

105TH CONGRESS  
1ST SESSION

# H. R. 3000

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

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 1997

Mr. OXLEY (for himself, Mr. CONDIT, Mr. JOHN, Mr. BLILEY, Mr. FORD, Mr. UPTON, Mr. GREENWOOD, Mr. KLUG, Mr. MARTINEZ, Mr. GOODLING, Mr. TRAFICANT, Mr. TAUZIN, Mr. PETERSON of Minnesota, Mr. DAN SCHAEFER of Colorado, Mr. STENHOLM, Mr. GILLMOR, Mr. BISHOP, Mr. PAXON, Mr. SISISKY, Mr. LARGENT, Mr. BAESLER, Mr. BUYER, Mr. GOODE, Mr. FRELINGHUYSEN, Mr. BOYD, Mrs. EMERSON, Mr. CRAMER, Mr. BARRETT of Nebraska, Mr. HOLDEN, Mr. BURR of North Carolina, Mr. PICKETT, Mr. HEFLEY, Mr. MCINTYRE, Mr. DUNCAN, Mr. SANDLIN, Mr. PETERSON of Pennsylvania, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “Superfund Reform Act”.

4 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

Sec. 2. References.

**TITLE I—REMEDY SELECTION**

Sec. 101. Remedy selection.

Sec. 102. Objective risk assessment standards.

Sec. 103. Remedy updates and remedy review board.

Sec. 104. Public health authorities.

Sec. 105. Indian health provisions.

Sec. 106. Hazard ranking system.

Sec. 107. Removal actions.

Sec. 108. Hazardous substance property use.

Sec. 109. Effective date and transition rules.

**TITLE II—LIABILITY**

Sec. 201. Parties not responsible for pollution.

Sec. 202. Clarifications of certain liability.

Sec. 203. Amendments to section 106.

Sec. 204. Civil proceedings.

Sec. 205. Limitations on contribution actions.

Sec. 206. Liability of response action contractors.

Sec. 207. Expedited final settlements.

Sec. 208. Allocations at multi-party facilities.

Sec. 209. Transition rules relating to certain nonliable parties.

Sec. 210. Recycling transactions.

**TITLE III—BROWNFIELDS**

Sec. 301. Short title.

Sec. 302. Findings.

Sec. 303. Cleanups pursuant to State voluntary response program.

Sec. 304. Innocent landowners.

Sec. 305. Bona fide prospective purchaser liability.

Sec. 306. Contiguous properties.

**TITLE IV—NATURAL RESOURCE DAMAGES**

Sec. 401. Natural resources defined.

Sec. 402. Consultation with natural resources trustees.

Sec. 403. Liability.

Sec. 404. Designation of trustees.

Sec. 405. Determination of causation.

Sec. 406. Measure of damages.

Sec. 407. Damage assessments.

Sec. 408. Selection of restoration alternatives.

Sec. 409. Use of sums recovered by trustees.

Sec. 410. Relation to other laws; damages occurring before December 11, 1980.

- Sec. 411. Restoration.
- Sec. 412. Use of mediation.
- Sec. 413. Applicability.

#### TITLE V—STATE ROLE

- Sec. 501. State delegation at NPL facilities.
- Sec. 502. State authorization at NPL facilities.
- Sec. 503. Federal funding of State actions under State delegation or State authorization.
- Sec. 504. State cost share.
- Sec. 505. Concurrence of governors required for additions to National Priorities List.
- Sec. 506. State and local reimbursement for response actions.

#### TITLE VI—FEDERAL FACILITIES

- Sec. 601. State role at Federal facilities.
- Sec. 602. Innovative technologies for remedial action at Federal facilities.
- Sec. 605. Federal entities and facilities.
- Sec. 607. Notification regarding uncontaminated property at Federal facilities.
- Sec. 608. Annual studies of priorities at Federal facilities.
- Sec. 609. Judicial removals.

