)(5)(A) (42 U.S.C.
12 9619(c)(5)(A)) is amended by inserting ''or threatened re-
13 lease'' after ''release'' each place it appears.
14 (e) CONSIDERATIONS.—Section 119(c) (42 U.S.C.
15 9619(c)) is amended by redesignating paragraphs (5), (6),
16 (7), and (8) as paragraphs (6), (7), (8), and (9), respec-
17 tively, and by inserting after paragraph (4) the following
18 new paragraph:
19 ''(5) CONSIDERATIONS.—In exercising the
20 President's discretion under this subsection whether
21 to provide an indemnification agreement, the Presi-
22 dent should consider the adequacy of competition in
23 response to solicitations, the availability of adequate
24 insurance at a fair and reasonable price (including
25 consideration of premium, policy terms, deductibles,

policy coverage, limits, and renewal terms), applicable statutes of limitation that may apply to actions against response action contractors, and any other factors the President considers relevant.''.

(f) EXTENSION.—Section 119 (42 U.S.C. 9619) is amended—

(1) in subsection (e)(2)(C) by striking ''1996'' and inserting ''2000''; and

(2) in subsection (g)(5) by striking ''1995'' and inserting ''1999''.

SEC. 409. ENHANCEMENT OF SETTLEMENT AUTHORITIES.

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

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

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

''(D) COMPLIANCE.—Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree

1 in an amount not to exceed $25,000 per day,
2 which may be enforced by either the President
3 or the State. Such stipulated penalties shall not
4 be construed to impair or affect the authority
5 of the court to order compliance with the spe-
6 cific terms of any such decree.''.
7 (3) By amending subsection (e)—
8 (A) By inserting after paragraph (1)(C)
9 the following:
10 ''(D) For each potentially responsible
11 party, the evidence that indicates that each ele-
12 ment of liability contained in section 107(a) is
13 present.''.
14 (B) By striking paragraph (3).
15 (C) By redesignating paragraphs (4) and
16 (5) as paragraphs (3) and (4), respectively.
17 (4) By adding at the end of subsection (g)(1)
18 the following: ''The President may waive any condi-
19 tion or requirement of subparagraph (B), for a per-
20 son liable as an owner under section 107(a)(1), if
21 not more than a de minimus amount of any hazard-
22 ous substance was released as a result of the genera-
23 tion, transportation, storage, treatment, or disposal
24 of hazardous substances at the facility by the owner
25 and persons affiliated with the owner after the

1 owner took title, or if the owner and persons affili-
2 ated with the owner caused or contributed to the re-
3 lease or threat of release of not more than a de
4 minimus amount of any hazardous substance at the
5 facility through any action or omission after the
6 owner took title.''.

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

10 (B) In subsection (o) (as so transferred and re-
11 designated), by striking ''remedial action'' in both
12 places it appears and inserting ''response action'',
13 and by inserting ''or the State under applicable law''
14 before the period at the end.

15 (C) By adding the following new subsections at
16 the end thereof:

17 ''(p) RETENTION OF FUNDS.—(1) If, as part of any
18 settlement agreement under this Act, a potentially respon-
19 sible party will be paying amounts to the President for
20 carrying out any response action, the President may retain
21 such amounts in interest bearing accounts, and use such
22 amounts, together with accrued interest, to conduct or en-
23 able other persons to conduct such response action.

24 ''(2) If, as part of any settlement agreement for car-
25 rying out a response action under this Act, a potentially

1 responsible party will be paying amounts to the President,
2 the Administrator is authorized to accept ownership of a
3 financial instrument running irrevocably to the benefit of
4 the United States to conduct, or enable other persons to
5 conduct, such response actions. For the purposes of this
6 paragraph, the term 'financial instrument' means an an-
7 nuity contract, funding agreement, or similar instrument
8 acceptable to the Secretary of the Treasury, that is pur-
9 chased by one or more potentially responsible parties, and
10 has a defined schedule of periodic payments which coin-
11 cides with the obligations set forth in the settlement agree-
12 ment. Periodic payments under such a financial instru-
13 ment will be made to the owner, or as the owner directs,
14 for response costs at the facility which is the subject of
15 the settlement agreement.

16 ''(q) CHALLENGE TO COST RECOVERY COMPONENT
17 OF SETTLEMENT.—Notwithstanding the limitations on re-
18 view in section 113(h), and except as provided in sub-
19 section (g) of this section, a person whose potential claim
20 for response costs or contribution is limited as a result
21 of contribution protection afforded by an administrative
22 settlement under this section may challenge the cost recov-
23 ery component of such settlement. Such a challenge may
24 be made only by filing a complaint against the Adminis-
25 trator in the United States District Court within 60 days

1 after such settlement becomes final. Venue shall lie in the
2 district in which the principal office of the appropriate re-
3 gion of the Environmental Protection Agency is located.
4 Any review of an administrative settlement shall be limited
5 to the administrative record, and the settlement shall be
6 upheld unless the objecting party can demonstrate on that
7 record that the decision of the President to enter into the
8 administrative settlement was arbitrary, capricious, or
9 otherwise not in accordance with law.

10 ''(r) UNSUCCESSFUL CHALLENGERS LIABLE FOR
11 ATTORNEY'S FEES.—Any party who challenges any settle-
12 ment entered into between the President and any poten-
13 tially responsible party under this Act, and who is not suc-
14 cessful in overturning or modifying the settlement, shall
15 be liable to the United States and any settling party for
16 all reasonable attorneys' fees and costs incurred in defend-
17 ing the settlement.''.

18 **SEC. 410. PROFESSIONAL SERVICES.**

19 Section 122 is amended by adding after subsection
20 (r) the following new subsection:

21 ''(s) PROFESSIONAL SERVICES.—The Administrator
22 has the authority to use the procedures set forth in section
23 109(e) to obtain the services of neutral professionals to
24 assist in the conduct of settlement negotiations under this

1 section, whether or not the neutral professional actually
2 participates in such negotiations.''.

3 **SEC. 411. FINAL COVENANTS.**

4 Section 122(f) is amended as follows:
5 (1) By amending paragraph (1) to read as fol-
6 lows:
7 ''(1) FINAL COVENANTS.—The President shall
8 offer potentially responsible parties who enter into
9 settlement agreements that are in the public interest
10 a final covenant not to sue concerning any liability
11 to the United States under this Act, including a cov-
12 enant with respect to future liability, for response
13 actions or response costs addressed in the settle-
14 ment, if all of the following conditions are met:
15 ''(A) The settling party agrees to perform,
16 or there are other adequate assurances of the
17 performance of, a final remedial action author-
18 ized by the Administrator for the release or
19 threat of release that is the subject of the set-
20 tlement.
21 ''(B) The remedial action does not provide
22 that any hazardous substances will remain at
23 the facility at concentrations above the protec-
24 tive concentration levels established pursuant to

1 section 121(d) after the final remedial action is
2 completed.
3 ‘‘(C) The settlement agreement has been
4 reached prior to the commencement of litigation
5 against the settling party under section 106 or
6 107 of this Act with respect to this facility.
7 ‘‘(D) The settling party waives all con-
8 tribution rights against other potentially re-
9 sponsible parties at the facility.
10 ‘‘(E) The settling party pays a premium
11 that compensates for the risks of remedy fail-
12 ure; future liability resulting from unknown
13 conditions; unanticipated increases in the cost
14 of any uncompleted response action, unless the
15 settling party is performing the response action;
16 and, where applicable, the United States litiga-
17 tion risk as provided in section 130 with respect
18 to persons who have not resolved their liability
19 to the United States under this Act, unless all
20 parties have settled their liability to the United
21 States, or the settlement covers 100 percent of
22 the United States response costs. The President
23 shall have sole discretion to determine the ap-
24 propriate amount of any such premium, and
25 such determinations are committed to the

1 President's discretion. The President has dis-
2 cretion to waive or reduce the premium pay-
3 ment for persons who demonstrate an inability
4 to pay such a premium.

5 ''(F) The settlement is otherwise accept-
6 able to the United States.''.

7 (2) Paragraph (3) is amended to read as fol-
8 lows:

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

1 of cost recovery, the reliability of any response ac-
2 tion or actions to restore, replace, or acquire the
3 equivalent of injured natural resources, the extent to
4 which performance standards are included in the
5 order or decree, the extent to which the technology
6 used in the response action is demonstrated to be ef-
7 fective, and any other factors relevant to the protec-
8 tion of human health and the environment.''.
9 (3) Such subsection (f) is amended by striking
10 paragraph (4) and redesignating paragraphs (5) and
11 (6) as paragraphs (4) and (5), respectively.
12 (4) Paragraph (2) is amended by striking ''re-
13 medial'' each place it appears and inserting ''re-
14 sponse''.
15 (5) Subparagraph (A) of paragraph (5) (as so
16 redesignated) is amended—
17 (A) by striking ''remedial'' and inserting
18 ''response'';
19 (B) by striking ''paragraph (2)'' in the
20 first sentence and inserting ''paragraph (1) or
21 (2)'';
22 (C) by striking ''de minimis settlements''
23 and inserting ''de minimis and other expedited
24 settlements pursuant to subsection (g) of this
25 section''; and

1 (D) by striking ''the President certifies
2 under paragraph (3) that remedial action has
3 been completed at the facility concerned'', and
4 inserting ''that the response action that is the
5 subject of the settlement agreement is se-
6 lected''.
7 (6) Subparagraph (B) of paragraph (5) (as so
8 redesignated) is amended as follows:
9 (i) By striking ''In extraordinary cir-
10 cumstances, the'' and inserting ''The''.
11 (ii) By striking ''those referred to in
12 paragraph (4) and''.
13 (iii) By striking ''if other terms,'' and
14 inserting '', if the agreement containing
15 the covenant not to sue provides for pay-
16 ment of a premium to address possible
17 remedy failure or any releases that may re-
18 sult from unknown conditions, and if other
19 terms,''.
20 (iv) By inserting at the end the fol-
21 lowing: ''The President may, in his discre-
22 tion, waive or reduce the premium pay-
23 ment for persons who demonstrate an in-
24 ability to pay such a premium.''.

1 **SEC. 412. EXPEDITED FINAL SETTLEMENTS.**

2 Section 122 is amended as follows:

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

7 ''(g) EXPEDITED FINAL SETTLEMENT.—

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

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

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

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

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

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

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

1 107(a) for up to 10 percent of the total re-
2 sponse costs at the facility.
3 ‘‘(D)(i) The potentially responsible party is
4 a natural person, a small business, or a munici-
5 pality and can demonstrate to the United
6 States an inability or limited ability to pay re-
7 sponse costs. A party who enters into a settle-
8 ment pursuant to this subparagraph shall be
9 deemed to have resolved its liability under this
10 Act to the United States for all matters ad-
11 dressed in the settlement.
12 ‘‘(ii) For purposes of this subparagraph,
13 the following provisions apply:
14 ‘‘(I) In the case of a small business,
15 the President shall take into consideration
16 the ability to pay of the business, if re-
17 quested by the business. The term ‘ability
18 to pay’ means the President’s reasonable
19 expectation of the ability of the small busi-
20 ness to pay its total settlement amount
21 and still maintain its basic business oper-
22 ations. Such consideration shall include the
23 business’s overall financial condition and
24 demonstrable constraints on its ability to
25 raise revenues.

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

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

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

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

''(iii) For purposes of this subparagraph, in the case of a municipal owner or operator of a facility, the President shall consider, to the extent that information is provided by the municipality, the following factors:

''(I) the municipality's general obligation bond rating and information about the most recent bond issue for which the rating was prepared;

''(II) the amount of total available funds (other than dedicated funds and State assistance payments for remediation of inactive hazardous waste sites);

''(III) the amount of total operating revenues (other than obligated or encumbered revenues);

''(IV) the amount of total expenses;

''(V) the amounts of total debt and debt service;

''(VI) per capita income;

''(VII) real property values;

''(VIII) unemployment information; and

1 "(IX) population information.

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

14 "(v) Any municipality which is a
15 potantially responsible party may establish an
16 inability to pay through an affirmative showing
17 that such payment of its liability under this Act
18 would either—

19 "(I) create a substantial demonstrable
20 risk that the municipality would default on
21 existing debt obligations, be forced into
22 bankruptcy, be forced to dissolve, or be
23 forced to make budgetary cutbacks that
24 would substantially reduce current levels of
25 protection of public health and safety; or

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

6 ''(vi) This subparagraph does not limit or
7 affect the President's authority to evaluate any
8 person's ability to pay or to enter into settle-
9 ments with any person based on that person's
10 inability to pay.''.

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

13 ''(2) BASIS OF DETERMINATION.—Any person
14 who enters into a settlement pursuant to this sub-
15 section shall provide any information requested by
16 the President or by an allocator in accordance with
17 section 130(i)(1) or section 104(e) of this Act. The
18 determination of whether a person is eligible for an
19 expedited settlement shall be made on the basis of
20 all information available to the President at the time
21 the determination is made. Neither the President's
22 determination as to the eligibility of a party that is
23 not a department, agency, or instrumentality of the
24 United States for settlement pursuant to this sec-
25 tion, nor the terms of the final settlement with such

1 a party, shall be subject to judicial review. If the
2 President determines that a party is not eligible for
3 a settlement pursuant to this section, the President
4 shall explain the basis for that determination in
5 writing to any person who requests such a settle-
6 ment.

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

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

19 (A) in paragraph (4), by striking
20 ''$500,000'' and inserting ''$2,000,000''; and

21 (B) by striking paragraph (5).

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

23 (A) By amending the heading to read as
24 follows: ''AUTHORITY TO SETTLE CLAIMS FOR

1 FINES, CIVIL PENALTIES, PUNITIVE DAMAGES,
2 AND COST RECOVERY.—''.
3 (B) In paragraph (1)—
4 (i) In the first sentence, by striking
5 ''costs incurred'' and inserting ''past and
6 future costs incurred or that may be in-
7 curred''.
8 (ii) In the first sentence, by inserting
9 after ''if the claim has not been referred to
10 the Department of Justice for further ac-
11 tion.'' the following: ''The head of any de-
12 partment or agency with the authority to
13 seek fines, civil penalties, or punitive dam-
14 ages under this Act may consider, com-
15 promise, and settle claims for any such
16 fines, civil penalties, or punitive damages
17 which may otherwise be assessed in civil
18 administrative or judicial proceedings if
19 the claim has not been referred to the De-
20 partment of Justice for further action. If
21 the total claim for fines, civil penalties, or
22 punitive damages exceeds $300,000, such
23 claim may be compromised and settled
24 only with the prior written approval of the
25 Attorney General.''.

1 (iii) In the second sentence, by striking ''$500,000 (excluding interest), any claim referred to in the preceding sentence'' and inserting ''$2,000,000 (excluding interest), any claim for response costs referred to in this subsection''.

7 (C) By striking paragraph (4).

8 **SEC. 413. ALLOCATION PROCEDURES.**

9 Insert after section 129 the following new section:

10 **''SEC. 130. ALLOCATION AT MULTIPARTY FACILITIES.**

11 ''(a) SCOPE.—

12 ''(1) POST-INTRODUCTION RODS.—For each non-federally owned facility listed on the National Priorities List involving 2 or more potentially responsible parties for which the President selects a remedial action on or after February 3, 1994, the Administrator shall initiate the allocation process under this section. This paragraph shall not apply to remedial actions selected prior to such date.

20 ''(2) PRE-INTRODUCTION RODS.—For each non-federally owned facility listed on the National Priorities List involving 2 or more potentially responsible parties, for any remedial action selected by the President before February 3, 1994, the Administrator shall initiate the allocation process under this

1 section, if requested to do so by a potentially respon-
2 sible party which has resolved its liability to the
3 United States with respect to the remedial action or
4 which is performing the remedial action pursuant to
5 an order issued under section 106(a).

6 ''(3) OTHER FACILITIES.—The Administrator,
7 as the Administrator deems appropriate, may initi-
8 ate the allocation process under this section for any
9 facility involving 2 or more potentially responsible
10 parties.

11 ''(4) EXCLUDED FACILITIES.—The allocation
12 process under this section shall not apply to either
13 of the following:

14 ''(A) A facility for which there has been a
15 final settlement, decree, or order that deter-
16 mines all liability or allocated shares of all po-
17 tentially responsible parties.

18 ''(B) A facility at which all of the poten-
19 tially responsible parties are liable or potentially
20 liable as facility owners or operators pursuant
21 to section 107(a)(1) or (2).

22 ''(5) MULTIPLE REMEDIAL ACTIONS.—An allo-
23 cation under this section, shall apply to all remedial
24 actions selected by the President on or after Feb-
25 ruary 3, 1994, for a facility (but not to those reme-

1 dial actions described in paragraph (2)), unless the
2 allocator determines that the allocation should ad-
3 dress only one or more of such remedial actions.

4 ''(6) MULTIPLE FACILITIES.—Where appro-
5 priate, the Administrator may initiate a single allo-
6 cation process under this section for more than 1 fa-
7 cility.

8 ''(7) EFFECT OF ALLOCATION.—An allocation
9 performed pursuant to paragraph (2) or (3) of this
10 section shall not be construed to require—

11 ''(A) payment of an orphan share pursuant
12 to this section; or

13 ''(B) the conferral of reimbursement rights
14 pursuant to this section.

15 ''(8) SETTLEMENT OFFERS AFTER COMMENCE-
16 MENT OF LITIGATION.—The provisions of this sec-
17 tion shall not apply to any offer of settlement made
18 after expiration of the moratorium period under sub-
19 section (b).

20 ''(b) MORATORIUM ON COMMENCEMENT OR CON-
21 TINUATION OF SUITS.—

22 ''(1) MORATORIUM.—No person may assert any
23 claim for response costs pursuant to section 107 of
24 this Act or commence any civil action seeking recov-
25 ery of any response costs in connection with a re-

1 sponse action for which an allocation is required
2 under subsection (a)(1) or (2), or for which the Ad-
3 ministrator has initiated an allocation under sub-
4 section (a)(3), until 90 days after issuance of the
5 allocator's report under subsection (h) or (m),
6 whichever is later.
7 "(2) STAY OF EXISTING ACTIONS.—If a claim
8 for response costs pursuant to section 107 of this
9 Act or an action seeking recovery of response costs
10 in connection with a response action for which an al-
11 location is required under subsection (a)(1) or
12 (a)(2), or for which the Administrator has initiated
13 an allocation under subsection (a)(3), is pending—
14 "(A) upon the date of enactment of the
15 Superfund Reform Act of 1994, or
16 "(B) upon initiation of an allocation,
17 the action or claim shall be stayed until 90 days
18 after the issuance of the allocator's report under
19 subsection (h) or (m), unless the court determines
20 that a stay will result in manifest injustice.
21 "(3) STATUTE OF LIMITATIONS.—Any applica-
22 ble limitations period with respect to a cause of ac-
23 tion subject to paragraph (1) shall be tolled from the
24 earlier of the following until 180 days after the issu-

1 ance of the allocator's report under subsection (h) or
2 (m):
3 ''(A) The date of listing of the facility on
4 the National Priorities List.
5 ''(B) The commencement of the allocation
6 process pursuant to this section.
7 ''(c) COMMENCEMENT OF ALLOCATION.—
8 ''(1) RESPONSIBLE PARTY SEARCH.—At all fa-
9 cilities subject to this section, the Administrator
10 shall, as soon as practicable, but not later than 60
11 days after the commencement of the remedial inves-
12 tigation, initiate a thorough investigation and search
13 for all potentially responsible parties, using his au-
14 thorities under section 104. Any person may submit
15 information to the Administrator concerning any po-
16 tentially responsible party at the facility, and the
17 Administrator shall consider such information in
18 carrying out the responsible party search.
19 ''(2) NOTIFICATION OF DE MINIMIS PARTIES.—
20 As soon as practicable after receipt of sufficient in-
21 formation, but not more than 12 months after the
22 commencement of the remedial investigation, the
23 Administrator shall take each of the following ac-
24 tions:

1 "(A) The Administrator shall notify any
2 potentially responsible party who the Adminis-
3 trator determines is eligible for an expedited
4 final settlement in accordance with section
5 122(g)(1)(A) of its eligibility, based on informa-
6 tion available to the Administrator at the time
7 the determination is made. Any such informa-
8 tion that is not confidential shall, to the extent
9 practicable, be made available by the Adminis-
10 trator to the party at the time of the settlement
11 offer.

12 "(B) The Administrator shall submit a
13 written settlement offer to each party notified
14 under subparagraph (A) no later than 60 days
15 after such notification. The Administrator shall,
16 at the same time, make available to such party
17 upon request any nonconfidential information
18 related to the party's settlement upon which the
19 Administrator based the settlement offer. If the
20 settlement offer is based in whole or in part on
21 confidential information, the Administrator
22 shall so advise such party.

23 "(3) PRELIMINARY NOTICE TO OTHER PAR-
24 TIES.—As soon as practicable after receipt of suffi-
25 cient information, but not later than 18 months

1 after commencement of the remedial investigation,
2 the Administrator shall—
3 ‘‘(A) notify any party not previously noti-
4 fied under paragraph (2) who the Adminis-
5 trator determines is eligible for an expedited
6 final settlement in accordance with section
7 122(g)(1)(A) of its eligibility, based on informa-
8 tion available to the Administrator at the time
9 the determination is made;
10 ‘‘(B) issue a list of all potentially respon-
11 sible parties preliminarily identified by the Ad-
12 ministrator to all such parties;
13 ‘‘(C) notify the public, in accordance with
14 section 117(d), of the list of potentially respon-
15 sible parties identified pursuant to subpara-
16 graphs (A) and (B) by the Administrator; and
17 ‘‘(D) make available all responses to the
18 Administrator’s information requests, as well as
19 other relevant information concerning the facil-
20 ity and potentially responsible parties, to the
21 notified parties, to the extent it is available to
22 the Administrator.
23 The Administrator shall not make available any
24 privileged or confidential information, except as oth-
25 erwise authorized by law. The Administrator shall

1 take the actions specified in this paragraph within 9
2 months after the date of enactment of this section
3 for all facilities eligible for allocation under sub-
4 section (a)(1) or (a)(2) for which the responsible
5 party search required by a paragraph (1) was sub-
6 stantially complete prior to the date of the enact-
7 ment of this section.

8 ''(4) STATUS OF PARTIES.—At the time of pro-
9 posing the list of potentially responsible parties
10 under paragraph (3), the Administrator shall—

11 ''(A) identify parties that are eligible for
12 expedited settlement pursuant to section
13 122(g);

14 ''(B) identify parties who are not eligible
15 for such expedited settlement; or

16 ''(C) determine that there is insufficient
17 information to ascertain whether or not the
18 party is eligible for such expedited settlement.

19 ''(5) NOMINATION OF PARTIES.—(A) For 60
20 days after information has been made available pur-
21 suant to paragraph (3), the parties identified by the
22 Administrator and members of the affected commu-
23 nity shall have the opportunity to identify and nomi-
24 nate additional potentially responsible parties or oth-
25 erwise provide information relevant to the facility or

1 such potentially responsible parties. This period may
2 be extended by the Administrator for an additional
3 30 days upon request of any person.

4 ''(B) Any proposal for the addition of any po-
5 tentially responsible party with respect to a facility
6 shall be supported by a statement setting forth the
7 basis in law and fact for the nominating party's be-
8 lief that the additional nominated party is poten-
9 tially liable under this Act and by full disclosure to
10 the Administrator and to the nominated party at the
11 same time of all available information concerning
12 that party's liability under this Act and that party's
13 contribution of hazardous substances to the facility.
14 The nominated party may submit to the Adminis-
15 trator information relating to its inclusion as an ad-
16 ditional potentially responsible party within 45 days
17 of the receipt of such information.

18 ''(6) LIST OF ALLOCATION PARTIES.—(A)
19 Within 60 days after the end of the period specified
20 in paragraph (5)(A) for the proposal of additional
21 parties, the Administrator shall—

22 ''(i) issue a list of parties subject to the al-
23 location process (hereinafter referred to in this
24 section as the 'allocation parties');

1 ‘‘(ii) identify in writing, as to each of the
2 proposed additional parties, which parties the
3 Administrator has determined, in the Adminis-
4 trator’s sole discretion—
5 ‘‘(I) to be eligible for expedited settle-
6 ment pursuant to section 122(g),
7 ‘‘(II) not to be eligible for such expe-
8 dited settlement, and
9 ‘‘(III) for whom insufficient informa-
10 tion exists to determine whether or not the
11 party is eligible for such expedited settle-
12 ment; and
13 ‘‘(iii) identify (in writing supported by
14 brief explanation) those parties as to which the
15 Administrator has determined, in the Adminis-
16 trator’s sole discretion, that there is an inad-
17 equate basis in law or fact to determine that
18 the party is liable under this Act.
19 The Administrator shall consider, when making de-
20 terminations under this subparagraph, all available
21 information provided pursuant to section
22 130(c)(5)(B). For each party identified under clause
23 (iii), the Administrator shall further identify whether
24 that party, if liable, would be eligible for an expe-
25 dited settlement.

1 “(B) At the time of issuance of the list of par-
2 ties provided for in subparagraph (A), the Adminis-
3 trator shall provide the potentially responsible par-
4 ties who received notice under this paragraph with
5 a list of neutral parties who are not employees of the
6 United States and who the Administrator deter-
7 mines, in the Administrator’s sole discretion, are
8 qualified to perform an allocation at the facility.
9 “(C) De minimis parties the Administrator
10 identifies as potentially liable but eligible for expe-
11 dited settlement pursuant to this section, shall not
12 be subject to, or assigned a share in, the allocation
13 (except to the extent required to determine the or-
14 phan share pursuant to subsection (h)), unless that
15 party fails to reach an agreement with the President
16 on settlement terms within 30 days after the offer.
17 “(D) If the Administrator determines that there
18 is an inadequate basis in law or fact to conclude that
19 a party is liable based on the information presented
20 by the nominating party or otherwise available to
21 the Administrator, the determination shall have the
22 following effect:
23 “(i) With respect to a party that the Ad-
24 ministrator has determined to be—

1 ''(I) exempt from liability pursuant to
2 section 107(a)(6)(A) or (B); or
3 ''(II) not liable on some other basis
4 but who, if liable, would be eligible for an
5 expedited settlement,
6 the Administrator's determination shall mean
7 that the party shall not be subject to, and shall
8 not be assigned a share in, the allocation.
9 ''(ii) With respect to all other parties, the
10 Administrator's determination shall be accorded
11 deference by the allocator. For such parties the
12 allocator shall consider the Administrator's de-
13 termination together with the allocation factors
14 listed in subsection (h)(2).
15 ''(E) The Administrator's determinations for
16 purposes of this subsection shall not be subject to
17 judicial review, nor shall any determination or expla-
18 nation provided for purposes of the allocation be ad-
19 missible for any purpose in an action commenced by
20 the United States against the party that is the sub-
21 ject of the determination or any other party.
22 ''(F) The allocator may assign a zero share to
23 any party the allocator determines should receive
24 such a share in consideration of the allocation fac-

1 tors including the Administrator's determinations
2 under subparagraph (C).
3 ''(G) If a party is included in the allocation
4 pursuant to the nomination of a potentially respon-
5 sible party pursuant to subsection (c)(5), but as-
6 signed a zero share by the allocator, that party's
7 costs of participating in the allocation (including
8 reasonable attorneys' fees) shall be borne by the
9 party who proposed the addition of the party to the
10 allocation.
11 ''(d) DE MINIMIS SETTLEMENT OFFER.—(1) Within
12 30 days after the final list of parties is issued pursuant
13 to paragraph (6) of subsection (c), the Administrator shall
14 submit a written settlement offer to any party identified
15 as a potentially responsible party pursuant to this section
16 who the Administrator has determined to be eligible for
17 an expedited final settlement in accordance with section
18 122(g)(1)(A), and who has not entered into a settlement
19 with the United States regarding the matters being ad-
20 dressed by the allocation. The Administrator shall, at the
21 same time, make available to such party upon request any
22 nonconfidential information related to the party's settle-
23 ment.
24 ''(2) The President shall not include any premia pur-
25 suant to section 122(g) in a settlement offer made pursu-

1 ant to paragraph (1) more than 60 days after the date
2 the offer is required to be made pursuant to paragraph
3 (1) to a party that is a small business, as defined in sec-
4 tion 101(47).

5 ‘‘(3) If a party is a small business which the Presi-
6 dent has determined is eligible for a settlement pursuant
7 to section 122(g)(1)(A), and the party is not offered a set-
8 tlement by the President within 120 days after the date
9 the offer is required to be made pursuant to paragraph
10 (1), the party shall have no further liability under this Act
11 for the costs of response actions at the facility for which
12 the allocation is being performed, unless the President de-
13 termines that there is just cause for the delay and such
14 delay is due to factors outside the President’s control.

15 ‘‘(e) SELECTION OF ALLOCATOR.—

16 ‘‘(1) PROPOSAL OF ADDITIONAL CAN-
17 DIDATES.—Any party identified by the Adminis-
18 trator under subsection (c) may propose any person
19 whom such party deems qualified for selection as an
20 allocator in addition to those proposed from the list
21 provided under subsection (c)(6)(B).

22 ‘‘(2) SELECTION OF ALLOCATOR BY ALLOCA-
23 TION PARTIES.—The allocation parties shall select
24 an allocator from the list of allocators proposed by
25 the Administrator or under paragraph (1) by the fol-

1 lowing voting method with each allocation party hav-
2 ing a single vote:
3 ‘‘(A) Each allocation party, with the Ad-
4 ministrator voting for the identified but insol-
5 vent or defunct parties, shall numerically rank
6 the individuals on the final list of proposed
7 allocators, with a ranking of 1 indicating first
8 preference, and forward its vote to the Adminis-
9 trator within 30 days of the issuance of the
10 final list of allocators pursuant to subsection
11 (c)(6)(B).
12 ‘‘(B) The proposed allocator who receives
13 the lowest combined numerical score, taking
14 into account all votes submitted to the Adminis-
15 trator pursuant to clause (i), and who agrees to
16 serve as allocator, shall be the allocator.
17 ‘‘(3) PEREMPTORY STRIKE.—The Adminis-
18 trator may reject any allocator selected by the allo-
19 cation parties if the proposed allocator is not on the
20 list provided under paragraph (6)(B) of subsection
21 (c). In the case of any such rejection, the allocation
22 parties shall select the allocator in order of numeri-
23 cal ranking in accordance with this subsection.
24 ‘‘(4) SELECTION OF ALLOCATOR BY EPA.—If
25 the allocation parties do not select an allocator pur-

1 suant to this subsection within 30 days after receipt
2 of the list provided under paragraph (2), the Admin-
3 istrator shall select the allocator, except that if the
4 Administrator rejects 4 or more allocators selected
5 by the allocation parties, the Administrator shall ini-
6 tiate a new allocator selection process under this sec-
7 tion.

8 ''(f) CONTRACT.—Following selection of the allocator,
9 the Administrator shall enter into a contract with the se-
10 lected allocator for the provision of allocation services for
11 the facility concerned, and immediately make available all
12 responses to information requests, as well as other rel-
13 evant information concerning the facility and potentially
14 responsible parties, to the allocator. The Administrator
15 has the authority to use the procedures set forth in section
16 109(e) to obtain the services of a neutral professional for
17 use in conducting allocation procedures under this section,
18 whether or not the neutral professional actually conducts
19 such allocation procedures.

20 ''(g) POTENTIALLY RESPONSIBLE PARTY SETTLE-
21 MENT.—At any time prior to the issuance of an allocation
22 report as described in subsection (h), any group of poten-
23 tially responsible parties may submit to the allocator a pri-
24 vate allocation. If such private allocation meets all of the

1 following criteria, the allocator shall promptly adopt it as
2 the allocation report:

3 ''(1) The private allocation is a binding alloca-
4 tion of 100 percent of the past, present, and future
5 recoverable response costs at issue under subsection
6 (a).

7 ''(2) The private allocation does not allocate
8 any share of response costs to any person who is not
9 a signatory to the proposed private allocation or, in
10 the case of any orphan share, unless the United
11 States (and, where applicable, the State) is a signa-
12 tory to the proposed private allocation.

13 ''(3) The signatories to the proposed private al-
14 location waive their contribution rights with respect
15 to the remedial action against all other potentially
16 responsible parties at the facility.

17 ''(h) ALLOCATION DETERMINATION.—

18 ''(1) SETTLEMENT AND ALLOCATION RE-
19 PORT.—Following issuance of the list of allocation
20 parties pursuant to subsection (c)(6)(A)(i), the allo-
21 cator shall initiate and conduct an allocation process
22 that shall culminate in the issuance of a written re-
23 port, with a nonbinding, equitable allocation of the
24 percentage shares of responsibility of all allocation
25 parties, including the orphan share, for response

costs at the facility, and provide such report to the allocation parties and the Administrator. The allocator shall provide the report to the allocation parties and the Administrator within 180 days of the issuance of the list of allocation parties pursuant to subsection (c)(6) or the date of the contract for allocation service pursuant to subsection (f), whichever is later. Upon request, for good cause shown, the Administrator may grant the allocator additional time to complete the allocation, not to exceed 90 days.

''(2) FACTORS IN THE ALLOCATION.—The allocator shall prepare a nonbinding, equitable allocation of percentage shares for the facility based on the following factors:

''(A) The amount of hazardous substances contributed by each allocation party.

''(B) The degree of toxicity of hazardous substances contributed by each allocation party.

''(C) The mobility of hazardous substances contributed by each allocation party.

''(D) The degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of the hazardous substance.

1 ''(E) The degree of care exercised by each
2 allocation party with respect to the hazardous
3 substance, taking into account the characteris-
4 tics of the hazardous substance.
5 ''(F) The cooperation of each allocation
6 party in contributing to the response action and
7 in providing complete and timely information
8 during the allocation process.
9 ''(G) Such other factors that the Adminis-
10 trator determines are appropriate by published
11 guidance. Any such guidance shall be consistent
12 with this Act and shall be published only after
13 notice and opportunity for public comment. An
14 alleged failure of the allocator to consider 1 or
15 more additional factors set forth in such guid-
16 ance shall not be deemed unlawful conduct or
17 procedural error for purposes of subsection
18 (l)(2) or (3).
19 ''(3) CONDUCT OF ALLOCATION PROCESS.—The
20 allocator shall conduct the allocation process and
21 render a decision based solely on the provisions of
22 this section, including the allocation factors specified
23 in paragraph (2). Each party to the allocation shall
24 be afforded an opportunity to be heard (either orally
25 or in writing, at the allocator's discretion), and an

1 opportunity to comment on a draft allocation report.
2 The allocator shall not be required to respond to
3 comments.

4 ''(4) IDENTIFICATION OF ORPHAN SHARES.—

5 ''(A) COMPONENTS OF ORPHAN SHARE.—
6 The allocator may determine that a percentage
7 share for the facility is specifically attributable
8 to an orphan share. The orphan share shall
9 consist only of the following:

10 ''(i) Shares attributable to hazardous
11 substances that the allocator determines,
12 on the basis of information presented, to
13 be specifically attributable to identified but
14 insolvent or defunct allocation parties who
15 are not affiliated with any viable allocation
16 party.

17 ''(ii) The difference between the ag-
18 gregate shares that the allocator deter-
19 mines, on the basis of the information pre-
20 sented, is specifically attributable to alloca-
21 tion parties that are contributors of munic-
22 ipal solid waste subject to the limitations
23 in section 107(a)(7), and the share actu-
24 ally assumed by those parties in any settle-
25 ments with the United States pursuant to

1 section 122(g), including the fair market
2 value of in-kind services provided by a mu-
3 nicipality.
4 ''(iii) The difference between the ag-
5 gregate share that the allocator deter-
6 mines, on the basis of information pre-
7 sented, to be specifically attributable to al-
8 location parties with a limited ability to
9 pay response costs and the share actually
10 assumed by those parties in any settle-
11 ments with the United States pursuant to
12 section 122(g).
13 ''(iv) Shares that the allocator deter-
14 mines, on the basis of the information pre-
15 sented, are specifically attributable to par-
16 ties that, solely due to the operation of
17 subsection (d)(3), have no liability under
18 this Act for the costs of response actions
19 at the facility for which the allocation is
20 being performed.
21 ''(B) UNATTRIBUTABLE SHARES.—Shares
22 attributable to hazardous substances that the
23 allocator cannot attribute to any identified
24 party shall be distributed among the allocation
25 parties, including the orphan share.

1 ''(i) ANSWERS AND CERTIFICATIONS TO
2 ALLOCATOR'S INFORMATION REQUESTS.—
3 ''(1) SUBPOENAS AND INFORMATION RE-
4 QUESTS.—Where necessary to assist in determining
5 the allocation of shares, the allocator may request
6 information or documents from any allocation party
7 in accordance with paragraphs (2) or (5) of section
8 104(e), and require by subpoena the attendance of
9 persons or the production of documents, or other in-
10 formation in accordance with section 104(e)(7). Any
11 allocation party to whom a request is directed shall
12 include in the response a certification by a respon-
13 sible representative or authorized representative that
14 satisfies the requirement of section 104(e)(3). The
15 allocator may also request the Administrator to uti-
16 lize the authorities of paragraph (2) and to exercise
17 any information-gathering authority of the Adminis-
18 trator under this Act.
19 ''(2) POWERS OF THE ALLOCATOR.—In addi-
20 tion to the information-gathering authority set forth
21 in paragraph (1), the allocator shall have the au-
22 thority to schedule meetings and require the attend-
23 ance of allocation parties at such meetings; to re-
24 quire that allocation parties wishing to present simi-
25 lar legal or factual positions consolidate their pres-

1 entations; to obtain or employ support services, in-
2 cluding secretarial and clerical services, computer
3 support services, and legal and investigative services;
4 and to take any other actions necessary to conduct
5 a fair, efficient, and impartial allocation process.
6 ''(j) CIVIL AND CRIMINAL PENALTIES.—
7 ''(1) CIVIL PENALTIES.—Where the allocator is-
8 sues an administrative subpoena or information re-
9 quest pursuant to subsection (i), a party who unrea-
10 sonably fails to comply with the subpoena or request
11 shall be subject to a civil penalty not to exceed
12 $25,000 for each day of noncompliance.
13 ''(2) ENFORCEMENT.—The allocator may seek
14 enforcement of an administrative subpoena or infor-
15 mation request pursuant to subsection (i)(1), and
16 shall seek such enforcement by requesting that the
17 Attorney General commence an action to enforce the
18 subpoena or request. The Attorney General, within
19 30 days after receiving such request from the allo-
20 cator, shall—
21 ''(A) notify the allocator that the Attorney
22 General will commence an action to enforce the
23 subpoena or information request;
24 ''(B) notify the allocator that the Attorney
25 General will not seek enforcement of the sub-

1 poena or request because the subpoena or re-
2 quest is barred by law or would result in annoy-
3 ance, embarrassment, oppression, or undue bur-
4 den or expense to the party to whom it was is-
5 sued; or

6 ''(C) notify the allocator that the Attorney
7 General has insufficient information on which
8 to determine whether an enforcement action is
9 appropriate.

10 ''(3) FAILURE OF ATTORNEY GENERAL TO RE-
11 SPOND.—If the Attorney General fails to provide
12 any response to the allocator within 30 days of a re-
13 quest for enforcement of a subpoena or information
14 request, the allocator may retain counsel to com-
15 mence a civil action to enforce the subpoena or in-
16 formation request.

17 ''(4) PENALTY.—If the Attorney General or al-
18 locator prevails in an action to enforce an allocator's
19 subpoena or information request, the party who
20 failed to comply shall be subject to a sanction that
21 may include civil penalties as provided in paragraph
22 (1). The court shall require such party to pay the
23 reasonable expenses, including attorney's fees,
24 caused by the failure to comply, unless the court
25 finds that the failure was substantially justified or

that other circumstances make an award of expenses unjust.

"(5) CRIMINAL.—Any person who knowingly and willfully makes any false material statement or representation in the response to an allocator's information request or subpoena issued pursuant to subsection (i) shall be deemed to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

"(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

"(1) DOCUMENT REPOSITORY.—The allocator shall establish and maintain a document repository containing copies of all documents and information—

"(A) provided by the Administrator pursuant to this section,

"(B) provided or generated by the allocation parties, or

"(C) generated by the allocator during the allocation.

The documents and information in the document repository shall be available only to the parties to the allocation process for review and copying at their own expense, subject to the confidentiality provisions

1 of paragraph (2). The Administrator shall provide to
2 the allocator all information obtained under section
3 104(e), including information entitled to protection
4 under section 1905 of title 18, United States Code,
5 or exempt from disclosure pursuant to section
6 552(a) of title 5, United States Code. An allocation
7 party shall not assert any privilege as a basis for
8 withholding any information from the allocator.

9 ''(2) CONFIDENTIALITY.—All documents and
10 materials submitted to the allocator or placed in the
11 document repository, together with the record of any
12 information generated or obtained during the alloca-
13 tion process, shall be confidential. The allocator,
14 each allocation party, the Administrator, and the At-
15 torney General shall maintain such documents and
16 materials, together with the record of any informa-
17 tion generated or obtained during the allocation, as
18 confidential and are prohibited from using any such
19 material in any other matter or proceeding, and
20 shall not be subject to disclosure under section 552
21 of title 5, United States Code. Such material shall
22 not be discoverable or admissible in any other Fed-
23 eral, State, or local judicial or administrative pro-
24 ceedings, except—

1 ''(A) a new allocation pursuant to sub-
2 section (m) or (n) for the same remedial action,
3 or
4 ''(B) an initial allocation for a different re-
5 medial action at the same facility.
6 Nothing in this section shall be construed to author-
7 ize any person, including the allocator, to withhold
8 any documents or information from Congress, or any
9 duly authorized Committee thereof, or limit in any
10 manner the right of Congress, or any duly author-
11 ized Committee thereof, to obtain such documents or
12 information. Any person disclosing such documents
13 or information to Congress shall notify the person
14 who produced such documents or information of the
15 fact of such disclosure pursuant to paragraph (5).
16 ''(3) DISCOVERABILITY AND ADMISSIBILITY.—
17 Notwithstanding the foregoing, if the original of any
18 document or material submitted to the allocator or
19 placed in the document repository was, in the hands
20 of the party which provided it, otherwise discover-
21 able or admissible, then such original document, if
22 subsequently sought from such party, shall remain
23 so. If a fact generated or obtained during the alloca-
24 tion was, in the hands of a witness, otherwise discov-

1 erable or admissible, then such fact, if subsequently
2 sought from such other party, shall remain so.
3 "(4) NO WAIVER OF PRIVILEGE.—The submis-
4 sion of, documents, or information pursuant to the
5 allocation process shall not be deemed to be a waiver
6 of any privilege, applicable to such documents or in-
7 formation under any Federal or State law or rule of
8 discovery or evidence.
9 "(5) PROCEDURE WHEN DISCOVERY IS
10 SOUGHT.—Any person, including the United States
11 and any Federal, State, or local agency, department
12 or instrumentality, receiving any request for a state-
13 ment, document, or material submitted, or for the
14 record of any allocation proceeding, shall promptly
15 notify the person who originally submitted such item
16 and, except in the case of a request from the Con-
17 gress or a duly authorized committee thereof, shall
18 provide such submitting person the opportunity to
19 assert and defend the confidentiality of such item.
20 No person shall release or provide a copy of the item
21 to any person not a party to such allocation, other
22 than the Congress or a duly authorized committee
23 thereof, except as may be required by court order.
24 "(6) CIVIL PENALTY FOR VIOLATION OF CON-
25 FIDENTIALITY.—Any person who fails to maintain

1 the confidentiality of any statements, documents or
2 information generated or obtained during an alloca-
3 tion proceeding, or who releases any such informa-
4 tion in violation of this section shall be subject to
5 civil penalties of up to $25,000 per violation. Such
6 penalties may be sought in a civil action initiated by
7 the Attorney General on behalf of the United States,
8 or any allocation party adversely affected by the fail-
9 ure to maintain confidentiality.

10 ''(l) REJECTION OF ALLOCATOR'S REPORT.—The
11 Administrator and the Attorney General of the United
12 States may reject the allocator's report if they jointly de-
13 termine that—

14 ''(1) no rational interpretation of the facts be-
15 fore the allocator, in light of the factors required to
16 be considered, would form a reasonable basis for the
17 shares assigned to the parties;

18 ''(2) the allocation was affected by bias, fraud,
19 or unlawful conduct; or

20 ''(3) the allocation was substantially and di-
21 rectly affected by procedural error.

22 The allocator's report may not be rejected after the United
23 States has accepted a settlement offer (excluding de
24 minimis or other expedited settlements under section
25 122(g)) based on the allocation. The Administrator and

1 the Attorney General shall make any such determination
2 within 180 days after the receipt of the first offer based
3 on the allocator's report. The determinations of the Ad-
4 ministrator and the Attorney General under this sub-
5 section shall not be judicially reviewable. No such deter-
6 mination may be delegated to any officer or employee of
7 the Environmental Protection Agency or the Department
8 of Justice below the level of an Assistant Secretary or Act-
9 ing Assistant Secretary with authority for implementing
10 this Act at the Environmental Protection Agency or the
11 Department of Justice.
12 ''(m) SECOND ALLOCATION.—If the United States
13 rejects an allocator's report, the parties shall select a new
14 allocator pursuant to subsection (e) to perform, on an ex-
15 pedited basis, a new allocation based on the same record
16 available to the first allocator. The moratorium on com-
17 mencement of litigation and tolling of statutes of limita-
18 tion set forth in subsection (b) shall be extended until 90
19 days after the issuance of the second allocation report. If
20 the United States rejects the second allocation the Presi-
21 dent may, following the expiration of the moratorium on
22 commencement of litigation, commence an action under
23 section 107.
24 ''(n) NEW INFORMATION.—Any settling party, in-
25 cluding the United States, may seek a new allocation pur-

1 suant to subsection (h), where that party presents clear
2 and convincing information or the United States otherwise
3 determines on the basis of clear and convincing informa-
4 tion that—

5 ''(1) the allocator did not have information con-
6 cerning 35 percent or more of the materials contain-
7 ing hazardous substances at the facility, and that
8 this information has been discovered subsequent to
9 the issuance of the allocator's report; or

10 ''(2) the allocator did not have information con-
11 cerning a person not subject to the allocation who
12 contributed 15 percent or more of materials contain-
13 ing hazardous substances at the facility, and that
14 this information has been discovered subsequent to
15 the issuance of the allocator's report.

16 Determinations by the United States pursuant to this sub-
17 section shall not be subject to judicial review.

18 ''(o) SETTLEMENT FOLLOWING ALLOCATION.—

19 ''(1) ACCEPTANCE OF OFFERS.—If, within 90
20 days after issuance of the allocator's report for an
21 allocation conducted under subsection (a)(1), an al-
22 location party—

23 ''(A) makes a written offer to settle with
24 respect to the response action based on the per-
25 centage share specified by the allocator and on

1 the additional terms and conditions of settle-
2 ment (other than the allocated percentage
3 share) that are acceptable to the President, and
4 ‘‘(B) is not in default on any information
5 requests under this Act,
6 then the President shall not seek a higher percent-
7 age share other than the premia authorized by this
8 section, unless the President has rejected the offer
9 on a basis other than the percentage share, or unless
10 the Administrator and the Attorney General have re-
11 jected the allocation report pursuant to subsection
12 (l).
13 ‘‘(2) EXPLANATION OF REFUSAL TO SETTLE.—
14 If the Administrator and the Attorney General de-
15 termine not to settle on the basis of the allocation,
16 they shall provide the allocation parties and mem-
17 bers of the affected community with a written expla-
18 nation of the Administrator’s determination.
19 ‘‘(3) SETTLEMENT PROVISIONS.—Settlements
20 based on allocated shares shall include each of the
21 following:
22 ‘‘(A) A waiver of contribution rights
23 against all parties who are potentially respon-
24 sible parties for the response action, as well as
25 a waiver of any rights to challenge any settle-

1 ment the President enters into with any other
2 potentially responsible party.
3 ''(B) Covenants not to sue, consistent with
4 section 122(f), and provisions regarding per-
5 formance or adequate assurance of performance
6 of response actions addressed in the settlement.
7 ''(C) A premium determined on a site spe-
8 cific basis and subject to the limitations set
9 forth in paragraph (4), that compensates for
10 the United States litigation risk with respect to
11 potentially responsible parties who have not re-
12 solved their liability to the United States, ex-
13 cept that no such premium shall apply if all
14 parties settle or the settlement covers 100 per-
15 cent of response costs.
16 ''(D) Contribution protection, consistent
17 with section 113(f), regarding matters ad-
18 dressed in the settlement. Such settlement does
19 not discharge any of the other potentially re-
20 sponsible parties unless its terms so provide,
21 but it reduces the potential liability of the oth-
22 ers by the amount of the settlement.
23 ''(E) Provisions through which the settling
24 parties shall receive reimbursement from the
25 Fund for any response costs incurred by such

1 parties in excess of the aggregate of their allo-
2 cated share and any premia required by the set-
3 tlement. Such right to reimbursement shall not
4 be contingent on the United States recovery of
5 response costs from any responsible person not
6 a party to any settlement with the United
7 States.

8 ''(4) PREMIUM LIMITATIONS.—The premium
9 authorized by paragraph (3)(C) for litigation risk
10 shall not exceed the following:

11 ''(A) Five percent of the total costs as-
12 sumed by a settling party, where settlements
13 (and any orphan share identified by the allo-
14 cator) account for 80 percent or more of re-
15 sponsibility at the facility.

16 ''(B) Ten percent of the total costs as-
17 sumed by a settling party, where settlements
18 (and any orphan share identified by the allo-
19 cator) account for more than 60 percent and
20 less than 80 percent of responsibility at the fa-
21 cility.

22 ''(C) Fifteen percent of the total costs as-
23 sumed by a settling party, where settlements
24 (and any orphan share identified by the allo-
25 cator) account for more than 40 percent and

less than 60 percent of responsibility at the facility.

"(D) Twenty percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for 40 percent or less of responsibility at the facility.

The Administrator shall have authority to promulgate regulations to modify the premia percentages established in this subsection. The Administrator may not propose a rule before the date 36 months after the enactment of this section, and no such rule may take effect before the date 48 months after the enactment of this section. Such rule must be based upon an administrative record establishing that such modification is necessary to reflect actual experience regarding the litigation risk faced by the United States in proceeding against nonsettling parties under this section.

"(5) AUTHORIZATION OF REIMBURSEMENT.—In any settlement in which a party agrees to perform response work in excess of its share, the Administrator shall have authority to carry out his duty to reimburse settling parties under this section

1 pursuant to such reasonable procedures as the Ad-
2 ministrator may prescribe.
3 ''(6) REIMBURSEMENT CLAIMS.—The Adminis-
4 trator shall require all claims for reimbursement to
5 be supported by—
6 ''(A) documentation of actual costs in-
7 curred; and
8 ''(B) sufficient information to enable the
9 Administrator to determine whether such costs
10 were reasonable.
11 ''(7) SETTLEMENTS WITH SMALL BUSINESS
12 PARTIES.—In connection with any small business al-
13 location party that makes a written offer to settle-
14 ment pursuant to paragraph (1), and that the Presi-
15 dent determines has a limited ability or inability to
16 pay its allocated share, the President shall apply the
17 provisions of section 122(g)(1)(D)(ii).
18 ''(8) INDEPENDENT AUDITING.—The Adminis-
19 trator may require independent auditing of any
20 claim for reimbursement.
21 ''(p) POST-ALLOCATION LITIGATION.—
22 ''(1) IN GENERAL.—The United States may
23 commence an action under section 107 against any
24 person liable under that section who has not resolved
25 its liability to the United States following allocation,

1 on or after 90 days following issuance of the
2 allocator's report. In any such action, such person
3 shall be liable in accordance with section 107 for all
4 response costs not recovered through settlements
5 with other persons. Such recoverable costs shall in-
6 clude any federally funded orphan share identified in
7 accordance with subsection (h), but shall not include
8 any shares allocated to Federal, State, or local gov-
9 ernmental agencies, departments, or instrumental-
10 ities. Defendants in any such action may implead
11 only allocation parties who did not resolve their li-
12 ability to the United States. The Administrator and
13 the Attorney General shall issue guidelines to ensure
14 that the relief sought against de minimis parties
15 under principles of joint and several liability will not
16 be grossly disproportionate to their contribution to
17 the facility. The application of such guidelines is
18 committed to the discretion of the Administrator
19 and the Attorney General.

20 ''(2) CERTIFICATION.—In commencing any ac-
21 tion under section 107 following allocation, the At-
22 torney General must certify, in the complaint, that
23 the United States has been unable to reach a settle-
24 ment that would be in the best interests of the

1 United States. This certification shall not be subject
2 to judicial review.
3 ''(3) DEFENDANTS.—No person may commence
4 an action under section 107 or otherwise seek con-
5 tribution against any person who was not identified
6 as an allocation party pursuant to subsection (c) or
7 subsequently identified as a potentially liable party
8 under subsection (n) (relating to new information).
9 ''(4) ADMISSIBILITY OF ALLOCATOR'S RE-
10 PORT.—The allocator's report shall not be admissi-
11 ble in any court for any purpose, except as set forth
12 in this section. The allocator's report, subject to the
13 rules and discretion of the court, may be admissible
14 solely for the purpose of assisting the court in mak-
15 ing an equitable allocation of response costs among
16 the relative shares of nonsettling liable parties.
17 ''(5) COSTS OF ALLOCATION PROCEDURE ON
18 ORPHAN SHARE.—
19 ''(A) INCLUDED AS COSTS OF RE-
20 SPONSE.—The costs of implementing the alloca-
21 tion procedure set forth in this section, includ-
22 ing reasonable fees and expenses of the allo-
23 cator, shall be considered necessary costs of re-
24 sponse for purposes of this Act.