#### TITLE VII—COMMUNITY PARTICIPATION

- Sec. 701. Community involvement.
- Sec. 702. Community assistance groups.
- Sec. 703. Technical assistance grants.

#### TITLE VIII—MISCELLANEOUS

- Sec. 801. Definitions.
- Sec. 802. Response claims procedures.
- Sec. 803. Small business ombudsman.
- Sec. 804. Consideration of local government cleanup priorities.
- Sec. 805. Savings clause.
- Sec. 806. Report and oversight requirements.
- Sec. 807. Response authorities.
- Sec. 808. Prioritization.
- Sec. 809. Response management and worker protection standards.
- Sec. 810. Actions relating to source, byproduct, and special nuclear material.

#### TITLE IX—FUNDING

##### Subtitle A—Expenditures From the Hazardous Substance Superfund

- Sec. 901. Expenditures from the Hazardous Substance Superfund.
- Sec. 902. Authorization of appropriations from general revenues.

##### Subtitle B—5-Year Extension of Hazardous Substance Superfund

- Sec. 911. 5-year extension of Hazardous Substance Superfund.

1 **SEC. 2. REFERENCES.**

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

10 **TITLE I—REMEDY SELECTION**

11 **SEC. 101. REMEDY SELECTION.**

12 Section 121 (42 U.S.C. 9621) is amended as follows:

13 (1) In subsection (a), by striking “and, to the  
14 extent practicable, the national contingency plan”.

15 (2) By amending subsection (b) to read as fol-  
16 lows:

17 “(b) REMEDY SELECTION.—

18 “(1) HEALTH AND ENVIRONMENTAL STAND-  
19 ARDS.—

20 “(A) IN GENERAL.—Final remedies se-  
21 lected under this Act shall protect human  
22 health and the environment and provide long-  
23 term reliability at reasonable cost. Such rem-  
24 edies should not seek to address unrealistic or  
25 insignificant risks.

1           “(B) CERTAIN CARCINOGENS.—For non-  
2 threshold carcinogens, to the extent the Presi-  
3 dent is using risk measures based on the  
4 numeric risk of carcinogenic effects, final rem-  
5 edies selected under this Act shall limit cumu-  
6 lative, lifetime additional cancer risk from expo-  
7 sure to hazardous substances from releases at  
8 the facility to within the range of one in 10,000  
9 to one in 1,000,000 for the affected population  
10 or subpopulation, as determined by the Presi-  
11 dent.

12           “(C) EXPOSURE INFORMATION.—Exposure  
13 assessments shall be consistent with the current  
14 and reasonably anticipated uses of land, water,  
15 and other resources as identified under para-  
16 graph (2). The President shall consider and  
17 use, in selecting final remedies under this Act,  
18 information made available to the President on  
19 actual ingestion of, inhalation of, or dermal  
20 contact with hazardous substances or pollutants  
21 or contaminants, or blood lead levels at or near  
22 the site, along with other relevant information.  
23 Where the President uses predictive estimates,  
24 protective exposure levels shall be based on a

1 reasonable high-end estimate of the scientif-  
2 ically objective exposure distribution.

3 “(D) PLANTS AND ANIMALS.—In deter-  
4 mining what is protective of plants and animals  
5 for purposes of this section, the Administrator  
6 shall base such determinations on the signifi-  
7 cance of impacts from a release or releases of  
8 hazardous substances from a facility to local  
9 populations or communities of plants and ani-  
10 mals or ecosystems. If a species is listed as  
11 threatened or endangered under the Endan-  
12 gered Species Act of 1973 (16 U.S.C 1531 et  
13 seq.) impacts to individual plants or animals  
14 may be considered to be impacts to populations  
15 of plants or animals.

16 “(2) ANTICIPATED USE OF LAND, WATER, AND  
17 OTHER RESOURCES.—(A) For purposes of selecting  
18 the method or methods of remediation appropriate  
19 for a given facility, the President shall identify the  
20 current and reasonably anticipated uses of land,  
21 water, and other resources at and around the facility  
22 and the timing of such uses.