1 "(B) ORPHAN SHARE.—The costs attrib-
2 utable to any funding of orphan shares identi-
3 fied by the allocator pursuant to subsection
4 (e)(4) also shall be considered necessary costs
5 of response for purposes of this Act, and shall
6 be recoverable from liable parties who do not
7 resolve their liability on the basis of the alloca-
8 tion.
9 "(6) REJECTION OF SHARE DETERMINATION.—
10 In any action by the United States under this title,
11 if the United States has rejected an offer of settle-
12 ment that is consistent with subsection (o) and that
13 was presented to the United States prior to the expi-
14 ration of the moratorium period set forth in sub-
15 section (b), the offeror shall be entitled to recover
16 from the United States the offeror's reasonable costs
17 of defending the action after the making of the offer
18 (including reasonable attorneys' fees) if the ultimate
19 resolution of liability or allocation of costs with re-
20 spect to the offeror (taking into account all settle-
21 ments and reimbursements with respect to the facil-
22 ity other than those attributable to insurance or in-
23 demnification), is as, or more, favorable to the
24 offeror than the offer based on the allocation.
25 "(q) REIMBURSEMENT FOR UAO PERFORMANCE.—

1 “(1) REIMBURSEMENT.—Parties who satisfac-
2 torily perform work under an administrative order
3 issued under section 106(a) with respect to a reme-
4 dial action for which an allocation is required by
5 subsection (a)(1), shall be entitled to reimbursement
6 for the reasonable and necessary costs of work they
7 perform in excess of the share assigned to them in
8 the allocation in accordance with the provisions of
9 this section, provided that the allocation report is
10 not rejected by the United States and, that, at the
11 end of the moratorium following the allocation, the
12 performing party, in consideration of such reim-
13 bursement—
14 “(A) agrees not to contest liability for all
15 response costs not inconsistent with the Na-
16 tional Contingency Plan to the extent of the al-
17 located share;
18 “(B) receives no covenant not to sue;
19 “(C) agrees that its reimbursement shall
20 be reduced by an amount equal to the maxi-
21 mum litigation risk premium provided for in
22 subsection (o)(4) based on the total allocated
23 shares of the allocation parties who have not
24 reached settlements with the United States by

1 the end of the moratorium on commencement of
2 actions provided in subsection (b); and
3 ''(D) waives contribution rights against all
4 parties who are potentially responsible parties
5 for the response action, as well as waives any
6 rights to challenge any settlement the President
7 enters into with any other potentially respon-
8 sible party.
9 ''(2) OFFSET.—Any and all reimbursement pro-
10 vided to a performing party for work in excess of its
11 share is subject to equitable offset or reduction by
12 the Administrator upon a finding of a failure to per-
13 form any aspect of the remedy in a proper and time-
14 ly manner.
15 ''(3) TIME OF PAYMENT.—Any and all reim-
16 bursement to a performing party for work in excess
17 of its share shall be paid after work is completed,
18 but no sooner than completion of the construction of
19 the remedial action.
20 ''(4) LIMIT ON ORPHAN SHARE FUNDING.—The
21 amount of orphan share funding available to the
22 performing party shall be further limited as follows:
23 ''(A) Performing parties who fully waive
24 their right to challenge remedy selection at the
25 end of the moratorium following allocation shall

1 be entitled to full reimbursement of costs in ex-
2 cess of the party's share and attributable by the
3 allocator to the orphan share paid in nominal
4 dollars after the work is completed, but no
5 sooner than completion of the construction of
6 the remedial action.

7 "(B) Performing parties who retain their
8 right to challenge the remedy shall be reim-
9 bursed for 90 percent of orphan share funding,
10 paid in nominal dollars after the work is com-
11 pleted, but no sooner than completion of the
12 construction of the remedial action, unless the
13 orphan share is less than 20 percent of respon-
14 sibility at the site, in which case such parties
15 shall be reimbursed only 80 percent of the or-
16 phan share.

17 For purposes of this subsection 'nominal dollars'
18 means actual dollars spent by the performing party,
19 without increase for interest or inflation.

20 "(5) NONORPHAN SHARE REIMBURSEMENT.—
21 Reimbursement for work in excess of the performing
22 party's allocated share but that is not attributable to
23 the orphan share shall be paid in nominal dollars
24 after work is completed, but no sooner than comple-
25 tion of the construction of the remedial action, pro-

1 vided that the performing party is entitled to all in-
2 terest (prejudgment and post judgment, whether re-
3 covered from a party or earned in a site account)
4 that has accrued on money recovered by the United
5 States from other parties for such work at the time
6 construction of the remedy is completed.

7 ''(6) REIMBURSEMENT CLAIMS.—The Adminis-
8 trator shall require that all claims for reimburse-
9 ment be supported by—

10 ''(A) documentation of actual costs in-
11 curred; and

12 ''(B) sufficient information to enable the
13 Administrator to determine whether such costs
14 were reasonable.

15 ''(7) INDEPENDENT AUDITING.—The Adminis-
16 trator may require independent auditing of any
17 claim for reimbursement.

18 ''(r) FUNDING OF ORPHAN SHARES.—

19 ''(1) LIMITATION ON OBLIGATIONS.—For each
20 settlement agreement entered into pursuant to sub-
21 section (o) that includes an orphan share, and for
22 each unilateral administrative order where the per-
23 son satisfies the requirements of subsection (q), the
24 United States shall reimburse the allocation parties,
25 including any Federal agency, for costs incurred and

1 equitably attributable to the orphan share. In no
2 case shall the United States obligate for such costs
3 and interest determined under paragraph (3) in ex-
4 cess of $300,000,000 in any fiscal year, plus any re-
5 maining unobligated balance of funds made available
6 under paragraph (2) from previous fiscal years. The
7 mandate to the United States to make obligations
8 and payments under this paragraph constitutes an
9 entitlement to those parties eligible to receive those
10 payments.

11 ''(2) There are authorized to be appropriated
12 from the Fund not to exceed $300,000,000 per year
13 for fiscal year 1996 and each succeeding fiscal year
14 for payments required by paragraph (1), to remain
15 available until expended.

16 ''(3) REIMBURSEMENT DELAYS.—Notwith-
17 standing section 1341 of title 31, United States
18 Code, any sums found to be due and owing in excess
19 of amounts appropriated for agreements entered into
20 pursuant to subsection (o) and for unilateral admin-
21 istrative orders pursuant to subsection (q), shall be
22 paid from amounts made available under paragraph
23 (2) for subsequent fiscal years. Such sums shall in-
24 clude payment of interest on the unpaid balances in

an amount equal to the rate of interest on 1-year Treasury bills, except as provided in subsection (q).

''(s) PROCEDURES.—The Administrator, after consultation with the Attorney General, may promulgate rules (or guidance) of Agency organization, procedure, and practices but shall not have additional authority, except as specifically set forth in this section, to promulgate rules or publish guidance to restrict the allocator's discretion in the conduct of the allocation.

''(t) ROLE OF FEDERAL AGENCIES.—Federal departments, agencies, or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process provided by this section to the same extent as any other party.

''(u) REPRESENTATION OF THE UNITED STATES AND AFFECTED STATES.—The Administrator and the Attorney General, and a representative of any State that may be responsible for a portion of the orphan share, shall be entitled to review all documents and participate in any phase of the allocation proceeding.

''(v) ANNUAL REPORT.—The President shall report annually to Congress on the administration of the allocation scheme under this section, and provide information comparing allocation results with actual settlements at multiparty facilities.

1 ''(w) SAVINGS PROVISIONS.—(1) Nothing in this sec-
2 tion shall in any way limit or affect the President's author-
3 ity to exercise the powers conferred by section 103, 104,
4 105, 106, or 122 of this title, or to commence an action
5 against a party where there is a contemporaneous filing
6 of a judicial consent decree resolving that party's liability;
7 or to file a proof of claim or take other action in a proceed-
8 ing under title 11 of the United States Code.

9 ''(2) The procedures established in this section shall
10 not be construed to modify or affect in any way the prin-
11 ciples of retroactive, strict, joint and several liability under
12 this title.

13 ''(3) Nothing in this section shall limit or affect—

14 ''(A) the Administrator's obligation to perform
15 an allocation for facilities that have been the subject
16 of partial or expedited settlements;

17 ''(B) the ability of a potentially responsible
18 party at a facility to resolve its liability to the Unit-
19 ed States or other parties at any time before initi-
20 ation or completion of the allocation process;

21 ''(C) the validity, enforceability, finality, or
22 merits of any judicial or administrative order, judg-
23 ment, or decree that is issued, signed, lodged, or en-
24 tered with respect to liability under this Act or that

1 authorizes modification of any such order, judgment
2 or decree; or
3 ''(D) the validity, enforceability, finality or mer-
4 its of any preexisting contract or agreement relating
5 to any allocation of responsibility or any sharing of
6 response costs under this Act.
7 ''(x) RESPONSE ACTION CONTRACTOR.—A person
8 who is potentially liable under this Act solely as a response
9 action contractor with respect to a facility in accordance
10 with section 119 shall not be named as an allocation party
11 under this section with respect to that facility.''.

12 **SEC. 414. RECYCLING TRANSACTIONS.**

13 (a) PURPOSES.—The purposes of this section are—
14 (1) to promote the reuse and recycling of scrap
15 material in furtherance of the goals of waste mini-
16 mization and natural resource conservation while
17 protecting human health and the environment;
18 (2) to level the playing field between the use of
19 virgin materials and recycled materials; and
20 (3) to remove the disincentives and impedi-
21 ments to recycling because of potential liability.
22 (b) CLARIFICATION OF LIABILITY UNDER CERCLA
23 FOR RECYCLING TRANSACTIONS.—Title I is amended by
24 adding after section 128 the following new section:

1 **"SEC. 129. RECYCLING TRANSACTIONS.**

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

6 ''(b) RECYCLABLE MATERIAL DEFINED.—For pur-
7 poses of this section, the term 'recyclable material' means
8 scrap paper, scrap plastic, scrap glass, scrap textiles,
9 scrap rubber (other than whole tires), scrap metal, or
10 spent lead-acid, spent nickel-cadmium and other spent
11 batteries, as well as minor amounts of material incident
12 to or adhering to the scrap material as a result of its nor-
13 mal and customary use prior to becoming scrap.

14 ''(c) TRANSACTIONS INVOLVING SCRAP PAPER,
15 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
16 involving scrap paper, scrap plastic, scrap glass, scrap tex-
17 tiles, or scrap rubber (other than whole tires) shall be
18 deemed to be arranging for recycling if the person who
19 arranged for the transaction (by selling recyclable material
20 or otherwise arranging for the recycling of recyclable ma-
21 terial) can demonstrate by a preponderance of the evi-
22 dence that all of the following criteria were met at the
23 time of the transaction:

24 ''(1) The recyclable material met a commercial
25 specification grade.

1 ‘‘(2) A market existed for the recyclable material.

3 ‘‘(3) A substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product.

6 ‘‘(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

12 ‘‘(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a ‘consuming facility’) was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

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

23 ''(d) TRANSACTIONS INVOLVING SCRAP METAL.—

24 ''(1) Transactions involving scrap metal shall be
25 deemed to be arranging for recycling if the person

1 who arranged for the transaction (by selling recycla-
2 ble material or otherwise arranging for the recycling
3 of recyclable material) can demonstrate by a prepon-
4 derance of the evidence that at the time of the
5 transaction—

6 ''(A) the person met the criteria set forth
7 in subsection (c) with respect to the scrap
8 metal;

9 ''(B) the person was in compliance with
10 any applicable regulations or standards regard-
11 ing the storage, transport, management, or
12 other activities associated with the recycling of
13 scrap metal that the Administrator promulgates
14 under the Solid Waste Disposal Act subsequent
15 to the enactment of this section and with re-
16 gard to transactions occurring after the effec-
17 tive date of such regulations or standards; and

18 ''(C) the person did not melt the scrap
19 metal prior to the transaction.

20 ''(2) For purposes of paragraph (1)(C), melting
21 of scrap metal does not include the thermal separa-
22 tion of 2 or more materials due to differences in
23 their melting points (referred to as 'sweating').

24 ''(3) For the purposes of this subsection, the
25 term 'scrap metal' means bits and pieces of metal

1 parts (e.g. bars, turnings, rods, sheets, wire) or
2 metal pieces that may be combined together with
3 bolts or soldering (e.g. radiators, scrap automobiles,
4 railroad box cars), which when worn or superfluous
5 can be recycled, except for scrap metals that the Ad-
6 ministrator excludes from this definition by regula-
7 tion and steel shipping containers of a capacity from
8 30 liters to and including 3,000 liters, whether in-
9 tact or not, having any hazardous substance (but
10 not metal bits or pieces) contained in or adhering
11 thereto.

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

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

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

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

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

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

1 receives from such third person materials reclaimed from
2 such batteries shall not thereby be deemed to recover the
3 valuable components of such batteries, provided, however,
4 that (A) for transactions occurring more than 90 days
5 after the date of enactment of the Superfund Reform Act
6 of 1994, such person exercised due diligence in determin-
7 ing that such third person was in compliance with all Fed-
8 eral, State, and local environmental laws and regulations
9 applicable to the storage, transport, management, or other
10 activities associated with the recycling of spent batteries;
11 and (B) such person had no knowledge or reason to know
12 of the release or threatened release.

13 ''(f) EXCLUSIONS.—(1) The exemptions set forth in
14 subsections (c), (d), and (e) shall not apply if—

15 ''(A) the person had an objectively reasonable
16 basis to believe at the time of the recycling trans-
17 action—

18 ''(i) that the recyclable material would not
19 be recycled,

20 ''(ii) that the recyclable material would be
21 burned as fuel, or for energy recovery or incin-
22 eration, or

23 ''(iii) for transactions occurring before 90
24 days after the date of the enactment of this sec-
25 tion, that the consuming facility was not in

compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material; or

''(B) the person added hazardous substances to the recyclable material for purposes other than processing for recycling; or

''(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material.

''(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices, the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation or other management activities associated with the recyclable material.

''(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated

1 with recyclable material shall be deemed to be a sub-
2 stantive provision.
3 ‘‘(g) EFFECT ON OTHER LIABILITY.—Nothing in
4 this section shall be deemed to affect the liability of a per-
5 son under paragraph (1) or (2) of section 107(a).
6 ‘‘(h) PCBS.—An exemption under this section does
7 not apply if the recyclable material contained poly-
8 chlorinated biphenyls in excess of 50 parts per million or
9 any new standard promulgated pursuant to applicable
10 Federal laws.
11 ‘‘(i) REGULATIONS.—The Administrator has the au-
12 thority, under section 115, to promulgate additional regu-
13 lations concerning this section.
14 ‘‘(j) EFFECT ON PENDING OR CONCLUDED AC-
15 TIONS.—The exemptions provided in this section shall not
16 affect any concluded judicial or administrative action or
17 any pending judicial action initiated by the United States
18 prior to enactment of this section.
19 ‘‘(k) LIABILITY FOR ATTORNEY’S FEES FOR CER-
20 TAIN ACTIONS.—Any person who commences an action for
21 contribution against a person who is not liable by oper-
22 ation of this section shall be liable to that person for all
23 reasonable costs of defending that action, including all
24 reasonable attorney’s and expert witness fees.

1 "(l) RELATIONSHIP TO LIABILITY UNDER OTHER
2 LAWS.—Nothing in this section shall affect—
3 "(1) liability under any other Federal, State, or
4 local statute or regulation promulgated pursuant to
5 any such statute, including any requirements pro-
6 mulgated by the Administrator under the Solid
7 Waste Disposal Act; or
8 "(2) the ability of the Administrator to promul-
9 gate regulations under any other statute, including
10 the Solid Waste Disposal Act.".

11 TITLE V—REMEDY SELECTION
12 AND CLEANUP STANDARDS

13 **SEC. 501. CLEANUP STANDARDS.**

14 Section 121(d) (42 U.S.C. 9621(d)) is amended as
15 follows:
16 (1) In paragraph (3), by inserting "or 4010(c)
17 if appropriate" after "3005".
18 (2) By redesignating pargraphs (3) and (4) as
19 paragraphs (9) and (10), respectively.
20 (3) By striking out the subsection heading and
21 designation and all that follows through the end of
22 paragraph (2) and inserting in lieu thereof the fol-
23 lowing:
24 "(d) ESTABLISHMENT OF PROTECTIVE CONCENTRA-
25 TION LEVELS.—

1 "(1) NATIONAL GOALS FOR THE PROTECTION
2 OF HUMAN HEALTH AND THE ENVIRONMENT.—In
3 order to provide consistent and equivalent protection
4 of human health and the environment to all commu-
5 nities, within 18 months after the enactment of the
6 Superfund Reform Act of 1994, the Administrator
7 shall promulgate national goals to be applied at all
8 facilities subject to remedial action under this Act.
9 National goals for human health shall be expressed
10 as a single, numerical level for chemical carcinogens
11 and a single, numerical level for noncarcinogens, re-
12 spectively. The national goals shall provide the basis
13 for protective concentration levels unless the achieve-
14 ment of such goals is technically infeasible or unrea-
15 sonably costly pursuant to subsection (b). In a case
16 in which the President selects a remedy that does
17 not achieve the national goals, the President shall
18 publish an explanation of the basis for that decision.
19 The national goals shall be developed and promul-
20 gated in accordance with sections 561 through 570
21 of title 5, United States Code (commonly referred to
22 as the 'Negotiated Rulemaking Act').
23 "(2) SCOPE AND PURPOSE OF NATIONAL RISK
24 PROTOCOL.—The Administrator shall promulgate a
25 national risk protocol for conducting risk assess-

1 ments under this Act. The national risk protocol
2 shall be used for risk assessments underlying deter-
3 minations of the need for remedial action, the estab-
4 lishment of protective concentration levels of chemi-
5 cals, and the evaluation of remedial alternatives. The
6 goal of the national risk protocol is to promote real-
7 istic estimates that neither minimize nor exaggerate
8 the risks or potential risks posed by a facility at
9 which hazardous substances have been disposed of or
10 otherwise come to be located. The national risk pro-
11 tocol shall be developed and promulgated in accord-
12 ance with sections 561 through 570 of title 5, Unit-
13 ed States Code, to the extent the Administrator
14 deems appropriate. The national risk protocol shall
15 establish, to the extent appropriate and practicable,
16 the following:

17 ''(A) Standardized exposure scenarios de-
18 fining exposure pathways for a range of unre-
19 stricted and restricted land uses.

20 ''(B) Standardized formulae or methodolo-
21 gies for—

22 ''(i) evaluating the exposure pathways
23 of concern under the standardized expo-
24 sure scenarios established under subpara-
25 graph (A); and

1 ‘‘(ii) developing, consistent with the
2 national goals under paragraph (1), chemi-
3 cal concentration levels protective of recep-
4 tors currently and reasonably anticipated
5 to be exposed via the pathways included in
6 such scenarios for the 100 contaminants
7 most frequently occurring at facilities ad-
8 dressed under this Act for which adequate
9 toxicity information is available.
10 ‘‘(C) Methodologies for facility-specific
11 evaluations of ecological risks.
12 ‘‘(3) STANDARDIZED FORMULAE OR METH-
13 ODOLOGIES.—Standardized formulae or methodolo-
14 gies established under subparagraphs (A) and (B) of
15 paragraph (2) shall include the following:
16 ‘‘(A) National constants for specific char-
17 acteristics of individual chemicals not expected
18 to vary from facility to facility.
19 ‘‘(B) Facility-specific variables for physical
20 characteristics of the facility and other factors.
21 Criteria for identifying such variables shall in-
22 clude the following:
23 ‘‘(i) Whether a characteristic or factor
24 can be objectively measured based on ac-
25 tual facility data or reasonably estimated

1 based on credible scientific studies when
2 facility-measured data cannot be reason-
3 ably obtained.
4 ''(ii) Whether the effects of a char-
5 acteristic or factor are scientifically well-
6 understood.
7 ''(iii) Whether the impact of the char-
8 acteristic or factor on estimations of risk
9 or protective concentration levels is signifi-
10 cant.
11 ''(C) Exposure factors related to demo-
12 graphics (including separate exposure factors
13 for sensitive subpopulations to be applied where
14 relevant), activity patterns, and natural con-
15 straints. Defaults or ranges of default values
16 shall be established for such factors and used
17 unless verifiable data are presented that the de-
18 faults are significantly different from actual fa-
19 cility conditions. In such cases, the values shall
20 be determined on a site-specific basis after con-
21 sideration of any views expressed by the Com-
22 munity Working Group, if available, and the af-
23 fected community.
24 ''(4) APPLICATION OF NATIONAL RISK PROTO-
25 COL.—(A) The President shall conduct an analysis

1 at each facility to determine which exposure sce-
2 narios, pathways, and contaminants are relevant to
3 that facility. Where standardized formulae or meth-
4 odologies for addressing such relevant scenarios,
5 pathways, and contaminants are available, they shall
6 be used.

7 ''(B) Standardized formulae or methodologies
8 for exposure pathways that do not exist or are not
9 reasonably anticipated to exist in the future at a fa-
10 cility shall not be applied in establishing protective
11 concentration levels for the facility.

12 ''(C) Where standardized formulae or meth-
13 odologies for particular exposure scenarios, exposure
14 pathways, or chemicals are unavailable, facility-spe-
15 cific risk assessment shall be used.

16 ''(5) CONSIDERATIONS IN ESTABLISHING THE
17 NATIONAL RISK PROTOCOL.—(A) In developing the
18 national risk protocol under paragraph (2), the Ad-
19 ministrator shall evaluate and, to the degree appro-
20 priate and practicable—

21 ''(i) identify appropriate sources of toxicity
22 information;

23 ''(ii) define the use of probabilistic model-
24 ing;

1 ''(iii) identify criteria for the selection and
2 application of transport and fate models;
3 ''(iv) define the use of high end and central
4 tendency exposure cases and assumptions;
5 ''(v) define the use of population risk esti-
6 mates in addition to individual risk estimates;
7 ''(vi) define appropriate approaches for ad-
8 dressing cumulative risks posed by multiple
9 contaminants or multiple exposure pathways;
10 and
11 ''(vii) establish appropriate sampling ap-
12 proaches and data quality requirements.
13 ''(B) The national risk protocol shall establish
14 guidelines for all risk assessments conducted under
15 paragraph (2), including those by which protective
16 concentration levels are established, which result in
17 final protection at the 90th exposure percentile of
18 the affected population defined by the President.
19 ''(6) PHASING AND UPDATING OF THE NA-
20 TIONAL RISK PROTOCOL.—The national risk protocol
21 shall be developed in accordance with a schedule pro-
22 mulgated by the Administrator within 90 days after
23 the date of enactment of the Superfund Reform Act
24 of 1994. The national risk protocol may be devel-
25 oped and promulgated in phases as determined ap-

1 propriate by the Administrator. The final protocol
2 shall be promulgated within 18 months after the en-
3 actment of such Act. The Administrator also shall
4 determine an appropriate approach and schedule for
5 ensuring that the national risk protocol remains cur-
6 rent with emerging science and relevant Agency pol-
7 icy.

8 ''(7) FEDERAL AND STATE LAWS.—(A) A reme-
9 dial action shall be required to—

10 ''(i) comply with the substantive require-
11 ments of any promulgated standard, require-
12 ment, criterion, or limitation under any Fed-
13 eral, or more stringent State, environmental or
14 facility siting law that is applicable to the con-
15 duct or operation of the remedial action;

16 ''(ii) attain any promulgated protective
17 concentration levels applicable to determining
18 the level of cleanup for remedial actions con-
19 ducted under any State environmental law
20 where such levels are more stringent than those
21 established under subparagraph (C)(i) or the
22 concentration levels determined to be protective
23 for a given facility in accordance with the re-
24 quirements of paragraph (2); and

1 "(iii) comply with or attain any other pro-
2 mulgated standard, requirement, criterion, or
3 limitation under any State environmental or fa-
4 cility siting law that the State demonstrates is
5 consistently applied to remedial actions under
6 State law, and that the State determines,
7 through a promulgation process which includes
8 public notice, comment, and written response
9 thereto, and opportunity for judicial review,
10 apply to remedial actions under the Act.

11 "(B) Compliance with any State standard, cri-
12 terion, requirement, or limitation under subpara-
13 graph (A) shall be required at a given facility if it
14 has been identified by the State to the President in
15 a timely manner as applicable at that facility. In ad-
16 dition, each State shall publish a comprehensive list
17 of the promulgated standards, criteria, requirements,
18 or limitations that the State may apply to remedial
19 actions under this Act and revise such list periodi-
20 cally. The State shall also revise such list as re-
21 quested by the President.

22 "(C)(i) A goal of this Act is to restore any con-
23 taminated ground water and surface water that may
24 be used for drinking water to—

1 ''(I) the level of any maximum contami-
2 nant level or non-zero maximum contaminant
3 level goal for any hazardous substance, pollut-
4 ant, or contaminant which has been established
5 under title XIV of the Public Health Service
6 Act (the Safe Drinking Water Act), and
7 ''(II) a protective concentration level that
8 attains the goal in paragraph (1) for any other
9 hazardous substance, pollutant, or contaminant.
10 Attainment of such levels shall satisfy the require-
11 ments of paragraph (1). Each total remedy selected
12 under this Act and each protective concentration
13 level established under this subsection shall achieve
14 the goal of this subparagraph in the ground water
15 or surface water unless the President makes a find-
16 ing which is published with an explanation and ap-
17 propriate documentation that the achievement of the
18 goal is technically impracticable from an engineering
19 perspective or, in the case of ground water that
20 meets the requirements of subsection (b)(4)(C) and
21 has low levels of contamination relative to such goal,
22 compliance with or attainment of such goal is unrea-
23 sonably costly considering the factors under sub-
24 section (b)(4)(A). Upon making such a finding, the

1 President shall publish the alternative remedial
2 strategy and its goals.
3 ''(ii) For the purpose of this section, the phrase
4 'ground water that may be used for drinking water'
5 shall not include ground waters (I) containing more
6 than 10,000 milligrams per liter total dissolved sol-
7 ids, (II) that are so contaminated by naturally oc-
8 curring conditions or by the effects of broad-scale
9 human activity unrelated to a specific activity that
10 restoration of drinking water quality is impractica-
11 ble, or (III) the potential source of drinking water
12 is physically incapable of yielding a quantity of 150
13 gallons per day of water to a well or spring without
14 adverse environmental consequences.
15 ''(iii) Remedial actions for contaminated ground
16 water (other than ground water that may be used
17 for drinking water) shall attain levels appropriate for
18 the current or reasonably anticipated future use of
19 such ground water, or levels appropriate considering
20 the current use of any ground water or surface
21 water to which such contaminated ground water dis-
22 charges.
23 ''(iv) Concentration levels other than those re-
24 quired under clause (i) may be established for
25 ground water that may be used for drinking water

1 in any case in which the following conditions are
2 met:
3 ‘‘(I) The President determines that the use
4 of alternate concentration levels is appropriate.
5 ‘‘(II) There are known and projected
6 points of entry of such ground water into sur-
7 face water.
8 ‘‘(III) On the basis of measurements or
9 projections, there is or will be no increase of
10 such constituents that would pose a threat to
11 human health or the environment from such
12 ground water in such surface water.
13 ‘‘(IV) The remedial action includes en-
14 forceable measures that will preclude human ex-
15 posure to the contaminated ground water within
16 the facility and up to all known and projected
17 points of entry of such ground water into sur-
18 face water.
19 ‘‘(V) Monitoring to ensure attainment of
20 the alternative concentration level is conducted
21 in ground water at a point or points imme-
22 diately prior to where the ground water enters
23 into surface water. In such cases, the point of
24 human exposure may be assumed to be at such
25 known and projected points of entry.

1 ''(v) Not later than 18 months after the date of
2 the enactment of the Superfund Reform Act of
3 1994, after notice and comment, the President shall
4 publish guidance as to determinations of technical
5 impracticability from an engineering perspective to
6 achieve the goal of this subparagraph, for use in the
7 selection of remedies for contaminated ground water
8 under subsection (b). Such guidance shall identify
9 certain hazardous substances, pollutants, or con-
10 taminants and certain geological or hydrological
11 characteristics of facilities with ground water con-
12 tamination, or combinations thereof, for which res-
13 toration in accordance with subclauses (I) and (II)
14 of clause (i) may be from an engineering perspective
15 technically impracticable or technically practicable.
16 Such guidance shall be taken into consideration
17 under subsection (b)(4)(A)(vii) and this subpara-
18 graph.

19 ''(vi) The President shall make findings of tech-
20 nical impracticability from an engineering perspec-
21 tive (including findings under this subparagraph or
22 subparagraph (E) or subsection (b)(4)(A) on the
23 basis of projections, modeling, measures undertaken
24 under subsection (b)(4)(B), or other analysis on a
25 site specific basis (including the consideration of in-

formation presented by responsible parties at such facility) without a requirement that the remedial measure for which a finding of technical impracticability is under consideration be first constructed or installed and operated and its performance over time reviewed, unless such projection, modeling, measure, or other analysis are insufficient or inadequate to make such a finding.

''(D) Procedural requirements of Federal and State standards, requirements, criteria, or limitations, including permitting requirements, shall not apply to response actions conducted on-site. Compliance with subparagraph (A) shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same medium in or very near existing areas of contamination on-site.

''(E)(i) The President may select a remedial action meeting the requirements of paragraph (1) that does not comply with or attain a Federal or State standard, requirement, criterion, or limitation as required by subparagraphs (A) and (C), if the President finds any of the following:

''(I) The remedial action selected is only part of a total remedial action that will comply

1 with or attain the applicable requirements of
2 subparagraphs (A) and (C) of this paragraph
3 when completed.
4 ''(II) Compliance with or attainment of
5 such requirement at that facility will result in
6 greater risk to human health and the environ-
7 ment than alternative options.
8 ''(III) Compliance with or attainment of
9 such requirement is technically impracticable
10 from an engineering perspective.
11 ''(IV) The remedial action selected will at-
12 tain a standard of performance that is equiva-
13 lent to that required under a standard, require-
14 ment, criterion, or limitation identified under
15 subparagraph (A) through use of another ap-
16 proach.
17 ''(V) With respect to a State standard, re-
18 quirement, criterion, or limitation under clauses
19 (i), (ii), and (iii) of subparagraph (A), the State
20 has not consistently applied (or demonstrated
21 the intention to consistently apply) the stand-
22 ard, requirement, criterion, or limitation in
23 similar circumstances at other remedial actions
24 within the State.

1 ‘‘(VI) In the case of a remedial action to
2 be undertaken solely under section 104 using
3 the Fund, a selection of a remedial action that
4 complies with or attains standards, criteria, re-
5 quirements, or limitations will not provide a
6 balance between the need for protection of pub-
7 lic health and welfare and the environment at
8 the facility under consideration, and the avail-
9 ability of amounts from the Fund to respond to
10 other facilities that present or may present a
11 threat to public health or welfare or the envi-
12 ronment, taking into consideration the relative
13 immediacy of such threat.

14 ‘‘(ii) The President shall publish any findings
15 made under clause (i), together with an explanation
16 and appropriate documentation.

17 ‘‘(8)(A) Except as provided in subparagraph
18 (B), a State standard, requirement, criteria, or limi-
19 tation (including any State siting standard or re-
20 quirement) which could effectively result in the
21 statewide prohibition of land disposal of hazardous
22 substances, pollutants, or contaminants shall not
23 apply.

1 ''(B) Any State standard, requirement, criteria,
2 or limitation referred to in subparagraph (A) shall
3 apply where each of the following conditions is met:
4 ''(i) The State standard, requirement, cri-
5 teria, or limitation is of general applicability
6 and was adopted by formal means.
7 ''(ii) The State standard, requirement, cri-
8 teria, or limitation was adopted on the basis of
9 hydrologic, geologic, or other relevant consider-
10 ations and was not adopted for the purpose of
11 precluding onsite remedial actions or other land
12 disposal for reasons unrelated to protection of
13 human health and the environment.
14 ''(iii) The State arranges for, and assures
15 payment of the incremental costs of utilizing, a
16 facility for disposition of the hazardous sub-
17 stances, pollutants, or contaminants con-
18 cerned.''.

19 **SEC. 502. REMEDY SELECTION.**

20 Section 121(b) (42 U.S.C. 9621(b)) is amended to
21 read as follows:
22 ''(b) GENERAL RULES. —
23 ''(1) SELECTION OF PROTECTIVE REMEDIES.—
24 Remedies selected at individual facilities shall be
25 protective of human health and the environment and

1 provide long-term reliability at reasonable cost. A re-
2 medial action may achieve protection of human
3 health and the environment through treatment that
4 reduces the toxicity, mobility, or volume of hazard-
5 ous substances, pollutants, or contaminants; contain-
6 ment or other engineering controls to limit exposure;
7 a combination of treatment and containment; or
8 other methods of protection. The method or methods
9 of remediation appropriate for a given facility shall
10 be determined through the evaluation of remedial al-
11 ternatives and the selection process under para-
12 graphs (2) and (3). When determining the appro-
13 priate remedial method, treatment is to be preferred
14 for hot spots as defined under paragraph (3)(B).
15 This preference shall not apply to materials that do
16 not constitute hot spots.

17 ''(2) LAND USE.—(A) In selecting a remedy,
18 the President shall take into account the reasonably
19 anticipated future uses of land at a facility as re-
20 quired by this Act. In identifying reasonably antici-
21 pated future land uses the President shall consider
22 factors, which generally shall include the following:

23 ''(i) Any consensus recommendation of the
24 Community Working Group and any other
25 views expressed by members of the affected

1 community except that, with respect to a Fed-
2 eral facility scheduled for closure or realign-
3 ment, the President shall consider any joint
4 concensus recommendation of the Community
5 Working Group and a redevelopment authority
6 which has been established for such facility.

7 ‘‘(ii) The land use history of the facility
8 and surrounding properties, the current land
9 uses of the facility and surrounding properties,
10 recent development patterns in the area where
11 the facility is located, and population projec-
12 tions for that area.

13 ‘‘(iii) Federal or State land use designa-
14 tions, including Federal facilities and national
15 parks, State ground water or surface water re-
16 charge areas established under a State’s com-
17 prehensive protection plan for ground water or
18 surface water, and recreational areas.

19 ‘‘(iv) The current land use zoning and fu-
20 ture land use plans of the local government
21 with land use regulatory authority.

22 ‘‘(v) The potential for economic redevelop-
23 ment.

24 ‘‘(vi) The proximity of the contamination
25 to residences, sensitive populations or

1 ecosystems, natural resources, or areas of
2 unique historic or cultural significance.
3 ''(vii) Current plans for the facility by the
4 property owner or owners, not including poten-
5 tial voluntary remedial measures.
6 ''(B) In developing its recommendation, the
7 Community Working Group shall consider factors
8 (ii) through (vii) of subparagraph (A), and the
9 President shall give substantial weight to that rec-
10 ommendation where consensus is reached, or sub-
11 stantial weight to the views of the affected commu-
12 nity where the Community Working Group does not
13 reach consensus in accordance with section 117(g).
14 ''(C) All information considered by the Presi-
15 dent in evaluating reasonably anticipated future land
16 uses under this paragraph shall be included in the
17 administrative record under section 113(k).
18 ''(3) APPROPRIATE REMEDIAL ACTION.—(A)
19 The President shall identify and select an appro-
20 priate remedy that prevents exposures in excess of
21 protective concentration levels established under sub-
22 section (d) by balancing the following factors:
23 ''(i) The effectiveness of the remedy, in-
24 cluding its implementability.

1 ‘‘(ii) The long-term reliability of the rem-
2 edy, that is, its capability to achieve long-term
3 protection of human health and the environ-
4 ment considering the preference for treatment
5 of hot spots.
6 ‘‘(iii) Any short-term risk posed by the im-
7 plementation of the remedy to the affected com-
8 munity, to those engaged in the cleanup effort,
9 and to the environment.
10 ‘‘(iv) The acceptability of the remedy to
11 the affected community.
12 ‘‘(v) The reasonableness of the cost of the
13 remedy.
14 ‘‘(B) HOT SPOTS.—The following shall apply to
15 the remediation of hot spots:
16 ‘‘(i) For purposes of this section, the term
17 ‘hot spot’ means a discrete area within a facility
18 that contains hazardous substances, pollutants
19 or contaminants that are present in high con-
20 centrations, are highly mobile, or cannot be reli-
21 ably contained, that would present a significant
22 risk to human health or the environment should
23 exposure occur. The President shall develop
24 guidelines for the identification of hot spots.
25 Such guidelines shall recommend appropriate

1 field investigations that will not require extraor-
2 dinarily complex or costly measures.

3 ''(ii) In determining an appropriate remedy
4 for hot spots, the President shall consider the
5 factors under subparagraph (A). With respect
6 to the factor in clause (v), the President shall
7 use a higher threshold for evaluating the rea-
8 sonableness of costs for hot spot treatment rel-
9 ative to the remediation of non-hot spot mate-
10 rials.

11 ''(iii) The President shall select a remedy
12 requiring treatment of materials constituting
13 hot spots unless an appropriate treatment tech-
14 nology is unavailable or is available only at un-
15 reasonable cost. In such instances, the Presi-
16 dent shall select an interim containment remedy
17 for such hot spot subject to adequate monitor-
18 ing and public reporting to ensure its continued
19 integrity and shall review the interim contain-
20 ment remedy in accordance with subsection (c).
21 When the appropriate treatment technology be-
22 comes available, as determined by the Presi-
23 dent, that remedy shall be considered in accord-
24 ance with this section.

1 "(iv) Notwithstanding the presence of a
2 hot spot, the President may select a final con-
3 tainment remedy for hot spots at landfills and
4 mining sites or similar facilities under the fol-
5 lowing circumstances:
6 "(I) The hot spot is small relative to
7 the overall volume of waste or contamina-
8 tion being addressed, the hot spot is not
9 readily identifiable and accessible, and
10 without the presence of the hot spot con-
11 tainment would have been selected as the
12 appropriate remedy under subparagraph
13 (A) for the larger body of waste or area of
14 contamination in which the hot spot is lo-
15 cated.
16 "(II) The volume and areal extent of
17 the hot spot is extraordinary compared to
18 other facilities, and it is highly unlikely
19 due to the size and other characteristics of
20 the hot spot that any treatment technology
21 will be developed that could be imple-
22 mented at reasonable cost.
23 Where final containment for a hot spot is selected,
24 the President shall publish an explanation of the
25 basis for that decision.

1 “(4) SELECTION OF RESPONSE ACTIONS FOR
2 GROUND WATER CONTAMINATION.—
3 “(A) FACTORS.—The President shall iden-
4 tify and select an appropriate remedy for con-
5 taminated ground water that achieves protec-
6 tion of human health and the environment pur-
7 suant to subsection (d)(1) and the goal as de-
8 termined pursuant to subsection (d)(7)(C) by
9 balancing the following factors:
10 “(i) The effectiveness of the remedy in
11 achieving the goal under subsections (d)(1)
12 and (d)(7)(C).
13 “(ii) The long-term reliability of the
14 remedy, that is, its capability to achieve
15 long-term protection of human health and
16 the environment.
17 “(iii) Any short-term risk posed by
18 the implementation of the remedy to the
19 affected community, to those engaged in
20 the cleanup effort, and to the environment.
21 “(iv) The acceptability of the remedy
22 to the affected community.
23 “(v) The reasonableness of the cost of
24 the remedy.

1 "(vi) The timeframe in which the goal
2 of any such remedy will be achieved in re-
3 lation to the urgency of the need and the
4 timing of the use of such ground water
5 "(vii) The implementability of the
6 remedy.
7 "(B) EARLY EVALUATION AND PHASED
8 REMEDIAL ACTION.—(i) The President shall, as
9 appropriate, employ a phased approach to site
10 characterization and remediation in which rem-
11 edies are arrived at through a sequence of in-
12 vestigations and actions. Information gathered
13 in one phase shall be used to inform each suc-
14 cessive phase until final remediation goals are
15 determined and attained.
16 "(ii) To facilitate efficient and effective
17 site characterization that promotes early evalua-
18 tion of remedial alternatives and to prevent the
19 ground water contamination problems from
20 worsening, the President shall ensure, to the ex-
21 tent practicable, that hydrogeologic and con-
22 taminant-related information necessary to select
23 final ground water remedial actions, including
24 findings of technical impracticability, shall be
25 collected as part of site characterization activi-

1 ties prior to and including the remedial inves-
2 tigation. Such data shall include information
3 from actions under clause (iii).

4 ''(iii) To facilitate efficient and effective
5 site characterization that promotes early evalua-
6 tion of remedial alternatives and to prevent the
7 ground water contamination problems from
8 worsening, the President shall, as appropriate,
9 consistent with the factors in subparagraph (A),
10 and to the extent technically practicable from
11 an engineering perspective, implement phased
12 remedial actions to minimize further contami-
13 nant migration and reduce the risk of exposure
14 to contaminated ground water. Such actions
15 shall be based on sufficient site characterization
16 to ensure achievement of the intended goal of
17 such actions, shall prevent exacerbation of the
18 contamination problem, and shall be monitored
19 to collect detailed information on site character-
20 ization and potential remedial alternatives.

21 ''(C) MINIMUM REQUIREMENTS.—The
22 President shall select an appropriate remedy for
23 contaminated ground water that may be used
24 for drinking water, subject to subsection

1 (d)(7)(C), which includes, at a minimum, the
2 following requirements:
3 ''(i) Prevention or elimination of any
4 actual human ingestion of drinking water
5 containing any hazardous substance, pol-
6 lutant or contaminant at levels in excess of
7 the maximum contaminant level or non-
8 zero maximum contaminant level goal es-
9 tablished under title XIV of the Public
10 Health Service Act (the Safe Drinking
11 Water Act) including, as appropriate, the
12 provision of an alternate water supply;
13 ''(ii) Prevention or elimination of any
14 actual human exposure through water that
15 may be used for drinking to any hazardous
16 substances, pollutants, or contaminants at
17 levels in excess of those levels needed to
18 protect human health.
19 ''(iii) Unless technically impracticable
20 from an engineering perspective, prevent
21 impairment of any surface water des-
22 ignated use established under section 303
23 of the Federal Water Pollution Control Act
24 caused by such hazardous substance, pol-
25 lutant, or contaminant in any surface

1 water body into which such contaminated
2 ground water is known or projected to
3 enter.

4 ''(iv) Assurance that source areas in
5 ground water containing hazardous sub-
6 stances, pollutants, or contaminants shall
7 be contained to the extent technically fea-
8 sible. Treatment which reduces contamina-
9 tion shall be applied to the degree nec-
10 essary to ensure the long-term reliability of
11 such containment remedy. Such decision
12 shall be based on a balancing of the factors
13 in subparagraph (A).

14 ''(v) Assurance that, unless technically
15 impracticable from an engineering perspec-
16 tive, the contamination exceeding the goals
17 of subsection (d)(7)(C)(i) shall be con-
18 tained, except as provided in subsection
19 (d)(7)(C)(iv).

20 ''(vi) Provision for long-term monitor-
21 ing of such ground water, as appropriate
22 (including any information needed for the
23 purposes of review under subsection (c)).

24 ''(D) PERIODIC REVIEW.—Each remedial
25 action conducted pursuant to subsection

1 (d)(7)(E)(i)(III) shall be reviewed by the Presi-
2 dent within 10 years after completion of all
3 physical on-site construction, and no less often
4 than every 5 years thereafter as provided in
5 subsection (c). If the President determines that
6 remedial alternatives have become available to
7 attain the goal of subsection (d)(7)(C), the
8 President shall select a new remedy in accord-
9 ance with this section.

10 ''(5) GENERIC REMEDIES.—In order to stream-
11 line the remedy selection process and to facilitate
12 rapid voluntary action, the President shall establish,
13 taking into account the factors enumerated in para-
14 graph (3)(A), cost-effective generic remedies for cat-
15 egories of facilities, and expedited procedures that
16 include community involvement for selecting generic
17 remedies at an individual facility. To be eligible for
18 selection at a facility, a generic remedy shall be pro-
19 tective of human health and the environment at that
20 facility. In appropriate cases, the President may se-
21 lect a generic remedy without considering alter-
22 natives to the generic remedy.

23 ''(6) INSTITUTIONAL CONTROLS.—Whenever
24 the President selects a remedial action which relies
25 on restrictions on the use of land, water, or other re-

sources to achieve protection of human health and the environment, the President shall specify the nature of the restrictions required to achieve such protections, including restrictions on the permissible uses of land, prohibitions on specified activities upon the property, restrictions on the drilling of wells or the use of ground water, or restrictions on the use of surface water, and may ensure that such restrictions are incorporated into a hazardous substance easement, as provided by section 104(k). In reviewing remedial action alternatives which would require the use of such restrictions and providing opportunity for public comment on those alternatives, the President shall identify the nature of any institutional controls that would be required to implement such restrictions, known or anticipated affected persons, the likely duration of such restrictions, and the anticipated costs of acquiring any appropriate hazardous substance easements and enforcing the appropriate restrictions.''.

SEC. 503. MISCELLANEOUS AMENDMENTS TO SECTION 121.

(a) REVIEW.—Section 121(c) (42 U.S.C. 9621(c)) is amended—

1 (1) in the first sentence, by striking out ''initi-
2 ation'' and inserting in lieu thereof ''completion of
3 all physical on-site construction,'';
4 (2) in the second sentence, by inserting ''(1)''
5 after ''it is the judgment of the President that''; and
6 (3) in the second sentence, by inserting after
7 ''section 104 or 106,'' the following: ''or (2) an in-
8 terim containment remedy was selected for such site
9 and an appropriate final remedial action is available
10 under subsection (b)(3)(B)(iii) and appropriate to
11 select in accordance with subsection (b)(3)(A) of this
12 section,''.
13 (b) Section 121(e)(1) (42 U.S.C. 9621(e)(1)) is
14 amended by adding at the end thereof the following: ''Fur-
15 thermore, no Federal, State, or local permit or permit ap-
16 plication shall be required for on-site or off-site activities
17 conducted under section 311(b).''.

18 **SEC. 504. RESPONSE AUTHORITIES.**

19 (a) STUDIES AND INVESTIGATIONS.—Section
20 104(b)(1) (42 U.S.C. 9604(b)(1)) is amended in the sec-
21 ond sentence by striking ''studies'' and all that follows
22 through the end of the sentence and inserting in lieu
23 thereof the following: ''actions, studies, or investigations
24 as he may deem necessary or appropriate to plan and di-

1 rect response actions or to enforce the provisions of this
2 Act and shall be entitled to recover the costs thereof.''.
3 (b) DISPOSAL AUTHORITY.—Section 104(j) (42
4 U.S.C. 9604(j)) is amended—
5 (1) in paragraph (1), by striking ''remedial'' in
6 the first sentence and inserting ''response'';
7 (2) by striking paragraph (2);
8 (3) by redesignating paragraph (3) as para-
9 graph (2) and in that paragraph by striking ''es-
10 tate'' and inserting ''property''; and
11 (4) by inserting after paragraph (2) (as redesig-
12 nated) the following new paragraph:
13 ''(3) DISPOSAL AUTHORITY.—The President is
14 authorized to dispose of any interest in real property
15 acquired for use by the Administrator under this
16 subsection by sale, exchange, donation, or otherwise
17 and any such interest in real property shall not be
18 subject to any of the provisions of section 120 except
19 the notice provisions of section 120(h)(1). Any mon-
20 eys received by the President pursuant to this para-
21 graph shall be deposited in the Fund.''.
22 (c) PRIVATE PARTY REMOVAL LIMITATIONS.—Sec-
23 tion 104(a)(2) (42 U.S.C. 9604(a)(2)) is amended by add-
24 ing at the end the following: ''In any case in which imple-
25 mentation of a removal action is expected to obviate or

in fact does obviate the need to conduct a long-term remedial action, such removal action must—

"(A) comply with the protective concentration levels and other standards in subsections (b) and (d) of section 121; and

"(B) allow for public participation in accordance with seciton 117 to the maximum extent practicable.".

SEC. 505. REMOVAL ACTIONS.

(a) OBLIGATIONS FROM FUND.—Section 104(c)(1) (42 U.S.C. 9604(c)(1)) is amended—

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

(2) by striking "$2,000,000" and inserting "$4,000,000"; and

(3) by striking "12 months" and inserting "two years".

(b) NON-EMERGENCY REMOVALS.—Section 120(e) (42 U.S.C. 9620(e)) is amended by adding at the end the following new paragraph:

"(7) NOTIFICATION OF AND CONCURRENCE FROM EPA OR STATE FOR NON-EMERGENCY REMOVAL ACTIONS.—(A) Before the commencement of

1 any non-emergency removal action by a department,
2 agency, or instrumentality of the United States,
3 such department, agency, or instrumentality shall—
4 ‘‘(i) notify the Environmental Protection
5 Agency and the State of the planned removal
6 action; and
7 ‘‘(ii) obtain, in the case of facilities which
8 are listed or proposed for listing on the Na-
9 tional Priorities List, concurrence in the
10 planned removal action from the Environmental
11 Protection Agency or the State, as applicable.
12 ‘‘(B) The lack of concurrence under clause (ii)
13 shall not delay the commencement of the remedial
14 investigation and feasibility study in accordance with
15 the time requirements of this section. The require-
16 ments of this paragraph relating to notification and
17 concurrence shall not affect, alter, or supplant, di-
18 rectly or indirectly, the applicability of any State law
19 to the removal action concerned. Within a reasonable
20 period of time after any emergency removal action is
21 carried out by a department, agency, or instrumen-
22 tality of the United States, the department, agency,
23 or instrumentality shall notify the Environmental
24 Protection Agency or the State, as appropriate, of
25 the removal action.’’.

1 **SEC. 506. HAZARDOUS SUBSTANCE PROPERTY USE.**

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

4 ''(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

5 ''(1) AUTHORITY OF PRESIDENT TO ACQUIRE
6 EASEMENTS.—In order to prevent exposure to, re-
7 duce the likelihood of, or otherwise respond to a re-
8 lease or threatened release of a hazardous substance,
9 pollutant, or contaminant, the President may ac-
10 quire, at fair market value, or for other consider-
11 ation as agreed to by the parties, a hazardous sub-
12 stance easement which restricts, limits, or controls
13 the use of land or other natural resources, including
14 specifying permissible or impermissible uses of land,
15 prohibiting specified activities upon property, prohib-
16 iting the drilling of wells or use of ground water, or
17 restricting the use of surface water.

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

1 such controls are selected as a component of a re-
2 moval or remedial action, the President shall ensure
3 that the terms of the controls and, as appropriate,
4 the easement are specified in all appropriate decision
5 documents, enforcement orders, and public informa-
6 tion regarding the site.

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

1 fect notwithstanding any foreclosure or other asser-
2 tion of such interests.

3 ''(4) CONTENTS OF EASEMENTS.—A hazardous
4 substance easement shall contain, at a minimum—

5 ''(A) a legal description of the property af-
6 fected;

7 ''(B) the name or names of any current
8 owner or owners of the property as reflected in
9 public land records;

10 ''(C) a description of the release or threat-
11 ened release; and

12 ''(D) a statement as to the nature of the
13 restriction, limitation, or control created by the
14 easement.

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

1 "(6) FILING OF NOTICE.—Wherever recording
2 in the public land records is required under this sub-
3 section, the President shall file the notice or other
4 instrument in the appropriate office within the State
5 (or governmental subdivision) in which the affected
6 property is located, as designated by State law. If
7 the State has not by law designated one office for
8 the recording of interests in real property or claims
9 or rights burdening real property, the document or
10 notice shall be filed in the office of the clerk of the
11 United States district court for the district in which
12 the affected property is located.
13 "(7) METHODS OF ACQUIRING EASEMENTS.—
14 The President may acquire a hazardous substance
15 easement by purchase or other agreement, by con-
16 demnation, or by any other means permitted by law.
17 Compensation for such easement shall be at fair
18 market value, or for other consideration as agreed to
19 by the parties, for the interest acquired. The costs
20 of obtaining such easements, ensuring adequate pub-
21 lic notice of such easements, and otherwise tracking
22 and maintaining the protections afforded by the
23 easements shall be considered response costs which
24 are recoverable under this Act.