23 “(B) Except as provided in subparagraphs (D),  
24 in identifying such reasonably anticipated future

1 uses, the President shall consider relevant factors,  
2 which generally shall include the following:

3 “(i) Any consensus recommendation of the  
4 Community Assistance Group. With respect to  
5 a Federal facility scheduled for closure or re-  
6 alignment, the President shall consider any  
7 joint consensus recommendation of the Commu-  
8 nity Assistance Group and a redevelopment au-  
9 thority which has been established for such fa-  
10 cility.

11 “(ii) The current uses of the facility and  
12 surrounding properties, recent development pat-  
13 terns in the area where the facility is located,  
14 and population projections for that area.

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

21 “(iv) The current land use zoning and fu-  
22 ture land use plans of the local government  
23 with land use regulatory authority.

24 “(v) Current plans for the facility by the  
25 property owner or owners.

1           “(vi) The availability of alternative sources  
2 of drinking water.

3           “(vii) Current or anticipated plans for live-  
4 stock watering or irrigation.

5           “(viii) Current and anticipated plans of  
6 local water suppliers.

7           “(C) In developing its recommendation, the  
8 Community Assistance Group shall consider factors  
9 listed in subparagraph (B).

10          “(D) In identifying current and reasonably an-  
11 ticipated future ground water uses for purposes of  
12 this section, the President shall defer to State deter-  
13 minations regarding such uses where the State has  
14 made such a determination on a facility-specific  
15 basis.

16          “(E) Unless the State has made a specific de-  
17 termination otherwise under subparagraph (D), a  
18 current or reasonably anticipated future use of  
19 ground water shall not be identified as drinking  
20 water for ground water (i) containing more than  
21 10,000 milligrams per liter total dissolved solids, (ii)  
22 that is so contaminated by naturally occurring con-  
23 ditions or by the effects of broad-scale human activ-  
24 ity unrelated to a specific activity that restoration of  
25 drinking water quality is impracticable, or (iii) if the

1 potential source of drinking water is physically in-  
2 capable of yielding a quantity of 150 gallons per day  
3 of water to a well or spring without adverse environ-  
4 mental consequences.

5 “(F) All information considered by the Presi-  
6 dent in evaluating current and reasonably antici-  
7 pated future land uses under this subsection shall be  
8 included in the administrative record under section  
9 113(k).

10 “(3) SITE-SPECIFIC RISK ASSESSMENT.—The  
11 President shall use site-specific risk assessment that  
12 meets the requirements of the principles set forth in  
13 section 127(a) to—

14 “(A) determine the nature and extent of  
15 risk to human health and the environment;

16 “(B) identify groups which are currently or  
17 would be highly exposed or highly susceptible (i)  
18 to contamination from the site based on current  
19 and reasonably anticipated uses of land, water,  
20 and other resources at or around the site, or  
21 (ii) to risks arising from implementation of a  
22 remedial option;

23 “(C) assist in establishing remedial objec-  
24 tives for the facility respecting releases or  
25 threatened releases, and in identifying geo-

1 graphic areas or exposure pathways of concern;  
2 and

3 “(D) evaluate alternative remedial actions  
4 for the facility to determine their risk reduction  
5 benefits and assist in selecting the remedial ac-  
6 tion for the facility that meets the criteria of  
7 paragraph (1).