1 "(8) ASSIGNMENT OF EASEMENTS TO PARTIES
2 OTHER THAN THE PRESIDENT.—
3 "(A) AUTHORITY TO ASSIGN.—The Presi-
4 dent may assign an easement acquired under
5 this subsection to a State or other governmental
6 entity that has the capability of effectively en-
7 forcing the easement over the period of time
8 necessary to achieve the purposes of the ease-
9 ment. In the case of any assignment, the ease-
10 ment shall be fully enforceable by the assignee.
11 Any assignment of such an easement by the
12 President may be made by following the same
13 procedures as are used for the transfer of an
14 interest in real property to a State under sec-
15 tion 104(j).
16 "(B) EFFECT OF ASSIGNMENT.—Any in-
17 terest in property granted to a State or other
18 governmental entity which restricts, limits, or
19 controls the use of land or other natural re-
20 sources in order to prevent exposure to, reduce
21 the likelihood of, or otherwise respond to, a re-
22 lease or threatened release of a hazardous sub-
23 stance, pollutant, or contaminant, and which is
24 expressly designated in writing as a hazardous
25 substance easement within the meaning of this

1 paragraph, shall create the same rights, have
2 the same legal effect, and be enforceable in the
3 same manner as a hazardous substance ease-
4 ment acquired by the President regardless of
5 whether the interest in property is otherwise de-
6 nominated as an easement, covenant, or any
7 other form of property right.

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

24 ''(10) TERMINATION OF EASEMENTS.—An ease-
25 ment acquired under this subsection shall remain in

1 force until the holder of the easement executes and
2 records a termination and release in accordance with
3 the terms of the easement and approved by the Ad-
4 ministrator of the Environmental Protection Agency
5 or the relevant assignee. Such termination shall be
6 recorded in the same manner as the easement.

7 ''(11) ENFORCEMENT.—

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

21 ''(B) ENFORCEMENT ACTIONS.—The
22 President may take appropriate enforcement ac-
23 tions to ensure compliance with the terms of
24 the easement whenever the Administrator of the
25 Environmental Protection Agency determines

1 that the terms set forth in the easement are
2 being violated. If the easement has been as-
3 signed to a party other than the President and
4 that party has not taken appropriate enforce-
5 ment actions, the President may notify the
6 party of the violation. If the party does not take
7 appropriate enforcement actions within 30 days
8 of such notification, or sooner in the case of an
9 imminent hazard, the President may initiate
10 such enforcement actions.

11 ''(12) APPLICABILITY OF OTHER PROVISIONS.—
12 Holding a hazardous substance easement shall not
13 subject either the holder thereof or the owner of the
14 affected property to liability under section 107. Any
15 such easement acquired by the President shall not
16 be subject to the requirements of section 104(j) or
17 120(h).''.

18 **SEC. 507. TRANSITION.**

19 (a) EFFECTIVE DATE.—This title, and the amend-
20 ments made by this title, shall become effective 180 days
21 after the date of enactment of this Act. Remedies selected
22 under the Comprehensive Environmental Response, Com-
23 pensation, and Liability Act of 1980 following that effec-
24 tive date shall be selected as provided in section 121(b)
25 of that Act (as amended by this Act) and subject to the

Federal and State requirements specified in section 121(d)(7) of that Act (as amended by this Act).

(b) CONTINUED EFFECTIVENESS OF REGULATIONS AND GUIDANCE.—Until promulgation of the national goals and the national risk protocol under section 121(d), the President may continue to rely on current regulations and guidance with regard to acceptable risk levels and the conduct of risk assessments.

(c) PRIOR RODS.—(1) Nothing in this Act shall place upon the President an obligation to reopen a record of decision signed prior to the effective date of this title.

(2) If, pursuant to section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the President determines that a change to a record of decision signed prior to the effective date of this title is necessary, the President may apply the rules in effect at the time the original record of decision was signed.

TITLE VI—MISCELLANEOUS

SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNERSHIP AND MIXED RESPONSIBILITY FACILITIES.

Section 120(e) (42 U.S.C. 9620(e)) is amended—

(1) by inserting at the end of paragraph (4) the following new subparagraph:

1 ''(D) A provision allowing for the partici-
2 pation of other responsible parties (if any) in
3 the response action.''; and
4 (2) by inserting after paragraph (7) the follow-
5 ing new paragraphs:
6 ''(8) EXCEPTION TO REQUIRED ACTION.—(A) A
7 department, agency, or instrumentality of the United
8 States that owns or operates a facility at which the
9 department, agency, or instrumentality exercised no
10 regulatory or other control over activities that di-
11 rectly or indirectly resulted in a release or threat of
12 a release of a hazardous substance shall be subject
13 to the requirements of paragraphs (1) through (6),
14 other than subparagraphs (F) and (G) of paragraph
15 (5), unless and to the extent the department, agen-
16 cy, or instrumentality demonstrates to the satisfac-
17 tion of the Administrator that—
18 ''(i) no department, agency, or instrumen-
19 tality was the primary or sole source or cause
20 of a release or threat of release of a hazardous
21 substance at the facility;
22 ''(ii) the activities either directly or indi-
23 rectly resulting in a release or threat of a re-
24 lease of a hazardous substance at the facility

1 were pursuant to a statutory authority and oc-
2 curred before 1976; and

3 ''(iii) the person or persons primarily or
4 solely responsible for such release or threat of
5 release are financially viable and are capable of
6 performing or financing all or a portion of the
7 response action at the facility.

8 ''(B) If the conditions listed in clauses (i)
9 through (iii) of subparagraph (A) are not met, the
10 applicable terms of this subsection apply to the de-
11 partment, agency, or instrumentality of the United
12 States at the facility. Upon determination by the
13 Administrator that a department, agency, or instru-
14 mentality qualifies for the exception provided by this
15 paragraph, the head of such department, agency, or
16 instrumentality may exercise enforcement authority
17 under section 106. To the extent a person who has
18 been issued an order under the authority of this
19 paragraph seeks reimbursement under the provisions
20 of section 106, the relevant department, agency, or
21 instrumentality, and not the Fund, shall be the
22 source of any appropriate reimbursement. If the rel-
23 evant department, agency, or instrumentality has
24 failed to obtain the performance of response actions
25 by responsible parties pursuant to an order or con-

1 sent decree within 12 months after the facility has
2 been listed on the National Priorities List, the ex-
3 ception provided by this paragraph shall be void and
4 the department, agency, or instrumentality shall, in
5 consultation with the Administrator and appropriate
6 State authorities, commence a remedial investigation
7 and feasibility study for such facility within six
8 months after the expiration of the 12-month period.

9 ''(9) An interagency agreement under this sec-
10 tion shall in no way impair or diminish the obliga-
11 tion of any department, agency, or instrumentality
12 of the United States to comply with requirements of
13 applicable law, unless such requirements have been
14 specifically—

15 ''(A) addressed; or

16 ''(B) waived;

17 without objection from the State prior to or at the
18 time the response action is selected pursuant to sec-
19 tion 121.''.

20 **SEC. 602. CONTENTS OF CERTAIN DEEDS.**

21 Section 120(h)(3) (42 U.S.C. 9620(h)(3)) is amend-
22 ed in the matter following subparagraph (C) by inserting
23 after ''the Administrator'' both places it appears the fol-
24 lowing: ''or, in the case of real property that is not part

1 of a facility on the National Priorities List, to the Gov-
2 ernor of the affected State''.

3 **SEC. 603. TRANSFERS OF UNCONTAMINATED PROPERTY.**

4 Section 120(h)(4)(A) (42 U.S.C. 9620(h)(4)(A)) is
5 amended by striking ''stored for one year or more,'' in
6 the first sentence.

7 **SEC. 604. AGREEMENTS TO TRANSFER BY DEED.**

8 Section 120(h) (42 U.S.C. 9620(h)) is amended by
9 adding after paragraph (5) the following new paragraph:
10 ''(6) AGREEMENTS TO TRANSFER BY DEED.—
11 Nothing in this subsection shall be construed to pro-
12 hibit the head of the department, agency, or instru-
13 mentality of the United States from entering into an
14 agreement to transfer by deed real property or facili-
15 ties prior to the entering of such deed.''.

16 **SEC. 605. ALTERNATIVE OR INNOVATIVE TREATMENT**
17 **TECHNOLOGIES.**

18 Section 111(a) is amended by adding after paragraph
19 (6) the following new paragraph:
20 ''(7) ALTERNATIVE OR INNOVATIVE TREAT-
21 MENT TECHNOLOGIES.—Payment of no more than
22 50 percent of response costs incurred by a poten-
23 tially liable party in taking actions approved by the
24 Administrator to achieve required levels of response
25 under this Act after employing an alternative or in-

1 novative technology that fails to achieve a level of re-
2 sponse required under this Act pursuant to an ad-
3 ministrative order or consent decree. The Adminis-
4 trator shall issue guidance on the procedures for the
5 appropriate level of funding for response activities
6 using alternative innovative technologies as defined
7 in section 311(b)(10) that are necessary to achieve
8 a level of response required under this Act. The Ad-
9 ministrator shall review and update such guidance,
10 as appropriate.''.

11 **SEC. 606. DEFINITIONS.**

12 Section 101 (42 U.S.C. 9601) is amended as follows:
13 (1) Paragraph (10)(H) is amended by striking
14 ''subject to'' and inserting ''in compliance with''.
15 (2) Paragraph (14) is amended by adding at
16 the end the following: ''The term includes methane,
17 but only when a response action undertaken to ad-
18 dress a release or threat of release of a hazardous
19 substance (as otherwise defined in this paragraph)
20 at a landfill or similar site also addresses methane.''.
21 (3) Paragraph (20) is amended—
22 (A) in subparagraph (A), by inserting ''the
23 United States or'' after ''similar means to'';
24 (B) in subparagraph (D)—

1 (i) in the first sentence by inserting
2 ‘‘the United States or’’ after ‘‘does not in-
3 clude’’;
4 (ii) in the second sentence, by insert-
5 ing ‘‘any department, agency, or instru-
6 mentality of the United States or’’ before
7 ‘‘any State’’; and
8 (iii) in the second sentence, by strik-
9 ing ‘‘a’’ after ‘‘such’’ and inserting ‘‘de-
10 partment, agency, or instrumentality of the
11 United States or’’; and
12 (C) by adding after subparagraph (D) the
13 following new subparagraphs:
14 ‘‘(E)(i) The term ‘owner or operator’ includes a
15 trust or estate or a person who holds title to a vessel
16 or facility, or otherwise is affiliated with the vessel
17 or facility solely in a fiduciary capacity. Subject to
18 clauses (ii) and (iii), a fiduciary holding such title or
19 having such affiliation shall be personally subject to
20 the obligations and liabilities of an owner or opera-
21 tor to the same extent as if the vessel or facility
22 were held by the fiduciary free of trust.
23 ‘‘(ii) The personal obligations and liabilities of
24 a fiduciary referred to in clause (i) shall be limited
25 to the extent to which the assets of the trust or es-

1 tate are sufficient to indemnify the fiduciary, un-
2 less—
3 ‘‘(I) the obligations and liabilities would
4 have arisen even if the person had not served
5 as fiduciary;
6 ‘‘(II) the fiduciary's own failure to exercise
7 due care with respect to a vessel or facility
8 caused or contributed to the release of hazard-
9 ous substances following establishment of the
10 trust, estate, or fiduciary relationship;
11 ‘‘(III) the fiduciary had a role in establish-
12 ing the trust, estate, or fiduciary relationship,
13 and such trust, estate, or fiduciary relationship
14 has no objectively reasonable or substantial pur-
15 pose apart from the avoidance or limitation of
16 liability under this Act; or
17 ‘‘(IV) the fiduciary has not complied with
18 such other requirements as the Administrator
19 may set forth by regulation.
20 ‘‘(iii) A fiduciary shall not be personally liable
21 for undertaking or directing another to undertake a
22 response action under section 107(d)(1).
23 ‘‘(F) The term ‘owner or operator' shall not in-
24 clude the United States or any department, agency,
25 or instrumentality of the United States or a con-

1 servator or receiver appointed by a department,
2 agency, or instrumentality of the United States if
3 the United States or the conservator or receiver
4 meets both of the following conditions:
5 ''(i) The United States, conservator, or re-
6 ceiver acquired ownership or control of a vessel
7 or facility (or any right or interest therein)—
8 ''(I) in connection with the exercise of
9 receivership or conservatorship authority
10 or the liquidation or winding up of the af-
11 fairs of any entity subject to a receivership
12 or conservatorship, including any subsidi-
13 ary thereof; and
14 ''(II) in connection with the exercise
15 of any seizure or forfeiture authority.
16 ''(ii) The United States, conservator, or re-
17 ceiver does not participate in the management
18 of the vessel or facility operations that result in
19 a release or threat of release of hazardous sub-
20 stances and complies with such other require-
21 ments as the Administrator may set forth by
22 regulation.''.
23 (4) Paragraph (23) (relating to the terms ''re-
24 move'' and ''removal'') is amended—
25 (A) in the first sentence—

1 (i) by striking ‘‘terms’’ and inserting
2 ‘‘term’’;
3 (ii) by striking ‘‘necessary’’ the first
4 place it appears and inserting ‘‘nec-
5 essarily’’; and
6 (iii) by inserting after ‘‘environment,
7 such actions’’ the phrase ‘‘or combination
8 of such actions’’;
9 (B) in the second sentence by striking
10 ‘‘term includes’’ and inserting ‘‘terms include’’;
11 and
12 (C) by adding at the end the following:
13 ‘‘The term ‘remove’ or ‘removal’ is not limited
14 to emergency situations and includes actions to
15 address future or potential exposures.’’.
16 (5) Paragraph (25) (relating to the terms ‘‘re-
17 spond’’ and ‘‘response’’) is amended—
18 (A) by striking ‘‘terms’’ and inserting
19 ‘‘term’’;
20 (B) by striking the comma after ‘‘remedial
21 action;’’; and
22 (C) by striking ‘‘related thereto’’ and in-
23 serting ‘‘(including attorneys’ fees and expert
24 witness fees) and oversight activities related

1 thereto when such activities are undertaken by
2 the President, a State or Indian Tribe''.
3 (6) Paragraph (29) (relating to the terms ''dis-
4 posal'', ''hazardous waste'', and ''treatment'') is
5 amended by inserting before the period the follow-
6 ing: '', except that the term 'hazardous substance'
7 shall be substituted for the term 'hazardous waste'
8 in the definitions of 'disposal' and 'treatment' ''.
9 (7) Paragraph (33) (relating to the term ''pol-
10 lutant or contaminant'') is amended by striking '';
11 except that the'' and inserting ''. The''.
12 (8) Paragraph (35) (relating to the term ''con-
13 tractual relationship'') is amended—
14 (A) in subparagraph (A)—
15 (i) by striking out clause (iii); and
16 (ii) in the matter preceding clause (i),
17 by striking out ''clause (i), (ii), or (iii)''
18 and inserting ''clause (i) or (ii)'';
19 (B) by amending subparagraph (B) to read
20 as follows:
21 ''(B)(i) To establish that the defendant had no
22 reason to know, as provided in clause (i) of subpara-
23 graph (A) of this paragraph, the defendant must
24 have undertaken, at the time of the acquisition, all
25 appropriate inquiry into the previous ownership and

1 uses of the facility and its real property in accord-
2 ance with generally accepted good commercial and
3 customary standards and practices. For the pur-
4 poses of the preceding sentence and until the Ad-
5 ministrator issues or designates standards and prac-
6 tices as provided in clause (ii) of this subparagraph,
7 the court shall take into account any specialized
8 knowledge or experience on the part of the defend-
9 ant, the relationship of the purchase price to the
10 value of the property if uncontaminated, commonly
11 known or reasonably ascertainable information about
12 the property, the obviousness of the presence or like-
13 ly presence of contamination at the property, and
14 the ability to detect such contamination by appro-
15 priate investigation.

16 ''(ii) The Administrator may, by regulation,
17 promulgate standards and practices or, by regula-
18 tion, designate standards and practices promulgated
19 or developed by others, that satisfy the requirements
20 of this subparagraph. In issuing or designating such
21 standards and practices, the Administrator shall
22 consider factors for the inquiry, including the follow-
23 ing:

24 ''(I) Conduct of the inquiry by an environ-
25 mental professional.

1 ''(II) Inclusion of interviews with past and
2 present owners, operators, and occupants of the
3 facility and its real property for the purpose of
4 gathering information regarding the potential
5 for contamination at the facility and its real
6 property.

7 ''(III) Inclusion of a review of historical
8 sources, such as chain of title documents, aerial
9 photographs, building department records, and
10 land use records, to determine previous uses
11 and occupancies of the real property since it
12 was first developed.

13 ''(IV) Inclusion of a search for recorded
14 environmental cleanup liens, filed under Fed-
15 eral, State, or local law, against the facility or
16 its real property.

17 ''(V) Inclusion of a review of Federal,
18 State, and local government records, such as
19 waste disposal records; underground storage
20 tank records; and hazardous waste handling,
21 generation, treatment, disposal, and spill
22 records, concerning contamination at or near
23 the facility or its real property.

1 ''(VI) Inclusion of a visual inspection of
2 the facility and its real property and of adjoin-
3 ing properties.
4 ''(VII) Any specialized knowledge or expe-
5 rience on the part of the defendant.
6 ''(VIII) The relationship of the purchase
7 price to the value of the property if
8 uncontaminated.
9 ''(IX) Commonly known or reasonably as-
10 certainable information about the property.
11 ''(X) The obviousness of the presence or
12 likely presence of contamination at the prop-
13 erty, and the ability to detect such contamina-
14 tion by appropriate investigation.
15 ''(iii) In the case of property for residential use
16 or other similar use, purchased by a nongovern-
17 mental or noncommercial entity, a site inspection
18 and title search that reveal no basis for further in-
19 vestigation satisfy the requirements of this subpara-
20 graph.''; and
21 (C) By adding the following new subpara-
22 graph at the end thereof:
23 ''(E) The term 'contractual relationship' shall
24 not include the initial filing by a claimant of an

1 unpatented mining claim or the issuance of a patent
2 for any such claim.''.
3 (9) The following new paragraphs are added
4 after paragraph (38):
5 ''(39) BONA FIDE PROSPECTIVE PURCHASER.—
6 The term 'bona fide prospective purchaser' means a
7 person who acquires ownership of a facility after the
8 date of enactment of the Superfund Reform Act of
9 1994, or a tenant of such a person, who can estab-
10 lish each of the following by a preponderance of the
11 evidence:
12 ''(A) All active disposal of hazardous sub-
13 stances at the facility occurred before that per-
14 son acquired the facility.
15 ''(B) The person made all appropriate in-
16 quiry into the previous ownership and uses of
17 the facility and its real property in accordance
18 with generally accepted good commercial and
19 customary standards and practices. The regula-
20 tions promulgated by the Administrator pursu-
21 ant to paragraph (35)(B)(ii) shall satisfy the
22 requirements of this subparagraph. In the case
23 of property for residential or other similar use,
24 purchased by a nongovernmental or non-
25 commercial entity, a site inspection and title

1 search that reveal no basis for further inves-
2 tigation satisfy the requirements of this sub-
3 paragraph.

4 ''(C) The person provided all legally re-
5 quired notices with respect to the discovery or
6 release of any hazardous substances at the fa-
7 cility.

8 ''(D) The person exercised appropriate
9 care with respect to hazardous substances
10 found at the facility by taking reasonable steps
11 to stop on-going releases, prevent threatened
12 future releases of hazardous substances, and
13 prevent or limit human or natural resource ex-
14 posure to hazardous substances previously re-
15 leased into the environment.

16 ''(E) The person provides full cooperation,
17 assistance, and facility access to persons au-
18 thorized to conduct response actions at the fa-
19 cility, including the cooperation and access nec-
20 essary for the installation, integrity, operation,
21 and maintenance of any complete or partial re-
22 sponse action at the facility.

23 ''(F) The person is not affiliated with any
24 other person liable for response costs at the fa-
25 cility, through any direct or indirect familial re-

1 lationship, or any contractual, corporate, or fi-
2 nancial relationship other than that created by
3 the instruments by which title to the facility is
4 conveyed or financed.

5 ''(40) FIDUCIARY.—

6 ''(A) Except as provided in subparagraph
7 (B), the term 'fiduciary' means a person who
8 owns or controls property—

9 ''(i) as a fiduciary within the meaning
10 of section 3(31) of the Employee Retire-
11 ment Income Security Act of 1974, or as
12 a trustee, executor, administrator, custo-
13 dian, guardian, conservator, or receiver
14 acting for the exclusive benefit of another
15 person; and

16 ''(ii) who has not previously owned or
17 operated the property in a non-fiduciary
18 capacity.

19 ''(B) The term 'fiduciary' does not include
20 any person described in subparagraph (A)—

21 ''(i) who acquires ownership or control
22 of property to avoid the liability of such
23 person or any other person under this Act;
24 or

1 ''(ii) who owns or controls property on
2 behalf of or for the benefit of a holder of
3 a security interest.
4 ''(41) MUNICIPAL SOLID WASTE.—The term
5 'municipal solid waste' means all waste materials
6 generated by households, including single and multi-
7 family residences, and hotels and motels. The term
8 also includes waste materials generated by commer-
9 cial, institutional, and industrial sources, to the ex-
10 tent such wastes (A) are essentially the same as
11 waste normally generated by households, or (B) are
12 collected and disposed of with other municipal solid
13 waste or sewage sludge as part of normal municipal
14 solid waste collection services, and, regardless of
15 when generated, would be considered conditionally
16 exempt small quantity generator waste under regula-
17 tion issued pursuant to section 3001(d) of the Solid
18 Waste Disposal Act (42 U.S.C. 6921(d)). Examples
19 of municipal solid waste include food and yard
20 waste, paper, clothing, appliances, consumer product
21 packaging, disposable diapers, office supplies, cos-
22 metics, glass and metal food containers, elementary
23 or secondary school science laboratory waste, and
24 household hazardous waste. The term does not in-
25 clude combustion ash generated by resource recovery

1 facilities or municipal incinerators, or waste from
2 manufacturing or processing (including pollution
3 control) operations not essentially the same as waste
4 normally generated by households.

5 ''(42) MUNICIPALITY.—The term 'municipality'
6 means a political subdivision of a State, including a
7 city, county, village, town, township, borough, par-
8 ish, school district, sanitation district, water district,
9 or other public entity performing local governmental
10 functions. The term also includes a natural person
11 acting in the capacity of an official, employee, or
12 agent of any entity referred to in the preceding sen-
13 tence in the performance of governmental functions.

14 ''(43) QUALIFIED HOUSEHOLD HAZARDOUS
15 WASTE COLLECTION PROGRAM.—The term 'qualified
16 household hazardous waste collection program'
17 means a program established by an entity of the
18 Federal Government, a State, a municipality, or an
19 Indian tribe that provides, at a minimum, for semi-
20 annual collection of household hazardous wastes at
21 accessible, well-publicized collection points within the
22 relevant jurisdiction.

23 ''(44) SEWAGE SLUDGE.—The term 'sewage
24 sludge' means solid, semisolid, or liquid residue re-
25 moved during the treatment of municipal waste

1 water, domestic sewage, or other waste water at or
2 by publicly owned or federally owned treatment
3 works.

4 "(45) SITE CHARACTERIZATION.—The term
5 'site characterization' means an investigation that
6 determines the nature and extent of a release or po-
7 tential release of a hazardous substance, pollutant,
8 or contaminant, and that includes an on site evalua-
9 tion and sufficient testing, sampling, and other field
10 data gathering activities to analyze whether there
11 has been a release or threat of a release of a hazard-
12 ous substance, pollutant, or contaminant, and the
13 health and environmental risks posed by such a re-
14 lease or threat of release. The investigation also may
15 include review of existing information (available at
16 the time of the review), an off-site evaluation, or
17 other measures that the Administrator considers ap-
18 propriate.

19 "(46) OWNER, OPERATOR, OR LESSEE OF RESI-
20 DENTIAL PROPERTY.—The term 'owner, operator, or
21 lessee of residential property' refers to a person who
22 owns, operates, manages, or leases residential prop-
23 erty and who uses or allows the use of the residen-
24 tial property exclusively for residential purposes. The
25 term 'residential property' refers to single or multi-

1 family residences, including accessory land, build-
2 ings, or improvements incidental to such dwellings,
3 which are exclusively for residential use.

4 "(47) SMALL BUSINESS.—The term 'small busi-
5 ness' refers to any business entity that employs no
6 more than 100 individuals and is a 'small business
7 concern' as defined under the Small Business Act
8 (15 U.S.C. 631 et seq.).

9 "(48) SMALL NONPROFIT ORGANIZATION.—The
10 term 'small nonprofit organization' means any orga-
11 nization that does not distribute any part of its in-
12 come or profit to its members, directors, or officers,
13 employs no more than 100 paid individuals at the
14 involved chapter, office, or department, and was rec-
15 ognized as a non-profit organization under section
16 501(c)(3) of the Internal Revenue Code of 1986.

17 "(49) SMALL BUSINESS CONSTRUCTION CON-
18 TRACTOR.—The term 'small business construction
19 contractor' means a person who—

20 "(A) is a small business as defined by
21 paragraph (47);

22 "(B) is not—

23 "(i) taking or required to take any re-
24 sponse action under this Act or any other

Federal or State law at the facility concerned,

"(ii) taking or required to take any corrective action under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) at the facility concerned, or

"(iii) otherwise responding to a release or threatened release of a hazardous substance, pollutant, or contaminant at the facility concerned;

"(C) did not know or have reason to know of the presence of hazardous substances at the facility concerned before beginning construction activities;

"(D) provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

"(E) exercised due care with respect to the hazardous substances discovered in the course of performing the construction activity, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances.".

1 **SEC. 607. RESPONSE CLAIMS PROCEDURES.**

2 (a) AMENDMENT OF SECTION 111.—Section
3 111(a)(2) (42 U.S.C. 9611(a)(2)) is amended by inserting
4 after ''under said plan'' the phrase '', reasonable in
5 amount based on open and free competition or fair market
6 value for similar available goods and services,''.

7 (b) AMENDMENT OF SECTION 112.—Section 112(a)
8 (42 U.S.C. 9612(a)(2)) is amended—

9 (1) in the first sentence, by adding after ''un-
10 less such claim is'' the following: ''(1) accompanied
11 by an audit prepared by an independent, certified
12 public accountant, and (2)''; and

13 (2) by inserting after the first sentence the fol-
14 lowing: ''The Administrator reserves the right to re-
15 view such audits to determine that the costs for
16 which the claimant is seeking reimbursement are
17 consistent with section 111(a) and, where necessary,
18 withhold claims or a portion thereof which are incon-
19 sistent with section 111(a).''.

20 **SEC. 608. SMALL BUSINESS OMBUDSMAN.**

21 The Administrator of the Environmental Protection
22 Agency shall establish a small business Superfund assist-
23 ance section within the small business ombudsman office
24 at the Environmental Protection Agency. Such section
25 shall carry out the following functions:

1 (1) Act as a clearinghouse of information for
2 small businesses regarding the Comprehensive Envi-
3 ronmental Response, Compensation, and Liability
4 Act of 1980. Such information shall be comprehen-
5 sible to a lay person and shall include information
6 regarding the allocation process under section 130 of
7 such Act, requirements and procedures for expedited
8 settlements pursuant to section 122(g) of such Act,
9 de minimis and de micromis status, and ability-to-
10 pay procedures.

11 (2) Provide general advice and assistance to
12 small businesses as to their questions and problems
13 concerning the allocation and settlement processes,
14 except that such advice and assistance shall not in-
15 clude any legal advice as to liability or any other
16 legal representation. The ombudsman shall not par-
17 ticipate in the allocation process.

18 (3) Develop proposals and make recommenda-
19 tions for changes in policies and activities of the En-
20 vironmental Protection Agency which would better
21 fulfill the goals of title IV of the Superfund Reform
22 Act of 1994 in ensuring equitable, simplified, and
23 expedited allocations and settlements for small busi-
24 nesses.

SEC. 609. CONSIDERATION OF LOCAL GOVERNMENT CLEANUP PRIORITIES.

Section 104(c)(2) is amended—

(1) by inserting ''(A)'' after ''(2)''; and

(2) by adding at the end the following new subparagraph:

''(B) In setting priorities for scheduling work and allocating oversight resources for a remedial action at a facility at which a potentially responsible party that is a State or local government proposes to carry out the remedial action (or a portion thereof), the Administrator should give higher priority to such remedial action (or portion thereof) if the State or local government demonstrates that the remedial action (i) will have a public benefit; and (ii) will result in the property on or adjacent to the facility being returned to productive use. A private potentially responsible party may request similar consideration, in the Administrator's discretion. Nothing in this subparagraph shall affect the responsibility of the Administrator to schedule and oversee the conduct of remedial action so as to assure protection of human health and the environment.''.

SEC. 610. CONSISTENT APPLICATION AMONG REGIONAL OFFICES.

Section 115 (42 U.S.C. 9615), as amended by section 407, is further amended as follows:

1 (1) By inserting the following immediately be-
2 fore ''The President'': ''(a) PRESIDENTIAL RULE-
3 MAKING AND DELEGATION AUTHORITY.—''.
4 (2) By inserting at the end thereof the follow-
5 ing new subsection:
6 ''(b) CONSISTENT APPLICATION AMONG REGIONAL
7 OFFICES.—Each Regional Administrator should imple-
8 ment, execute, and enforce this Act and regulations, guid-
9 ance, and policies established in accordance with this Act
10 by (1) the President (or by the Administrator pursuant
11 to a delegation from the President), or (2) the Adminis-
12 trator (or by the Deputy Administrator or an Assistant
13 Administrator pursuant to a delegation from the Adminis-
14 trator).''.

15 **SEC. 611. STUDY OF PARTICIPANTS.**

16 (a) STUDY.—The Administrator shall undertake a
17 study of current Environmental Protection Agency proce-
18 dures for suspension and debarment of persons and busi-
19 ness entities, particularly response action contractors and
20 to assess the feasibility and cost of creating a nationwide
21 data base to track such persons. The study shall include,
22 but shall not be limited, to the following items:
23 (1) Whether the certification process pursuant
24 to 40 CFR 32 regarding debarment and suspensions
25 is sufficient to uncover those persons who have pre-

1 viously served as a principal of a business entity af-
2 filiated or unaffiliated with the certifying entity.
3 (2) Whether the 3-year period for certification
4 is a sufficient length of time to uncover past activi-
5 ties.
6 (3) Whether the process under Federal regula-
7 tions for determining false certification is sufficient,
8 particularly for those persons who are attempting to
9 hide past debarment or suspension.
10 (4) The effectiveness of the current debarment
11 and suspension procedures.
12 (5) The practicability of coordination, through
13 a central data base, with other Federal agencies the
14 tracking and sharing of data on such persons who
15 have been debarred or suspended.
16 (6) The effectiveness of debarment and suspen-
17 sion on the future conduct of persons or business en-
18 tities with regard to compliance with Federal and
19 State environmental laws.
20 (7) The extent of sharing data within the Envi-
21 ronmental Protection Agency and among its regional
22 offices.
23 (8) The cost of creating a central data base.
24 (b) REPORT AND RECOMMENDATIONS.—The Admin-
25 istrator shall report the findings of this study to Congress

within 12 months after the enactment of this Act. The Administrator shall also make a recommendation to Congress whether statutory language or further regulations are necessary to correct any problems or deficiencies that may be uncovered.

SEC. 612. PUBLIC COMMENT.

Nothing in this Act or any amendments made by this Act shall limit the obligations of the President or the Administrator to fully consider and respond to public comments during any available comment period or otherwise abridge the requirements of subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedures Act).

SEC. 613. CERTIFICATION OF ENVIRONMENTAL TRAINING AND CERTIFICATION ORGANIZATIONS.

(a) REGULATIONS.—(1) Not later than 2 years after enactment of this Act, the Administrator of the Environmental Protection Agency shall publish guidelines, in accordance with subsection (b), for a model State program for organizations that train and certify individuals to perform Phase I Environmental Site Assessments.

(2) The guidelines published under paragraph (1) may include, but not be limited to, minimum standards relating to—

(A) formal environmental training;

1 (B) continuing environmental education;
2 (C) environmental certification and testing pro-
3 cedures;
4 (D) revocation and disciplinary procedures;
5 (E) establishment of a code of ethics;
6 (F) consumer education;
7 (G) certification renewal procedures; and
8 (H) annual reporting of program activities.
9 (b) ESTABLISHMENT OF THE ENVIRONMENTAL CER-
10 TIFICATION BOARD.—(1) Not later than 60 days after en-
11 actment of this Act, the Administrator of the Environ-
12 mental Protection Agency shall establish a certification
13 advisory board to be known as the ''Environmental Certifi-
14 cation Board'' (hereafter in this section referred to as the
15 ''Board'').
16 (2) The Board shall consist of a minimum of 6 mem-
17 bers, appointed by the Administrator, with a demonstrated
18 knowledge in the environmental field. The Board may in-
19 clude representatives from the Environmental Protection
20 Agency, environmental interest organizations, the chemi-
21 cal/manufacturing industry, the environmental consulting
22 service industry, the insurance industry, the banking/in-
23 vestment industry, professional societies, private sector ac-
24 creditation organizations, State government, and other ap-

1 propriate representatives with a knowledge in the environ-
2 mental field.

3 (3) All members of the Board shall serve on a vol-
4 untary basis, except those members from the Environ-
5 mental Protection Agency.

6 (4) The Board shall appoint 1 member to serve as
7 Chairman of the Board who shall exercise the executive
8 and administrative functions of the Board.

9 (5) Not later than 6 months after the date of enact-
10 ment of this Act, the Board shall issue recommendations
11 to the Administrator which shall include, but not be lim-
12 ited to, the minimum standards to be established under
13 subsection (a).

14 (c) STATE ADOPTION OF REGULATIONS.—(1) After
15 the publication of the guidelines under subsection (a), any
16 State may adopt regulations identical (except as provided
17 in paragraph (2) of this subsection) to the guidelines pro-
18 mulgated by the Administrator under subsection (a)(1).

19 (2) Nothing in this section shall be construed to pre-
20 empt any State from issuing and enforcing, at any time,
21 additional or more stringent guidelines and regulations re-
22 garding the training and certification of Phase I environ-
23 mental professionals.

24 (3) Nothing in this section shall be construed to re-
25 quire a profession or occupation licensed by a State au-

1 thority and whose scope of practice, as defined by State
2 law, includes Phase I Environmental Site Assessments to
3 obtain certification as a ''certified Phase I Environmental
4 Site Professional'' as a condition for performing Phase I
5 Environmental Site Assessments.

6 (4) Nothing in this section shall be construed to per-
7 mit a certified Phase I Environmental Professional to
8 practice within the scope of practice of a licensed profes-
9 sion or occupation, as defined by State law, unless that
10 individual also meets the requirements of the State licens-
11 ing statute.

12 (d) DETERMINATION OF COMPLIANCE.—(1) If a
13 State adopts the guidelines issued by the Administrator,
14 any organization that seeks to obtain a determination of
15 compliance with the regulations set forth in subsection (c)
16 may submit to any such State, in which the organization
17 is located, information documenting such compliance.

18 (2) Such State shall make the determination of such
19 organization's compliance or noncompliance with such reg-
20 ulations.

21 (3) Upon a determination of compliance under para-
22 graph (2), the State shall issue notice in writing to such
23 organization, indicating that such organization is an ''Ap-
24 proved Phase I Environmental Training and Certification
25 Organization'' in accordance with this Act. Such approval

1 shall be valid for a term to be set by the State, but no
2 longer than 5 years.

3 (4) A State may charge a reasonable fee, equal to
4 the cost of determining compliance under paragraph (2),
5 to each organization that applies for such determination.
6 Any such fees shall be listed as part of the regulations
7 promulgated under subsection (c).

8 (5) Any organization that has received notice of a de-
9 termination of compliance from a State under paragraph
10 (3), may issue a diploma, certification, or other form of
11 degree, to any individual who has completed to its satisfac-
12 tion such organization's curriculum and training program
13 signifying that the recipient is a ''Certified Phase I Envi-
14 ronmental Professional'' qualified to perform Phase I En-
15 vironmental Site Assessments.

16 (6) A State may periodically, or upon expiration of
17 a notification of a determination of compliance under
18 paragraph (3), review the program, curriculum, facilities,
19 and training methods of any such organization to deter-
20 mine such organizations continued compliance with the
21 regulations promulgated under subsection (c).

22 (e) DEFINITIONS.—For purposes of this section:

23 (1) PHASE I ENVIRONMENTAL SITE ASSESS-
24 MENT.—The term ''Phase I Environmental Site As-
25 sessment'' means the process by which a person or

1 entity seeks to determine whether a particular parcel
2 of real property is subject to recognized environ-
3 mental conditions. These conditions indicate the
4 presence or likely presence of a hazardous substance
5 or pollutant or contaminant on a property under
6 conditions that indicate the existence of a release or
7 threatened release at the facility into structures on
8 the property or into the ground, ground water or
9 surface water of the property.
10 (2) CERTIFIED PHASE I ENVIRONMENTAL PRO-
11 FESSIONAL.—The term ''Certified Phase I Environ-
12 mental Professional'' means any person receiving
13 certification to perform Phase I Environmental Site
14 Assessments from an approved environmental train-
15 ing and certification organization in accordance with
16 this section.
17 (3) APPROVED PHASE I ENVIRONMENTAL
18 TRAINING AND CERTIFICATION ORGANIZATION.—The
19 term ''Approved Phase I Environmental Training
20 and Certification Organization'' means Phase I En-
21 vironmental Training and Certification Organization
22 whose curriculum, program, facilities, training, and
23 testing methods comply with the regulations adopted
24 by a State under this section.

1 **SEC. 614. SAVINGS CLAUSE.**

2 Nothing in this Act or any amendment made by this
3 Act shall affect the application of the Atomic Energy Act
4 of 1954 to any facility licensed by the Nuclear Regulatory
5 Commission.

6 **SEC. 615. FEDERAL ENTITIES AND FACILITIES.**

7 Section 120 (42 U.S.C. 9620) is amended as follows:

8 (1) By amending the heading to read as follows:

9 **"SEC. 120. FEDERAL ENTITIES AND FACILITIES.".**

10 (2) By amending paragraph (1) of subsection
11 (a) to read as follows:

12 "(1)(A) Each department, agency, and instru-
13 mentality of the executive, legislative, and judicial
14 branches of the United States shall be subject to,
15 and comply with, all Federal, State, interstate and
16 local requirements, both substantive and procedural
17 (including any requirements for permits, reporting,
18 or any provisions for injunctive relief and such sanc-
19 tions as may be imposed by a court to enforce such
20 relief), regarding response actions related to, or
21 management of, hazardous substances, pollutants, or
22 contaminants in the same manner, and to the same
23 extent, as any nongovernmental entity is subject to
24 such requirements, including enforcement and liabil-
25 ity under sections 106 and 107 of this title and the
26 payment of reasonable service charges.

1 "(B) The Federal, State, interstate, and local
2 substantive and procedural requirements referred to
3 in subparagraph (A) include, but are not limited to,
4 all administrative orders and all civil and adminis-
5 trative penalties and fines, regardless of whether
6 such penalties and fines are punitive or coercive in
7 nature or are imposed for isolated, intermittent, or
8 continuing violations. The United States hereby ex-
9 pressly waives any immunity otherwise applicable to
10 the United States with respect to any such sub-
11 stantive or procedural requirement (including, but
12 not limited to, any injunctive relief, administrative
13 order or civil or administrative penalty or fine re-
14 ferred to in the preceding sentence, or reasonable
15 service charge).

16 "(C) The reasonable service charges referred to
17 in this paragraph include, but are not limited to,
18 fees or charges assessed in connection with the proc-
19 essing and issuance of permits, renewal of permits,
20 amendments to permits, review of plans, studies,
21 and other documents, and inspection and monitoring
22 of facilities, as well as any other nondiscriminatory
23 charges that are assessed in connection with a State,
24 interstate, or local response program.

1 ''(D) Neither the United States, nor any agent,
2 employee, or officer thereof, shall be immune or ex-
3 empt from any process or sanction of any State or
4 Federal court with respect to the enforcement of any
5 injunctive relief.

6 ''(E) No agent, employee, or officer of the Unit-
7 ed States shall be personally liable for any civil pen-
8 alty under any Federal or State response law with
9 respect to any act or omission within the scope of
10 their official duties. An agent, employee, or officer of
11 the United States shall be subject to any criminal
12 sanction (including, but not limited to, any fine or
13 imprisonment) under any Federal or State response
14 law, but no department, agency, or instrumentality
15 of the executive, legislative, or judicial branch of the
16 United States shall be subject to any such sanctions.

17 ''(F) The waiver of sovereign immunity pro-
18 vided in this paragraph shall not apply to the extent
19 a State law would apply any standard or require-
20 ment to such Federal department, agency, or instru-
21 mentality in a manner which is more stringent than
22 such standard or requirement would be applied to
23 any other person.

24 ''(G) Nothing in this section shall be construed
25 to affect the liability of any person or entity other

1 than a department, agency, or instrumentality of the
2 United States under sections 106 and 107 of this
3 Act.
4 ''(H)(i) The Administrator may issue an order
5 under section 106 of this Act to any department,
6 agency, or instrumentality of the executive, legisla-
7 tive, or judicial branch of the United States. The
8 Administrator shall initiate an administrative en-
9 forcement action against such a department, agency,
10 or instrumentality in the same manner and under
11 the same circumstances as action would be initiated
12 against any other person.
13 ''(ii) No administrative order issued to such de-
14 partment, agency, or instrumentality shall become
15 final until such department, agency, or instrumental-
16 ity has had the opportunity to confer with the Ad-
17 ministrator.
18 ''(iii) Unless a State law in effect on the effec-
19 tive date of the Superfund Reform Act of 1994, or
20 a State Constitution, requires the funds to be used
21 in a different manner, all funds collected by a State
22 from the Federal Government from penalties and
23 fines imposed for violation of any substantive or pro-
24 cedural requirement referred to in subsection (a) of
25 this section shall be used by the State only for

1 projects designed to improve or protect the environ-
2 ment or to defray the costs of environmental protec-
3 tion or enforcement.

4 ''(I) Each such department, agency, and instru-
5 mentality shall have the right to contribution protec-
6 tion set forth in section 113, when such department,
7 agency, or instrumentality resolves its liability under
8 this Act.''.

9 (3) By striking paragraph (4) of subsection (a).

10 (4) By inserting ''(other than the indemnifica-
11 tion requirements of section 119)'' after ''respon-
12 sibility'' in subsection (a)(3).

13 **SEC. 616. WORKER TRAINING AND EDUCATION GRANTS.**

14 Section 111(c)(12) (42 U.S.C. 9611(c)(12)) is
15 amended—

16 (1) by striking ''$10,000,000'' and inserting
17 ''$20,000,000''; and

18 (2) by inserting before the period at the end
19 ''and $30,000,000 for each of fiscal years 1995,
20 1996, 1997, 1998, and 1999''.

21 **SEC. 617. REPORT AND OVERSIGHT REQUIREMENTS.**

22 (a) SUBMISSION TO STATE GOVERNORS.—Section
23 301(h)(1) (42 U.S.C. 9651(h)(1)) is amended in the mat-
24 ter preceding subparagraph (A) by striking ''to Congress

1 of such Agency'' and inserting ''of such Agency to Con-
2 gress and the Governor of each State''.

3 (b) PROGRESS REPORT.—Section 301(h)(1)(A) is
4 amended to read as follows:

5 ''(A) A progress report of accomplishments
6 and expenditures on a State-by-State basis, in-
7 cluding—

8 ''(i) a statement of the number of
9 completed record of decisions, removal ac-
10 tions, remedial actions, and enforcement
11 actions; and

12 ''(ii) a statement of—

13 ''(I) the aggregate amount ex-
14 pended in each State;

15 ''(II) the amount expended in
16 each State for site investigation and
17 cleanup activities;

18 ''(III) the amount expended in
19 each State for non site-specific costs;
20 and

21 ''(IV) the amount expended for
22 enforcement actions and cost recovery
23 activities.''.

24 (c) OTHER REPORT CONTENTS.—Section 301(h)(1)
25 is amended—

1 (1) in subparagraph (B) by striking the period
2 at the end and inserting ''and removal or remedial
3 action.''; and
4 (2) in subparagraph (C) by inserting '', removal
5 action, and remedial action'' after ''study''.
6 (d) RESPONSE TO STATE COMMENTS BY EPA.—Sec-
7 tion 301(h) is amended by adding at the end the following:
8 ''(4) RESPONSE TO STATE COMMENTS BY
9 EPA.—The Administrator of the Environmental Pro-
10 tection Agency shall respond in writing to any com-
11 ments submitted to the Administrator by a State re-
12 garding reports developed under this subsection.''.
13 **SEC. 618. REMEDIAL TECHNOLOGIES.**
14 Section 311 (42 U.S.C. 9660) is amended by adding
15 at the end the following:
16 ''(h) REMEDIAL TECHNOLOGIES.—
17 ''(1) REPORT.—Not later than 18 months after
18 the date of the enactment of this subsection, the Ad-
19 ministrator shall publish a report which—
20 ''(A) identifies existing remedial technology
21 demonstration and development programs con-
22 ducted by the Administrator, the States, and
23 Federal agencies;

1 ''(B) identifies and prioritizes remedial
2 technology needs at National Priorities List fa-
3 cilities; and
4 ''(C) to the extent information is available
5 to the Administrator, identifies and prioritizes
6 remedial technology needs identified through
7 the performance of removal actions at facilities
8 not on the National Priorities List.
9 ''(2) STATE INVOLVEMENT.—In preparing the
10 report pursuant to paragraph (1), the Administrator
11 shall solicit State involvement.''.

12 **SEC. 619. REIMBURSEMENT TO STATE AND LOCAL GOVERN-**
13 **MENTS.**

14 (a) AMENDMENT OF SECTION 123.—Section 123 (42
15 U.S.C. 9623) is amended to read as follows:

16 **''SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOV-**
17 **ERNMENTS.**

18 ''(a) APPLICATION.—Any State or general purpose
19 unit of local government for a political subdivision of a
20 State that is affected by a release or threatened release
21 at any facility may apply to the President for reimburse-
22 ment under this section.
23 ''(b) REIMBURSEMENT.—
24 ''(1) EMERGENCY RESPONSE ACTIONS.—The
25 President is authorized to reimburse States and local

1 community authorities for expenses incurred (before
2 or after the enactment of the Superfund Reform Act
3 of 1994) in carrying out emergency response actions
4 necessary to prevent or mitigate injury to human
5 health or the environment associated with the re-
6 lease or threatened release of any hazardous sub-
7 stance or pollutant or contaminant. Such actions
8 may include, where appropriate, security fencing to
9 limit access, cleanup of illicit drug laboratories, re-
10 sponse to fires and explosions, and other measures
11 that require immediate response at the State or local
12 level.

13 ''(2) STATE OR LOCAL FUNDS NOT SUP-
14 PLANTED.—Reimbursement under this section shall
15 not supplant State or local funds normally provided
16 for response.

17 ''(c) AMOUNT.—(1) The amount of any reimburse-
18 ment to a local authority under subsection (b)(1) may not
19 exceed $25,000 for a single response. The reimbursement
20 under this section with respect to a single facility shall
21 be limited to the units of local government having jurisdic-
22 tion over the political subdivision in which the facility is
23 located.

24 ''(2) The amount of any reimbursement to a State
25 under subsection (b)(1) may not exceed $50,000 for a sin-

1 gle response. The reimbursement under this section with
2 respect to a single facility shall be limited to the State
3 in which the facility is located.

4 ''(3) The total amount made available to State and
5 local governments under subsection (b)(1) may not exceed
6 $50,000 for a single response.

7 ''(d) PROCEDURE.—Reimbursements authorized pur-
8 suant to this section shall be in accordance with rules pro-
9 mulgated by the Administrator.''.

10 (b) AMENDMENT OF SECTION 111.—Paragraph (11)
11 of section 111(c) of such Act is amended—

12 (1) by striking out ''LOCAL GOVERNMENT RE-
13 IMBURSEMENT.—'' and inserting in lieu thereof
14 ''STATE AND LOCAL GOVERNMENT REIMBURSE-
15 MENT.—(A)''; and

16 (2) by adding at the end the following new sub-
17 paragraph:

18 ''(B) Reimbursements to States under section
19 123, except that no State may receive more than
20 $2,000,000 in any one fiscal year.''.

21 (c) DEADLINE FOR REGULATIONS.—The Adminis-
22 trator of Environmental Protection Agency shall promul-
23 gate any regulations necessary to implement section 123
24 of the Comprehensive Environmental Response, Com-
25 pensation, and Liability Act of 1980 (42 U.S.C. 9623),

as amended by subsection (a), not later than 24 months after the date of the enactment of this Act.

SEC. 620. STUDY OF SMALL DISADVANTAGED BUSINESS GOALS.

The Administrator of the Environmental Protection Agency shall study the advisability and feasibility of instituting a small disadvantaged business goal program for all contracts entered into by the Federal Government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and shall report the Administrator's recommendations to Congress within 1 year after the date of the enactment of this Act. In carrying out the study, the Administrator shall give due consideration to the small disadvantaged business goals established under section 2323 of title 10, United States Code, for the Department of Defense and to the implementation of such goals by a State in any case in which a State is authorized to carry out such Act.

SEC. 621. CONFORMING AMENDMENT.

Section 104(g)(1) (42 U.S.C. 9604(g)(1)) is amended by striking ''section'' and inserting in lieu thereof ''Act''.

TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 111(a) is amended by striking ''$8,500,000,000 for the 5-year period beginning on the

1 date of enactment of the Superfund Amendments and Re-
2 authorization Act of 1986, and not more than
3 $5,100,000,000 for the period commencing October 1,
4 1991, and ending September 30, 1994'' and inserting
5 ''$9,600,000,000 for the period commencing October 1,
6 1994, and ending September 30, 1999''.

7 **SEC. 702. ORPHAN SHARE FUNDING.**

8 Section 111(a) is amended by adding after paragraph
9 (7) (as added by this Act) the following new paragraph:
10 ''(8) ORPHAN SHARE FUNDING.—Payment of
11 orphan shares pursuant to section 130(e) of this
12 Act.''.

13 **SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE**
14 **REGISTRY.**

15 Section 111(m) (relating to ATSDR) is amended to
16 read as follows:
17 ''(m) AGENCY FOR TOXIC SUBSTANCES AND DIS-
18 EASE REGISTRY.—There shall be directly available to the
19 Agency for Toxic Substances and Disease Registry to be
20 used for the purpose of carrying out activities described
21 in subsection (c)(4) of this section and section 104(i) of
22 this Act not less than $100,000,000 per fiscal year for
23 each of fiscal years 1995, 1996, 1997, 1998, and 1999
24 of which $20,000,000 per fiscal year shall be available for
25 the purposes of section 104(i)(15)(C). Any funds so made

available which are not obligated by the end of the fiscal year in which made available shall be turned back to the Fund.''.

SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111(n) is amended to read as follows:

''(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

''(1) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) of this title (relating to hazardous substance research, demonstration, and training activities):

''(A) For fiscal year 1995 $40,000,000.

''(B) For fiscal year 1996 $50,000,000.

''(C) For fiscal year 1997 $55,000,000.

''(D) For fiscal year 1998 $55,000,000.

''(E) For fiscal year 1999 $55,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) of this title for any fiscal year.

''(2) SECTION 311(d).—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section

311(d) of this title (relating to university hazardous substance research centers).''.

SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p)(1) is amended to read as follows:

''(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

''(A) For fiscal year 1995, $250,000,000.

''(B) For fiscal year 1996, $250,000,000.

''(C) For fiscal year 1997, $250,000,000.

''(D) For fiscal year 1998, $250,000,000.

''(E) For fiscal year 1999, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 131(b) of this title) as has not been appropriated before the beginning of the fiscal year involved.''.

SEC. 706. ADDITIONAL LIMITATIONS.

Section 111 is amended by adding after subsection (p) the following new subsections:

1 "(q) CITIZEN INFORMATION AND ACCESS OF-
2 FICES.—For each of the fiscal years 1995, 1996, 1997,
3 1998, and 1999, not more than $50,000,000 of the
4 amounts available in the Fund may be used for the pur-
5 poses of section 117(h) of this Act (relating to citizen in-
6 formation and access offices).

7 "(r) VOLUNTARY RESPONSE PROGRAMS.—For each
8 of the fiscal years 1995 through 1999, not more than
9 $20,000,000 of the amounts available in the Fund may
10 be used for the purposes of section 128 of this Act (relat-
11 ing to State voluntary cleanup programs).".

12 **SEC. 707. USES OF THE FUND.**

13 Section 111(a) is amended by adding after paragraph
14 (8) the following new paragraph:

15 "(9) REIMBURSEMENT OF POTENTIALLY RE-
16 SPONSIBLE PARTY COSTS.—If a potentially respon-
17 sible party and the Administrator enter into a settle-
18 ment under this Act in which the Administrator is
19 reimbursed for its response costs, and if the Admin-
20 istrator determines, through a Federal audit of re-
21 sponse the costs, that costs for which the Adminis-
22 trator was reimbursed:

23 "(A) are unallowable due to contractor
24 fraud, or

''(B) are unallowable under the Federal Acquisition Regulations, or

''(C) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures,

then the Administrator is authorized to use the fund to reimburse a potentially responsible party for any costs identified under subparagraph (A), (B), or (C) of this paragraph.''.

TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND

SEC. 801. SHORT TITLE.

This title may be cited as the ''Environmental Insurance Resolution and Equity Act of 1994''.

SEC. 802. DEFINITIONS.