8 “(4) APPROPRIATE REMEDIAL ACTION.—

9 “(A) ALTERNATIVES CONSIDERED AND  
10 FACTORS BALANCED.—For purposes of select-  
11 ing final remedies under this Act, the President  
12 shall identify an appropriate mix of technically  
13 practicable remedial options (including those  
14 provided by interested parties) which are de-  
15 signed to meet the standards set forth in this  
16 section considering reasonable points of compli-  
17 ance. Appropriate remedies shall be based on  
18 consideration of the current and reasonably an-  
19 ticipated future uses of land, water, and other  
20 resources, as identified under paragraph (2),  
21 and the timing of such uses. The President  
22 shall select from among such options a protec-  
23 tive, cost-effective, cost-reasonable, and other-  
24 wise appropriate remedy by an overall balancing  
25 of the relative advantages and disadvantages of

1 the remedial options, considering the following  
2 factors:

3 “(i) The effectiveness of the remedial  
4 options in reducing risks (including risks  
5 posed by the spread of contamination to  
6 ground water or surface water).

7 “(ii) Effectiveness in promoting  
8 source control (including appropriate man-  
9 agement or treatment of hot spots).

10 “(iii) The long-term reliability of the  
11 remedial option.

12 “(iv) Risks to the affected community,  
13 to those engaged in the remedial effort,  
14 and to the environment arising from the  
15 potential implementation of a remedial op-  
16 tion and any offsite transportation and  
17 subsequent management of the hazardous  
18 substances.

19 “(v) The acceptability of the remedial  
20 option to the affected community (includ-  
21 ing Indian Tribes, as appropriate) and the  
22 affected local government.

23 “(vi) The reasonableness of the dif-  
24 ferences in costs between one remedial op-  
25 tion and the other remedial options.

1           “(B) In the case of contaminated ground  
2 water for which the current or reasonably an-  
3 ticipated future use is drinking water, final  
4 remedies shall seek to remediate otherwise usa-  
5 ble ground water to beneficial use, to the extent  
6 practical and consistent with subparagraph (A),  
7 within a timeframe that is reasonable given the  
8 circumstances at the site. This subparagraph  
9 does not apply to ground water in source man-  
10 agement areas and allows for the use of natural  
11 attenuation, where appropriate.”.

12           “(C) In the case of uncontaminated ground  
13 water for which the current or reasonably an-  
14 ticipated future use is drinking water, final  
15 remedies shall provide for the protection of such  
16 current or future use, to the extent practicable  
17 and consistent with subparagraph (A), consider-  
18 ing the timing of such use. This subparagraph  
19 shall not prohibit the use of reasonable source  
20 management areas for ground water and allows  
21 for the use of natural attenuation, where appro-  
22 priate.”.

23           “(D) GROUND WATER MONITORING.—The  
24 President shall provide for the long-term mon-  
25 itoring of ground water where appropriate (in-

1 including any information needed for purpose of  
2 review under section 121(c)).

3 “(E) COMPLIANCE.—The President shall,  
4 consistent with the protection of human health  
5 and the environment, establish the timing of  
6 compliance, reasonable points of compliance,  
7 and specific method of compliance for any  
8 standards applicable under this section.

9 “(F) HOT SPOTS.—For purposes of this  
10 paragraph, a ‘hot spot’ is a discrete area (not  
11 including areas in landfills or at mining or re-  
12 lated sites) which contain highly toxic material  
13 which poses a substantial risk to health or the  
14 environment considering current and reasonably  
15 anticipated uses of land, water, and other re-  
16 sources.”.

17 (3) Subsection (c) is amended by striking in the  
18 first sentence “the initiation of” and inserting “con-  
19 struction and installation of equipment and struc-  
20 tures to be used for” and by adding the following  
21 after the first sentence: “The President shall review  
22 the effectiveness of and compliance with any institu-  
23 tional controls related to the remedial action during  
24 the review.”.

1           (4) By striking so much of subsection (d) as  
2 precedes paragraph (3) and inserting the following:

3           “(d) OTHER STANDARDS.—(1) Except as provided in  
4 paragraph (2), for any facility to which they apply, the  
5 standards set forth in this section shall govern the level  
6 or standard of control for remedies, remedy selection, and  
7 on-site management of hazardous substances in lieu of any  
8 other Federal, State, or local standards where such action  
9 is selected and carried out in compliance with this section.