For purposes of this title:

(1) APPLICABLE COSTS.—The term ''applicable costs'' means applicable National Priorities List (NPL) facility costs or applicable non-NPL facility costs. Costs of removal shall be treated as applicable costs only if the removal is conducted in accordance with section 104, 106 or 122 of CERCLA or under the regulations of the Administrator governing removal actions (40 CFR 300.415 or any successor regulations).

1 (2) APPLICABLE NPL FACILITY COSTS.—The
2 term ‘‘applicable NPL facility costs’’ means the
3 costs for an eligible NPL facility—
4 (A) of response (as defined in section
5 101(25) of CERCLA);
6 (B) for natural resources damages under
7 section 107 of CERCLA; or
8 (C) to defend potential liability for the
9 costs described in subparagraph (A) or (B) or
10 both, including, but not limited to, attorney's
11 fees, costs of suit, consultant and expert fees
12 and costs, and expenses for testing and mon-
13 itoring.
14 (3) APPLICABLE NON-NPL FACILITY COSTS.—
15 The term ‘‘applicable non-NPL facility costs’’ means
16 the costs for a non-NPL facility—
17 (A) of removal (as defined in section
18 101(23) of CERCLA); and
19 (B) to defend potential liability for such
20 costs of removal, including, but not limited to,
21 attorney's fees, costs of suit, consultant and ex-
22 pert fees and costs, and expenses for testing
23 and monitoring.
24 (4) BOARD.—The term ‘‘Board’’ means the
25 Board of Trustees of the Fund.

1 (5) CERCLA.—The term ''CERCLA'' means
2 the Comprehensive Environmental Response, Com-
3 pensation and Liability Act of 1980 (42 U.S.C.
4 9601 et seq.).
5 (6) ELIGIBLE COSTS.—The term ''eligible
6 costs'' means the applicable costs incurred with re-
7 spect to a hazardous substance disposed of at an eli-
8 gible facility for which an eligible person either (A)
9 has not been reimbursed or (B) has been reimbursed
10 and that are the subject of a dispute between the eli-
11 gible person and an insurer. The term eligible costs
12 shall not include any costs paid by the United
13 States.
14 (7) ELIGIBLE FACILITY.—The term ''eligible fa-
15 cility'' means an eligible NPL facility or an eligible
16 non-NPL facility.
17 (8) ELIGIBLE NPL FACILITY.—The term ''eligi-
18 ble NPL facility'' means any facility placed on the
19 National Priority List at any time, at which a haz-
20 ardous substance was disposed of on or before De-
21 cember 31, 1985.
22 (9) ELIGIBLE NON-NPL FACILITY.—The term
23 ''eligible non-NPL facility'' means any site or facility
24 where a removal (as defined in section 101(23) of
25 CERCLA) was conducted pursuant to governmental

1 direction or oversight under CERCLA and the Na-
2 tional Contingency Plan at any time, at which a haz-
3 ardous substance was disposed of on or before De-
4 cember 31, 1985.

5 (10) ELIGIBLE PERSON.—The term ''eligible
6 person'' means any person that demonstrates, to the
7 satisfaction of the Resolution Fund, that such per-
8 son either—

9 (A) has received a notice at any time that
10 it may be a potentially responsible party pursu-
11 ant to CERCLA with respect to an eligible
12 NPL facility, which notice requests or demands
13 that such party perform response actions or pay
14 response costs or natural resource damages for
15 such facility; or

16 (B) is or was liable, or alleged to be liable,
17 at any time for a removal (as defined in section
18 101(23) of CERCLA) at any eligible facility,

19 and had entered into a valid insurance contract for
20 qualified insurance.

21 (11) FACILITY.—The term ''facility'' has the
22 same meaning as provided in section 101(9) of
23 CERCLA.

24 (12) FUND.—The term ''Fund'' means the En-
25 vironmental Insurance Resolution Fund.

1 (13) NPL.—The term ''NPL'' means the Na-
2 tional Priorities List.
3 (14) PERSON.—The term person means an in-
4 dividual, firm, corporation, association, partnership,
5 consortium, joint venture, commercial entity or gov-
6 ernmental unit (including any predecessor in interest
7 or any subsidiary thereof).
8 (15) QUALIFIED INSURANCE.—The term
9 ''qualified insurance'' means insurance for com-
10 prehensive general liability or commercial multi-peril
11 insurance coverage for any period prior to January
12 1, 1986. For purposes of this paragraph, com-
13 prehensive general liability insurance includes broad
14 form liability, general liability, commercial general li-
15 ability, and excess or umbrella coverage; and com-
16 mercial multi-peril insurance includes broad form
17 property, commercial package, special multi-peril,
18 and excess or umbrella coverage. Such term shall
19 not include any other insurance, such as environ-
20 mental impairment liability insurance, whether
21 found in primary, excess, or umbrella coverage.
22 (16) VALID INSURANCE CONTRACT.—The term
23 ''valid insurance contract'' means a contract for
24 qualified insurance other than any of the following:

1 (A) An insurance contract with respect to
2 which a person has entered into a settlement
3 with an insurer providing, or where a final
4 judgment has provided, that the contract has
5 been satisfied and that such person has no
6 right to make any further claims under such
7 contract.

8 (B) An insurance contract which covers
9 only a time period prior to the earliest date of
10 the action or status of the insured person which
11 resulted in liability or potential liability under
12 section 107 of CERCLA.

13 (C) An insurance contract with an insur-
14 ance company which is insolvent or in insol-
15 vency proceedings.

16 (D) An insurance contract which is the
17 subject of a settlement between the insurance
18 company and the insured pursuant to which the
19 policy has been reformed to include an absolute
20 exclusion for pollution liability (''absolute pollu-
21 tion exclusion'').

22 (17) STATE.—The term ''State'' has the same
23 meaning as provided in section 101(27) of
24 CERCLA.

1 **SEC. 803. ENVIRONMENTAL INSURANCE RESOLUTION**
2 **FUND.**
3 (a) ENVIRONMENTAL INSURANCE RESOLUTION
4 FUND ESTABLISHED.—There is hereby established the
5 Environmental Insurance Resolution Fund.
6 (b) OFFICES.—The principal office of the Fund shall
7 be in the District of Columbia or at such other place as
8 the Fund may from time to time prescribe.
9 (c) STATUS OF RESOLUTION FUND.—Except as ex-
10 pressly provided in this title, the Fund shall not be consid-
11 ered an agency or establishment of the United States. The
12 members of the Board of Trustees shall not, by reason
13 of such membership, be deemed to be officers or employees
14 of the United States.
15 (d) BOARD OF TRUSTEES.—
16 (1) IN GENERAL.—The Fund shall be adminis-
17 tered by a Board of Trustees.
18 (2) MEMBERSHIP.—The Board shall consist of
19 the following:
20 (A) GOVERNMENTAL MEMBERS.—
21 (i) The Administrator of the Environ-
22 mental Protection Agency or the Adminis-
23 trator's designee.
24 (ii) The Attorney General of the Unit-
25 ed States or the Attorney General's des-
26 ignee.

1 (B) PUBLIC MEMBERS.—Five public mem-
2 bers appointed by the President not later than
3 60 days after the date of enactment of this
4 title, not less than two of whom shall represent
5 insurers subject to section ____ of the Internal
6 Revenue Code of 1986, and not less than two
7 of whom shall represent eligible persons as de-
8 fined in section 802(10). The public members
9 shall be citizens of the United States.
10 (C) EX-OFFICIO MEMBER.—The Secretary
11 of the Treasury shall serve as an ex officio
12 member of the Board.
13 (3) CHAIR.—The Chair of the Board shall be
14 designated by the President from time to time from
15 among the members described in paragraph (2)(A).
16 No expenditure may be made, or other action taken,
17 by the Fund without the concurrence of the Chair
18 of the Board.
19 (4) COMPENSATION.—Governmental members
20 of the Board shall serve without additional com-
21 pensation. Public members of the Board shall, while
22 attending meetings of the Board or while engaged in
23 duties related to such meetings or other activities of
24 the Board pursuant to this title, be entitled to re-
25 ceive compensation at the rate of $200 per day, in-

1 cluding travel time. While away from their homes or
2 regular places of business, members of the Board
3 shall be allowed travel and actual, reasonable and
4 necessary expenses to the same extent as officers of
5 the United States.

6 (5) TERM OF PUBLIC MEMBERS.—Public mem-
7 bers of the Board shall serve for a term of 5 years,
8 except that such members may be removed by the
9 President for any reason at any time. A public mem-
10 ber whose term has expired may continue to serve
11 on the Board until such time as the President ap-
12 points a successor. The President may reappoint a
13 public member of the Board, but no such member
14 may consecutively serve more than two terms.

15 (6) VACANCIES.—A vacancy on the Board shall
16 be filled in the same manner as the original appoint-
17 ment, except that such appointment shall be for the
18 balance of the unexpired term of the vacant position.

19 (7) QUORUM.—Four members of the Board
20 shall constitute a quorum for the conduct of busi-
21 ness.

22 (8) MEETINGS.—The Board shall meet not less
23 than quarterly at the call of the Chair. Meetings of
24 the Board shall be open to the public unless the
25 Board, by a majority vote of members present in

1 open session, determines that it is necessary or ap-
2 propriate to close a meeting. The Chair shall provide
3 at least 10 days notice of a meeting by publishing
4 a notice in the Federal Register and such notice
5 shall indicate whether it is expected that the Board
6 will consider closing all or a portion of the meeting.
7 Nothing in this paragraph shall be construed to
8 apply to informal discussions or meetings among
9 Board members.

10 (e) OFFICERS AND EMPLOYEES.—

11 (1) CHIEF EXECUTIVE OFFICER; CHIEF FINAN-
12 CIAL OFFICER.—(A) The Fund shall have a Chief
13 Executive Officer appointed by the Board who shall
14 exercise any authority of the Fund under such terms
15 and conditions as the Board may prescribe.

16 (B) The Fund shall have a Chief Financial Of-
17 ficer appointed by the Board.

18 (2) COMPENSATION.—No officer or employee of
19 the Fund may be compensated by the Fund at an
20 annual rate of pay which exceeds the rate of basic
21 pay in effect from time to time for level I of the Ex-
22 ecutive Schedule under section 5312 of title 5, Unit-
23 ed States Code. No officer or employee of the Fund,
24 other than a member of the Board, may receive any
25 salary or other compensation from any source other

1 than the Fund for services rendered during the pe-
2 riod of employment by the Fund.
3 (3) POLITICAL TEST OR QUALIFICATION.—No
4 political test or qualification shall be used in select-
5 ing, appointing, promoting, or taking other person-
6 nel actions with respect to officers, agents, and em-
7 ployees of the Fund.
8 (4) ASSISTANCE BY FEDERAL AGENCIES.—The
9 Attorney General, the Secretary of the Treasury,
10 and the Administrator of the Environmental Protec-
11 tion Agency, may to the extent practicable and fea-
12 sible, and in their sole discretion, make personnel
13 and other resources available to the Fund. Such per-
14 sonnel and resources may be provided on a reim-
15 bursable basis, and any personnel so provided shall
16 not be considered employees of the Fund for pur-
17 poses of paragraph (2).
18 (f) POWERS OF RESOLUTION FUND.—Notwithstand-
19 ing any other provision of law, except as provided in this
20 title or as may be hereafter enacted by the Congress ex-
21 pressly in limitation of the provisions of this subsection,
22 the Fund shall have the power—
23 (1) to have succession until dissolved by Act of
24 Congress;

1 (2) to make and enforce such bylaws, rules and
2 regulations as may be necessary or appropriate to
3 carry out the purposes of this title;
4 (3) to make and perform contracts, agreements,
5 and commitments;
6 (4) to settle, adjust, and compromise, and with
7 or without consideration or benefit to the Fund re-
8 lease or waive in whole or in part, in advance or
9 otherwise, any claim, demand, or right of, by, or
10 against the Fund;
11 (5) to sue and be sued, complain and defend, in
12 any State, Federal or other court;
13 (6) to determine its necessary expenditures and
14 appoint, employ, and fix and provide for the duties,
15 compensation and benefits of officers, employees, at-
16 torneys, and agents, all of whom shall serve at the
17 pleasure of the Board; except that all amounts with-
18 drawn from the Treasury of the United States by or
19 on behalf of the Resolution Fund shall be certified
20 by a federally authorized certifying officer who is an
21 employee of the Federal agency represented by the
22 chair of the Resolution Fund;
23 (7) to hire or accept the voluntary services of
24 consultants, experts, advisory boards, and panels to

1 aid the Fund in carrying out the purposes of this
2 title; and
3 (8) to take such other actions as may be nec-
4 essary to carry out the responsibilities of the Fund
5 under this title.
6 (g) BORROWING AUTHORITY.—Nothing in this title
7 shall be construed to permit the Fund to issue any evi-
8 dence of indebtedness or otherwise borrow money.

9 **SEC. 804. RESOLUTION OFFERS.**

10 (a) IN GENERAL.—The Fund shall offer one com-
11 prehensive resolution to each eligible person. The offer
12 shall be for a percentage of all the eligible costs of such
13 eligible person incurred in connection with all eligible fa-
14 cilities. The amount of the offer shall be determined pur-
15 suant to section 806.
16 (b) REQUESTS FOR RESOLUTION OFFERS.—
17 (1) IN GENERAL.—An eligible person may, at
18 any time after the promulgation of the interim final
19 regulations under section 812(a), file a request for
20 a resolution offer from the Fund.
21 (2) RESPONSE TO REQUEST.—Not later than
22 180 days after the receipt of a complete request as
23 determined by the Fund, the Fund shall in writ-
24 ing—

(A) make a resolution offer to each eligible person that has filed a request for a resolution offer; or

(B) notify a person filing such a request that such person is not an eligible person.

(c) JOINT VENTURES AND SUBSIDIARIES.—A joint venture shall not be aggregated with any individual joint venturer for purposes of this section but shall be treated as a distinct entity for such purposes. All claims by subsidiaries shall be included in a single claim by the corporate parent for purposes of this Act.

SEC. 805. DOCUMENTATION OF CLAIMS AND INSURANCE COVERAGE.

(a) SCREENING OF CLAIMS.—

(1) DENIAL BY REASON OF FELONY.—The Fund may deny a resolution offer to an otherwise eligible person for a specific facility if the eligible person has been convicted of a felony under any Federal or State statute which has a material effect on the response costs or natural resource damage incurred at the facility.

(2) FILING AND ACTIVE PURSUIT OF CLAIMS.—The Fund may decide not to make an offer to an eligible person unless the eligible person has filed a claim and is actively pursuing the claim. The Fund

1 may also decide that an offer should be made to any
2 such person.

3 (b) FILING OF CLAIMS.—For the purposes of sub-
4 section (a), an eligible person shall be deemed to have filed
5 a claim if the eligible person has notified one or more of
6 its insurers of the existence of a claim, or has engaged
7 in active investigation and preparation of a claim, or has
8 filed a lawsuit seeking coverage for eligible costs. Failure
9 to have filed a claim or to have engaged in settlement dis-
10 cussions before January 1, 1994, shall not be deemed to
11 preclude an eligible person from receiving an offer from
12 the Fund if the eligible person had not received any notice
13 letter from a governmental authority or one or more po-
14 tentially responsible parties asserting its potential liability
15 under CERCLA at any eligible facility until after January
16 1, 1993.

17 (c) ACTIVE PURSUIT OF CLAIMS.—For purposes of
18 this section, an eligible person shall be considered to be
19 actively pursuing a claim if—

20 (1) the person has filed a lawsuit against an in-
21 surer, or has filed a motion or another pleading in
22 a lawsuit against an insurer, or has engaged in any
23 discovery in a lawsuit against an insurer between
24 January 1, 1993, and December 31, 1993 regarding
25 eligible costs at an eligible facility;

1 (2) the person has engaged in settlement dis-
2 cussions with an insurer between January 1, 1993,
3 and December 31, 1993 regarding eligible costs at
4 an eligible facility;
5 (3) the person has engaged in active investiga-
6 tion and preparation of a claim before January 1,
7 1994;
8 (4) if the person has received a letter from an
9 insurer rejecting coverage or reserving its rights to
10 reject coverage regarding eligible costs at an eligible
11 facility, the person has sent within 1 year thereafter
12 an additional status report or letter apprising an in-
13 surer of activities regarding an eligible facility; or
14 (5) the eligible person has sent a letter to an
15 insurer notifying an insurer of the potential exist-
16 ence of a claim regarding eligible costs at an eligible
17 facility and has received no response from the in-
18 surer.
19 (d) DOCUMENTATION OF COVERAGE.—
20 (1) EFFECT OF DOCUMENTATION.—Coverage of
21 an eligible person for policy years prior to 1986 and
22 the applicable deductibles and limits on coverage
23 shall be confirmed to the satisfaction of the Fund by
24 the terms of the policies or other documentary proof

1 of insurance provided by, or for, the eligible person
2 in accordance with this subsection.
3 (2) SUBMISSION OF DOCUMENTARY EVI-
4 DENCE.—After promulgation of regulations govern-
5 ing documentation requirements, an eligible person
6 requesting an offer shall submit: copies of its insur-
7 ance policies, or other documentary evidence suffi-
8 cient to establish the following six terms of coverage:
9 insurance company, policy number, type of policy,
10 duration of policy, deductible or self-insured reten-
11 tion, and limit of coverage. Documentary evidence
12 may consist of any documents from an insurance
13 company or broker or documents of the eligible per-
14 son or other party which are generally contempora-
15 neous with the term of the policy or with subsequent
16 retrospective rating under the policy. Where docu-
17 mentary evidence (other than a policy) is relied upon
18 as the proof of coverage, an eligible person must cer-
19 tify that it has undertaken a good faith investigation
20 of its records, that its submission is complete and
21 accurate to the best of its information and belief,
22 and that it does not have a copy of the insurance
23 policy. If an eligible person submits documentary
24 evidence which does not establish all six terms of
25 coverage but which does establish the name of the

1 insurance company and one or more other terms evi-
2 dencing coverage, the named insurance company
3 shall undertake an investigation for any policy or
4 other relevant documents evidencing the eligible per-
5 son's coverage. At the conclusion of the investiga-
6 tion, the named insurance company shall—

7 (A) produce to the Fund any policies or
8 other documents relevant to the eligible per-
9 son's claim of coverage; or

10 (B) certify that it has undertaken a good
11 faith investigation of its records and that it has
12 produced any and all policies or documents
13 available to the insurer and relevant to the eli-
14 gible person's claim of coverage.

15 Subsequent to the named insurance company's pro-
16 duction or certification, the Fund shall decide
17 whether a person has provided adequate proof of in-
18 surance based on the evidence presented. Submission
19 of the six terms of coverage referred to in this para-
20 graph shall be treated as adequate proof of insur-
21 ance.

22 (e) PRIOR SETTLEMENTS.—

23 (1) DISCLOSURE.—Each eligible person shall be
24 required to disclose and certify the amounts and
25 terms of any settlement reached with an insurer for

1 eligible costs at eligible facilities. In the event that
2 the terms of such a settlement are subject to a pro-
3 tective order or are otherwise confidential, the eligi-
4 ble person may provide evidence of the confidential
5 nature of the settlement information to the Fund.
6 Upon receipt of such evidence, the Fund shall be ob-
7 ligated to preserve the confidentiality of all such set-
8 tlement information.

9 (2) EFFECT OF TITLE ON PRIOR SETTLE-
10 MENTS.—This title shall have no effect on prior set-
11 tlements between eligible persons and an insurer.

12 **SEC. 806. AMOUNT OF RESOLUTION OFFERS.**

13 (a) RESOLUTION OFFERS.—The Fund shall make
14 resolution offers to each eligible person equal to the appli-
15 cable percentage (determined under this section) of the
16 lesser of the following:

17 (1) The eligible costs actually incurred by an el-
18 igible person.

19 (2) The available coverage, as determined under
20 this section.

21 (b) APPLICABLE PERCENTAGE.—

22 (1) IN GENERAL.—For each eligible person that
23 has not established a litigation venue pursuant to
24 subsection (d), the applicable percentage shall be
25 equal to the facility location percentage for that per-

son. For each eligible person that has established one or more litigation venues pursuant to subsection (d), the applicable percentage shall be comprised of one-half of the facility location percentage for that person plus one-half of the venue percentage for that person.

(2) FACILITY LOCATION PERCENTAGE.—

(A) ONE OR MORE ELIGIBLE NPL FACILITIES.—For each eligible person, the Fund shall establish a facility location percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible NPL facility for which such person has been identified as a potentially responsible party. In determining such weighted average, each such eligible facility shall be accorded equal value, except as provided in paragraph (4).

(B) NO ELIGIBLE NPL FACILITIES.—For each person not identified as a potentially responsible party at one or more eligible NPL facilities but who is, or is alleged to be, liable at any time for removal (as defined in section 101(23) of CERCLA) at one or more eligible non-NPL facilities, the Fund shall establish a facility location percentage equal to the weight-

1 ed average of the State percentages for each
2 such eligible non-NPL facility. In determining
3 such weighted average, each such facility shall
4 be accorded equal value.
5 (3) LITIGATION VENUE PERCENTAGE.—
6 (A) ONE OR MORE ELIGIBLE NPL FACILI-
7 TIES.—For each eligible person that has estab-
8 lished one or more litigation venues pursuant to
9 subsection (d) with respect to one or more eligi-
10 ble NPL facilities, the Fund shall establish a
11 litigation venue percentage. The percentage
12 shall be equal to the weighted average of the
13 State percentages for each eligible NPL facility
14 in each State in which such eligible person has
15 established a litigation venue. In determining
16 such weighted average, each eligible NPL facil-
17 ity with respect to which such person has estab-
18 lished a litigation venue shall be accorded equal
19 value.
20 (B) NO ELIGIBLE NPL FACILITIES.—For
21 each eligible person that does not have one or
22 more eligible NPL facilities and has established
23 litigation venue with respect to one or more eli-
24 gible non-NPL facilities pursuant to subsection
25 (d), the Fund shall establish a litigation venue

1 percentage equal to the weighted average of the
2 State percentages for each eligible non-NPL fa-
3 cility in each State in which such eligible person
4 has established a litigation venue. In determin-
5 ing such weighted average, each eligible non-
6 NPL facility with respect to which litigation
7 venue has been established shall be accorded
8 equal value.

9 (4) EXTRA WEIGHTING OF LARGE SITES.—In
10 determining the facility location percentage under
11 paragraph (2)(A), the Fund shall count a facility
12 twice for weighting purposes if—

13 (A) the facility is located in the same State
14 as the State in which litigation venue has been
15 established;

16 (B) the facility is included in the eligible
17 person's coverage litigation in that venue; and

18 (C) total response costs incurred plus esti-
19 mated response costs exceed $50,000,0000, as
20 established by governmental cost summaries or
21 demands, records or decision, or evidence satis-
22 factory to the Fund of costs actually incurred.

23 (c) STATE PERCENTAGE.—

24 (1) CONGRESSIONAL FINDINGS.—The Congress
25 finds that as of January 1, 1994, State law gen-

1 erally is more favorable to eligible persons that pur-
2 sue claims concerning eligible costs against insurers
3 in some States, that State law generally is more fa-
4 vorable to insurers with respect to such claims in
5 some States, and that in some States the law gen-
6 erally favors neither insurers nor eligible persons
7 with respect to such claims or that there is insuffi-
8 cient information to determine whether such law
9 generally favors insurers or eligible persons with re-
10 spect to such claims. The Congress further finds
11 that considerations of equity and fairness require
12 that resolution offers made by the Fund must vary
13 to reflect the relative state of the law among the sev-
14 eral States.

15 (2) STATE PERCENTAGE CATEGORIES.—The
16 States are hereby classified into the following per-
17 centage categories:

18 (A) 20 PERCENT.—The State percentage
19 shall be 20 percent for: Florida, Maine, Mary-
20 land, Massachusetts, Michigan, New York,
21 North Carolina, and Ohio.

22 (B) 60 PERCENT.—The State percentage
23 shall be 60 percent for: California, Colorado,
24 Georgia, Illinois, New Jersey, Washington,
25 West Virginia, and Wisconsin.

(C) 40 PERCENT.—For all other States the State percentage shall be 40 percent.

(d) LITIGATION VENUE.—For purposes of this section, litigation venue is considered established with respect to an eligible person if—

(1) on or before December 31, 1993, the eligible person had pending in a court of competent jurisdiction a complaint against an insurer with respect to eligible costs at an eligible facility; and

(2) no motion to change venue with respect to such complaint was pending on or before January 31, 1994.

(e) AVAILABLE COVERAGE.—

(1) IN GENERAL.—The Fund shall determine the available coverage for each eligible person by adding the limits of liability contained in all valid insurance contracts of insurance (including per occurrence, aggregate, primary, excess or other limits) and then by subtracting the total of all deductibles and self-insured retentions applicable to those policies. In calculating the available coverage and the average deductible pursuant to section 808(c), the Fund shall exclude any deductible or self-insured retention contained in a policy which has already been paid by the eligible person.

1 (2) PER OCCURRENCE BASIS POLICIES.—For
2 insurance policies with limits or deductibles ex-
3 pressed on a per occurrence basis without an aggre-
4 gate limit, the limit or deductible shall be an amount
5 equal to the limit or deductible in the policy multi-
6 plied by the number of eligible facilities of the eligi-
7 ble person and by the number of years the policy
8 was in effect. Per occurrence limits or deductibles
9 may be adjusted by the Fund whenever there is an
10 increase in the eligible facilities attributable to an el-
11 igible party.
12 (f) ADJUSTMENT FOR OWNED PROPERTY SITES.—
13 (1) ADJUSTMENT.—If an eligible person seeks
14 payment of eligible costs for an owned property site,
15 only 70 percent of such eligible costs (including eligi-
16 ble costs for off site contamination attributable to
17 the owned property) shall be taken into account in
18 making payments under this section.
19 (2) DEFINITIONS.—For purposes of this sub-
20 section—
21 (A) OWNED PROPERTY SITE.—A facility
22 shall be considered an owned property site if—
23 (i) an eligible person owned or leased
24 the facility at the time of initial disposal or
25 a predecessor company owned or leased the

1 facility at the time of initial disposal and
2 the predecessor company merged into an
3 eligible person or became the wholly owned
4 subsidiary of an eligible person;
5 (ii) the property owned or leased by
6 the eligible person or predecessor company
7 represents all or a portion of the facility as
8 specifically designated on the NPL or as
9 subject to a removal covered by this title;
10 (iii)(I) an eligible person or prede-
11 cessor company generated all of the haz-
12 ardous substances which were disposed of
13 during the period such person or prede-
14 cessor owned or leased the facility, or (II)
15 an eligible person or predecessor company
16 owned a landfill which is part of the prop-
17 erty on which a manufacturing or indus-
18 trial facility is situated, the landfill was
19 used for the treatment, storage, or disposal
20 of waste generated from the manufacturing
21 or industrial facility and from third par-
22 ties, and the landfill contains waste that is
23 not primarily municipal solid waste or sew-
24 age sludge as defined in title VI of this
25 Act; and

1 (iv) the hazardous substances associ-
2 ated with the owned property constitute
3 the basis for liability at the facility.
4 (B) PROPERTY NOT CONSIDERED OWNED
5 PROPERTY.—A facility shall not be considered
6 owned property of an eligible person for pur-
7 poses of this section when the eligible person
8 acquired the facility from, or acquired the as-
9 sets of, a company which engaged in initial dis-
10 posal of hazardous substances at the facility
11 and the eligible person did not engage in initial
12 disposal of hazardous substances at the facility
13 during its period of ownership. An owned prop-
14 erty site shall not include a public or commer-
15 cial landfill primarily used for disposal, storage,
16 or treatment of municipal solid waste or sewage
17 sludge as defined in title VI of this Act.
18 (C) INITIAL DISPOSAL.—For purposes of
19 this paragraph, the term initial disposal means
20 the spilling, pumping, pouring, emitting,
21 emptying, discharging, injecting, dumping, dis-
22 posing, placing, or leaking of hazardous sub-
23 stances into the environment caused by the fa-
24 cility owner but does not include—

(i) any continuing or further leaking, escaping, or leaching of hazardous substances into the environment during subsequent periods of ownership which was not caused by the acts of a subsequent owner; or

(ii) any activities undertaken by an owner related to response at the facility.

SEC. 807. ACCEPTANCE OF RESOLUTION OFFER.

(a) ACCEPTANCE.—

(1) ELECTION TO ACCEPT.—An eligible person may, when submitting a request for a resolution to the Fund, make a written irrevocable election to accept any resolution to be made by the Fund.

(2) NOTIFICATION.—An eligible person that does not make an election pursuant to paragraph (1) shall, within 60 days of the receipt of a resolution offer from the Fund, notify the Fund in writing of its irrevocable acceptance or rejection of such offer. An eligible person who does not so accept or reject a resolution offer within 60 days shall be deemed to have made an irrevocable election to reject the offer.

(b) ACCEPTANCE OR REJECTION PRIOR TO OFFER.—Upon expiration of the 60-day period immediately following the enactment of this Act, any eligible

1 person may notify the Fund that such eligible person ac-
2 cepts or rejects any offer to be issued by the Fund under
3 this title. Any such notice shall be signed by a duly author-
4 ized officer of the eligible person, as certified by the sec-
5 retary of the eligible person or by a person with equivalent
6 authority.

7 (c) WAIVER OF INSURANCE CLAIMS.—Any eligible
8 person accepting a resolution offer from the Fund shall
9 agree in writing, subject to reinstatement described in sub-
10 section (d) to waive, stay, or dismiss any of its existing
11 and future claims against any insurer for eligible costs,
12 including bad faith claims pertaining to actions to recover
13 eligible costs.

14 (d) REINSTATEMENT OF INSURANCE CLAIMS.—If the
15 Fund fails to timely fulfill its obligations to an eligible per-
16 son under the terms of an accepted resolution offer, such
17 eligible person shall be entitled to reinstate any of its exist-
18 ing and future claims under a contract for insurance with
19 respect to eligible costs. A shortfall provided for in section
20 808(f) shall not be considered a failure of the Fund to
21 timely fulfill its obligations.

22 **SEC. 808. RESOLUTION PAYMENTS.**

23 (a) TIME OF PAYMENT; PRE-RESOLUTION COSTS.—
24 The Fund shall make equal annual payments over a period
25 of 10 years for the applicable percentage of eligible costs

1 incurred by an eligible person on or before the date such
2 person accepts a resolution offer. The Fund may, in its
3 sole discretion, make such payments over a shorter period
4 if the aggregate eligible costs do not exceed $50,000. An
5 eligible person shall submit to the Fund documentation
6 of such costs as the Fund may require. The initial pay-
7 ment to an eligible person under this paragraph shall be
8 made not later than 60 days after the receipt of docu-
9 mentation satisfactory to the Fund. Interest shall not ac-
10 crue on amounts payable pursuant to a resolution offer
11 during the 5-year period beginning on the date of the en-
12 actment of this Act. In each year thereafter, interest shall
13 accrue on the unpaid balance of the pre-resolution costs
14 in an amount equal to the rate of interest on one year
15 Treasury bills issued on the anniversary of such date of
16 enactment, or if no bills were issued on such date, on the
17 last date such bills were issued prior to such anniversary.
18 (b) TIME OF PAYMENT; POST-RESOLUTION COSTS.—
19 The Fund shall make payments for eligible costs incurred
20 by an eligible person after the date such person accepts
21 a resolution offer to the eligible person, or to a contractor
22 or other person designated by the eligible person, subject
23 to such documentation as the Fund may require. Pay-
24 ments under this title shall be made not later than 60

1 days after the receipt of documentation (satisfactory to
2 the Fund) with respect to such costs.

3 (c) ADJUSTMENT FOR DEDUCTIBLE OR SELF INSUR-
4 ANCE.—In the case of an eligible person that has submit-
5 ted to the Fund, as proof of status as an eligible person,
6 a valid insurance contract subject to a self-insured reten-
7 tion or a deductible, payment to such eligible person pur-
8 suant to a resolution shall be reduced once by an amount
9 equal to the average of the amounts of self-insured reten-
10 tions and deductibles in all valid insurance contracts of
11 insurance of the eligible person. For purposes of determin-
12 ing such average in the case of a per occurrence deductible
13 or self-insured retention, the Fund shall only count such
14 deductible or self-insured retention once for each policy
15 year.

16 (d) ADJUSTMENT FOR CERTAIN DUTY-TO-DEFEND
17 COSTS.—If an insurer has incurred and paid costs pursu-
18 ant to a duty-to-defend clause contained in a contract for
19 insurance, and such costs are the subject of a dispute be-
20 tween the eligible person and an insurer, the Fund shall
21 reduce payment of a resolution to an eligible person by
22 such amount and pay such amount to the insurer. If such
23 costs were paid by the insurer on or before the date the
24 eligible person accepted a resolution offer made by the
25 Fund, payment to an insurer under this section shall be

1 made in equal annual installments over a period of 10
2 years, and interest shall not accrue with respect to such
3 costs. The Fund may, in its sole discretion, make such
4 payments over a shorter period if the aggregate costs do
5 not exceed $50,000.
6 (e) EFFECT OF PAYMENTS.—(1) Payments made to
7 an eligible person by the Fund pursuant to a resolution
8 offer shall be treated as payments made by an insurer in
9 satisfaction of the terms and conditions of a contract of
10 insurance. Such payments shall be allocated pro rata to
11 each year in which proof of insurance has been estab-
12 lished. The amount allocated to each coverage year shall
13 be allocated 100 percent to the primary coverage until it
14 is exhausted and then 100 percent to each successively
15 higher layer of coverage until each such layer is exhausted.
16 (2) No insurer shall be allowed to collect recovery
17 pursuant to a reinsurance contract on the basis of a pay-
18 ment by the Fund unless such reinsurer is not subject to
19 the fees under section ______ of the Internal Revenue
20 Code or has not satisfied its obligations pursuant to such
21 fees.
22 (f) SHORTFALL.—If, in any year during the first 10
23 years after enactment, the Fund does not have sufficient
24 funds available to pay all eligible costs of resolution offers
25 accepted by eligible persons, the Fund shall determine the

1 amount of the costs which cannot be paid in that year
2 (the ''shortfall''). The Fund shall allocate the shortfall to
3 the eligible persons in proportion to the size of their pend-
4 ing claims for reimbursement from the Fund. This short-
5 fall shall be paid to the eligible person and shall be amor-
6 tized over the next 5 years, and the amortized amount
7 shall be paid with interest at the rate specified for the
8 amortization of past costs. A shortfall which is being am-
9 ortized hereunder shall not be considered a default by the
10 Fund, triggering the reinstatement of claims.

11 (g) INTERIM ALLOCATIONS.—An eligible person ac-
12 cepting an offer of resolution shall be entitled to receive
13 payment of all eligible costs which have been incurred. If
14 an eligible person obtains reimbursement of such eligible
15 costs as a result of a final allocation, contribution action,
16 or otherwise, the eligible person must notify the Fund of
17 the amount of the reimbursement and must either (1) re-
18 duce its next claim to the Fund for payment of eligible
19 costs by the amount of the reimbursement, or (2) refund
20 the amount of the reimbursement.

21 **SEC. 809. REJECTION OF RESOLUTION OFFER AND REIM-**
22 **BURSEMENT TO INSURER.**

23 If an eligible person rejects a resolution offer (includ-
24 ing a rejection pursuant to section 807(b)), litigates a
25 claim with respect to eligible costs against 1 or more in-

1 surers, and obtains a final judgment against, or enters
2 into a settlement with, any such insurer, the Fund—
3 (1) shall reimburse to such insurer or insurers
4 the lesser of the amount of the resolution offer made
5 to the eligible person (or, in the case of a rejection
6 pursuant to section 807(b), the amount which the
7 Fund would have offered) or the final judgment or
8 settlement; and
9 (2) may, if the resolution offer exceeded the
10 final judgment or settlement, reimburse the insurer
11 or insurers for unrecovered reasonable costs and
12 legal fees, except that the total reimbursement under
13 this subsection may not exceed the amount of the
14 resolution offer to the eligible person (or, in the case
15 of a rejection pursuant to section 807(b), the
16 amount which the Fund would have offered).
17 Reimbursements pursuant to this subsection shall be sub-
18 ject to such documentation as the Fund may require and
19 shall be made by the Fund not later than 60 days after
20 receipt by the Fund of a complete request for reimburse-
21 ment satisfactory to the Fund.
22 **SEC. 810. FINANCIAL STATEMENTS, AUDITS, INVESTIGA-**
23 **TIONS, AND INSPECTIONS.**
24 (a) IN GENERAL.—The financial statements of the
25 Fund shall be prepared in accordance with generally ac-

1 cepted accounting principles and shall be audited annually
2 by an independent certified public accountant in accord-
3 ance with the auditing standards issued by the Comptrol-
4 ler General. Such auditing standards shall be consistent
5 with the private sector's generally accepted auditing
6 standards.

7 (b) INVESTIGATIONS AND OTHER AUDITS.—The In-
8 spector General of the Environmental Protection Agency
9 is authorized to conduct audits and investigations as the
10 Inspector General deems necessary or appropriate.

11 **SEC. 811. STAY OF PENDING LITIGATION.**

12 (a) ENACTMENT OPERATES AS STAY.—Except as
13 provided in this section, enactment of this title shall oper-
14 ate as a stay, applicable to all persons other than the Unit-
15 ed States, of the commencement or continuation, including
16 the issuance or employment of process or service of any
17 pleading, motion, or notice, of any judicial, administrative,
18 or other action with respect to claims for indemnity or
19 other claims arising from a valid insurance contract of
20 qualified insurance concerning insurance coverage for eli-
21 gible costs.

22 (b) ACTIONS NOT AFFECTED.—Nothing in this title
23 shall be construed to authorize a stay of any action involv-
24 ing claims that do not concern eligible costs or a valid
25 insurance contract of qualified insurance. Any such claim

1 shall be severed by operation of law from claims involving
2 eligible costs or valid contracts of insurance of qualified
3 insurance, and the insured party may proceed with the
4 prosecution of the severed claims not involving eligible
5 costs or not involving qualified insurance.

6 (c) TERMINATION OF STAY.—(1) The stay estab-
7 lished by subsection (a) shall terminate with respect to an
8 eligible person upon the earlier of the following:

9 (A) The rejection of a resolution offer (includ-
10 ing an early rejection) by such eligible person pursu-
11 ant to section 807.

12 (B) A determination by the Fund that an offer
13 will not be made to such eligible person or that such
14 person is not an eligible person.

15 (C) A determination by the Fund pursuant to
16 section 816(b) that the minimum participation level
17 has not been achieved.

18 (D) A failure by the Fund at any time after the
19 date 10 years after the enactment of this Act to
20 timely pay to such eligible person a resolution pay-
21 ment equal to the total amount of eligible costs (in-
22 cluding shortfalls from prior years) required to be
23 paid to such person under a resolution offer in any
24 year after such date.

1 (2) The stay established by subsection (a) shall termi-
2 nate on the date that is 10 years after the enactment of
3 this Act with respect to:
4 (A) A person that becomes an eligible person on
5 or after such date.
6 (B) An eligible person that has not filed a re-
7 quest for a resolution offer and has not rejected a
8 resolution offer pursuant to section 807(b) before
9 such date.
10 (d) AUTHORITY OF UNITED STATES UNAF-
11 FECTED.—Nothing in this section shall be construed to
12 limit or affect in any way the discretion or authority of
13 the United States or any party to commerce or continue
14 any allocation process, cost recovery, or other action pur-
15 suant to the authority of sections 101 through 122a of
16 CERCLA.
17 (e) STATUTE OF LIMITATION TOLLED.—Notwith-
18 standing any other provision of Federal or State law, any
19 Federal or State statute of limitation concerning the filing
20 or prosecution of an action by an eligible person against
21 an insurer, or by an insurer against an eligible person,
22 with respect to eligible costs shall be tolled during the
23 pendency of the stay of pending litigation established by
24 this title.

1 **SEC. 812. REGULATIONS.**

2 (a) PROCEDURES AND DOCUMENTATION.—Not later
3 than 120 days after the date of enactment of this title,
4 the Fund shall publish in the Federal Register for public
5 comment of not more than 60 days interim final regula-
6 tions concerning procedures and documentation for the
7 submission of requests for resolution offers and the pay-
8 ment of accepted resolution offers. Not later than 60 days
9 after the close of the public comment period, the Fund
10 shall publish in the Federal Register final regulations con-
11 cerning such procedures and documentation, which may
12 be amended by the Fund from time to time. The Fund
13 in its discretion may require that requests for resolution
14 offers made before the issuance of final regulations pursu-
15 ant to this subsection be revised to conform to the require-
16 ments of such final regulations.

17 (b) OTHER REGULATIONS.—The Fund may prescribe
18 such other regulations, rules and procedures as the Fund
19 deems appropriate from time to time.

20 (c) JUDICIAL REVIEW.—No regulation, rule or proce-
21 dure prescribed by the Fund shall be subject to review by
22 any court except to the extent such regulation, rule or pro-
23 cedure is not consistent with a provision of this title. No
24 resolution offer made by the Fund shall be subject to re-
25 view by any court.

1 **SEC. 813. COURT JURISDICTION AND PENALTIES.**

2 (a) JURISDICTION OF FEDERAL COURTS.—Notwith-
3 standing section 1349 of title 28, United States Code:

4 (1) The Fund shall be deemed to be an agency
5 of the United States for purposes of sections 1345
6 and 1442 of title 28, United States Code.

7 (2) All civil actions to which the Fund is a
8 party shall be deemed to arise under the laws of the
9 United States, and the district courts of the United
10 States shall have original jurisdiction of all such ac-
11 tions, without regard to amount or value.

12 (3) Any civil or other action, case or con-
13 troversy in a court of a State, or in any court other
14 than a district court of the United States, to which
15 the Fund is a party may at any time before the trial
16 thereof be removed by the Fund, without the giving
17 of any bond or security, to the district court of the
18 United States for the district and division embracing
19 the place where the same is pending, or, if there is
20 no such district court, to the district court of the
21 United States for the district in which the principal
22 office of the Fund is located, by following any proce-
23 dure for removal of causes in effect at the time of
24 such removal.

1 (4) No attachment or execution shall be issued
2 against the Fund or any of its property before final
3 judgment in any State, Federal, or other court.
4 (b) FALSE OR FRAUDULENT STATEMENTS OR
5 CLAIMS.—
6 (1) CRIMINAL PENALTIES.—(A) For purposes
7 of section 287 of title 18, United States Code (relat-
8 ing to false claims), the Fund shall be considered an
9 agency of the United States and any officer or em-
10 ployee of the Fund shall be considered a person in
11 the civil service of the United States.
12 (B) For purposes of section 1001 of title 18,
13 United States Code (relating to false statements or
14 entries), the Fund shall be considered an agency of
15 the United States.
16 (2) CIVIL PENALTIES.—Officers and employees
17 of the Fund shall be considered officers and employ-
18 ees of the United States for purposes of section
19 3729 of title 31, United States Code (relating to
20 false claims).
21 **SEC. 814. MISCELLANEOUS PROVISIONS.**
22 (a) ADMISSIBILITY OF RESOLUTION OFFER.—No
23 resolution offered by the Fund shall be admissible in any
24 legal action brought by an eligible person against an in-
25 surer or by an insurer against an eligible person.

1 (b) RESOLUTION PROCESS NOT ADMISSION OF LI-
2 ABILITY.—No provision of this title, and no action by an
3 eligible person undertaken in connection with any provi-
4 sion of this title shall in any way constitute an admission
5 of liability in connection with the disposal of a hazardous
6 substance.
7 (c) PRECEDENTIAL EFFECT.—No provision of this
8 title shall affect or be construed to establish a precedent
9 with respect to any insurance dispute between any person
10 and insurer not subject to a stay under this title.
11 (d) SOVEREIGN IMMUNITY OF THE UNITED
12 STATES.—No obligation or liability of the Fund shall con-
13 stitute an obligation or liability of the United States, or
14 of any department, agency, instrumentality, officer, or em-
15 ployee thereof. No person shall have a cause of action of
16 any kind against the United States, or any department
17 agency, instrumentality, officer, or employee thereof with
18 respect to any obligation, liability, or activity of the Fund.
19 **SEC. 815. REPORTS.**
20 (a) REPORT ON POTENTIAL FOR ESCALATION OF
21 EIRF LIABILITY.—Not later than the end of the 5th year
22 after enactment of this title, the President shall submit
23 a report to Congress assessing the potential liability of the
24 Fund over the next 5-year period. The report shall include
25 recommendations for amendments to address any short-

1 falls between the projected potential liability of the Fund
2 and the amounts authorized to be raised over such 5-year
3 period.

4 (b) REPORT ON NON-NPL FACILITIES.—The Presi-
5 dent shall conduct a study of the number of non-NPL fa-
6 cilities and the average cleanup cost per non-NPL facility
7 and shall report his findings not later than 3 years after
8 the date of enactment.

9 (c) ANNUAL REPORTS.—The Fund shall report annu-
10 ally to the President and the Congress not later than Jan-
11 uary 15 of each year on its activities for the prior fiscal
12 year. The report shall include—

13 (1) a financial statement audited by an inde-
14 pendent auditor; and

15 (2) a determination of whether the fees and as-
16 sessments imposed by section ____ of the Internal
17 Revenue Code of 1986 will be sufficient to meet the
18 anticipated obligations of the Fund.

19 (d) SPECIAL REPORTS.—The Fund shall promptly
20 report to the President and the Congress at any time the
21 Fund determines that the fees and assessments imposed
22 by section ____ of the Internal Revenue Code of 1986 will
23 be insufficient to meet the anticipated obligations of the
24 Fund.

1 **SEC. 816. EFFECTIVE DATE.**

2 (a) IN GENERAL.—This title shall take effect on the
3 date of enactment of this Act.

4 (b) MINIMUM PARTICIPATION LEVEL BY ELIGIBLE
5 PERSONS.—

6 (1) IDENTIFICATION OF LITIGATING ELIGIBLE
7 PERSONS.—Each insurance company providing in-
8 surance coverage to eligible persons shall submit to
9 the Fund, within 30 days after the enactment of this
10 Act, a list of all eligible persons which filed suit
11 against that company for eligible costs prior to the
12 enactment of this Act and shall notify each eligible
13 person which is on the list.

14 (2) REQUESTS FOR APPLICABLE PERCENT-
15 AGE.—Each eligible person identified on a list under
16 paragraph (1) shall file a request for its applicable
17 percentage (as determined under section 806(b))
18 with the Fund within 60 days after the enactment
19 of this Act. The Fund shall determine the applicable
20 percentage of the eligible person and notify the eligi-
21 ble person of such percentage within 90 days of en-
22 actment. Each eligible person receiving such notifi-
23 cation shall decide whether to accept or reject the
24 applicable percentage determination within 135 days
25 of enactment. An eligible person which has made an
26 early acceptance or rejection pursuant to section

1 807(b) shall be deemed to have accepted or rejected
2 its applicable percentage, as the case may be. Any
3 eligible person which does not file such a request
4 within such period, and any eligible person which
5 files such a request and does not reject the applica-
6 ble percentage determination within 135 days after
7 the enactment of this Act, shall be deemed to have
8 accepted the determination solely for the purposes of
9 this section.
10 (3) MINIMUM PARTICIPATION LEVEL.—Within
11 150 days after enactment, the Fund shall deter-
12 mine—
13 (A) the number of eligible persons on the
14 list under paragraph (1), and
15 (B) the weighted average (as determined
16 under paragraph (4)) of such eligible persons,
17 which have accepted or rejected applicable percent-
18 age determinations under this subsection. If more
19 than 15 percent of the eligible persons on such list
20 or more than a weighted average of 15 percent of
21 such eligible persons have rejected such determina-
22 tions, the provisions of this title and the insurance
23 fee provisions of title IX shall cease to have any
24 force and effect, and any fees paid by insurance
25 companies which have not been utilized for adminis-

1 tration of the Fund shall be refunded to those com-
2 panies.
3 (4) WEIGHTED AVERAGE.—The weighted aver-
4 age of eligible persons accepting or rejecting applica-
5 ble percentage determinations shall be determined by
6 multiplying the acceptances or rejections by eligible
7 persons listed under paragraph (1) times the num-
8 ber of each such person's eligible facilities (without
9 regard to whether or not any such is the subject of
10 any lawsuit).

11 **SEC. 817. TERMINATION OF AUTHORITY TO OFFER AND AC-**
12 **CEPT RESOLUTION.**

13 (a) AUTHORITY TO ACCEPT REQUEST FOR RESOLU-
14 TION.—The authority of the Fund to accept requests for
15 resolution shall terminate on the date 10 years after the
16 enactment of this Act.
17 (b) AUTHORITY TO OFFER RESOLUTIONS.—The au-
18 thority of the Fund to offer resolutions to eligible persons
19 shall terminate after the date 10 years and 180 days after
20 the date of the enactment of this Act.
21 (c) CONTINUING OBLIGATIONS.—Until termination
22 of the Fund, the Fund shall continue to—
23 (1) make payments pursuant to resolution of-
24 fers for any eligible facility which is identified at the

time of acceptance of the resolution offer or within 10 years after the enactment of this Act; or

(2) reimburse insurers with respect to litigation commenced or continued in connection with a resolution offer made on or before the date 10 years after the date of the enactment of this Act, where the resolution offer was rejected by an eligible person or not acted upon by an eligible person.

SEC. 818. TERMINATION OF FUND.

If, during any two-year calendar period commencing after the date 10 years after the date of the enactment of this Act, no eligible person makes a claim to the Fund for payment of eligible costs, the Fund shall terminate, and all amounts remaining in the Fund shall be deposited in the General Fund of the Treasury.

TITLE IX—TAXES

SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) Section 59A(e)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking ‘‘January 1, 1996’’ and inserting instead ‘‘January 1, 2001’’.

(b) Section 4611(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(e)) is amended—

1 (1) in paragraph (1), by striking ''December
2 31, 1986'' and inserting instead ''December 31,
3 1995'';
4 (2) in paragraph (2)—
5 (A) by striking ''December 31, 1993 or
6 December 31, 1994'' and inserting instead
7 ''December 31, 1998 or December 31, 1999'';
8 (B) by striking ''December 31, of 1994 or
9 1995, respectively'' and inserting instead ''De-
10 cember 31 of 1999 or 2000, respectively''; and
11 (C) by striking ''1994 or 1995'' the last
12 place it appears and inserting instead ''1999 or
13 2000'';
14 (3) in paragraph (3)(A), by striking ''January
15 1, 1987, and ending December 31, 1995'' and in-
16 serting instead ''January 1, 1996, and ending De-
17 cember 31, 2000''; and
18 (4) in paragraph (3)(B)—
19 (A) in the title thereof, by striking ''Janu-
20 ary 1, 1996'' and inserting ''January 1, 2001'';
21 and
22 (B) by striking ''Fund before January 1,
23 1996'' and inserting instead ''Fund before Jan-
24 uary 1, 2001''.

1 **SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON IN-**
2 **SURANCE COMPANIES.**

3 (a) IN GENERAL.—The Internal Revenue Code of
4 1986 is amended by inserting after section ____ the fol-
5 lowing new section:

6 **"SEC. . ENVIRONMENTAL FEES AND ASSESSMENTS ON**
7 **INSURANCE COMPANIES.**

8 "[RESERVED]".

9 (b) CLERICAL AMENDMENTS.—The table of sections
10 for chapter ____ of the Internal Revenue Code of 1986
11 is amended by inserting after the item relating to section
12 ____ the following:

"Sec. . Environmental fees and assessments on insurance companies.".

13 **SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL IN-**
14 **SURANCE RESOLUTION FUND.**

15 (a) IN GENERAL.—
16 (1) Except as provided in section 802(f)(7) of
17 this Act, all expenditures of the Resolution Fund
18 shall be paid out of the fees and assessments im-
19 posed by section ____ of the Internal Revenue Code.
20 (2) Except as may be expressly authorized by
21 the Secretary of the Treasury, all funds of the Reso-
22 lution Fund shall be maintained in the Treasury of
23 the United States. The Secretary may provide for
24 the disbursement of such funds to the Resolution

1 Fund or on behalf of the Resolution Fund under
2 such procedures, terms and conditions as the Sec-
3 retary may prescribe.

4 (b) TRANSFER TO RESOLUTION FUND.—The Sec-
5 retary of the Treasury shall transfer to the Resolution
6 Fund on October 1 of fiscal year 1995, 1996, 1997, 1998
7 and 1999, an amount equal to the fees and assessments
8 anticipated to be collected pursuant to section ____ of the
9 Internal Revenue Code of 1986 during the then current
10 fiscal year.

11 (c) ADJUSTMENTS.—In each succeeding fiscal year
12 the Secretary of the Treasury shall adjust the amounts
13 transferred pursuant to paragraph (2) to reflect actual
14 collections of fees and assessments during the prior fiscal
15 year, except that with respect to the transfer made on Oc-
16 tober 1, 1999, the Resolution Fund shall reimburse the
17 Secretary the amount of such transfer subsequently deter-
18 mined by the Secretary to have exceeded actual collections
19 of fees and assessments during such fiscal year.

20 **SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.**

21 The Resolution Fund, including its capital, reserves,
22 surplus, security holdings, and income shall be exempt
23 from all taxation now or hereafter imposed by the United
24 States (including any territory, dependency or possession

1 thereof) or any State, county, municipality or local taxing
2 authority.

○