10          “(2)(A) Point source discharges or emissions of haz-  
11 arduous substances into the waters of the United States  
12 or the ambient air that result from remediation technology  
13 used in the conduct of the remedy shall comply with State  
14 and Federal standards respecting such discharges or emis-  
15 sions.

16          “(B) Remedies selected under this Act shall attain  
17 a level or standard of control which meets promulgated  
18 State standards for protection that are applicable to reme-  
19 dial actions in the State unless the President makes a  
20 finding under paragraph (4) of this subsection. Any waiv-  
21 ers or adjustments of State standards for protection that  
22 are applicable under State law shall also apply for pur-  
23 poses of selecting remedial actions under this section.

24          “(C) If the current or reasonably anticipated use (as  
25 determined under subsection (b)(2)) of ground water is

1 drinking water, final remedies selected under this Act shall  
2 require a level or standard of control which meets maxi-  
3 mum contaminant levels established under the Safe Drink-  
4 ing Water Act at reasonable points of compliance, as ap-  
5 propriate under the circumstances of the release, consider-  
6 ing the nature and timing of such use of the ground water.  
7 At a minimum such remedies shall prevent or eliminate  
8 any actual human ingestion of drinking water containing  
9 any hazardous substance, pollutant, or contaminant at lev-  
10 els in excess of such maximum contaminant level, includ-  
11 ing, as appropriate, the provision of an alternate water  
12 supply.

13       “(D) Compliance with promulgated State standards  
14 for protection under subparagraph (B) shall not be re-  
15 quired unless such laws and standards are (i) of general  
16 applicability, (ii) consistently applied, and (iii) identified  
17 to the President in a timely fashion.

18       “(E) Nothing in this section shall be construed to re-  
19 quire that a final remedial action selected under this Act  
20 reduce concentrations of contaminants below background  
21 levels or that any such remedy comply with zero discharge  
22 standards.

23       “(F) Compliance with subparagraphs (A) and (B)  
24 shall not be required with respect to return, replacement,  
25 or disposal of contaminated media or residuals of contami-

1 nated media into the same medium in or very near existing  
2 areas of contamination on-site.”.

3           (5) In paragraph (3) of subsection (d), by strik-  
4 ing “, or constituent” and inserting “or hazardous  
5 levels of constituents” in subparagraph (A) and by  
6 adding the following before the period at the end of  
7 the first sentence of such paragraph: “unless the  
8 President determines that such substance or pollut-  
9 ant or contaminant can be managed in another loca-  
10 tion in a manner that will protect human health and  
11 the environment”.

12           (6) By striking so much of paragraph (4) of  
13 subsection (d) as precedes subparagraph (A) and in-  
14 serting the following:

15           “(4) The President may waive any requirement of  
16 subparagraphs (A) through (C) of paragraph (2) of this  
17 subsection if the President finds that—”.

18           (7) By adding the following new paragraph  
19 after paragraph (4) of subsection (d):

20           “(5) For purposes of subparagraph (C) of paragraph  
21 (4) the President shall make findings of technical imprac-  
22 ticability from an engineering perspective on the basis of  
23 projections, modeling, or other analysis on a site-specific  
24 basis (including the consideration of information pre-  
25 sented by responsible parties at such facility) without a

1 requirement that the remedial measure for which a finding  
2 of technical impracticability is under consideration be first  
3 constructed or installed and operated and its performance  
4 over time reviewed, unless such projection, modeling, or  
5 other analysis is insufficient or inadequate to make such  
6 a finding.”.

7           (8) By adding the following new subsections  
8           after subsection (f):

9           “(g) EARLY EVALUATION AND PHASED REMEDIAL  
10 ACTION.—(1) The President shall consider new proce-  
11 dures for conducting remedial investigations and feasibil-  
12 ity studies in an efficient, cost-effective, and timely man-  
13 ner. Such new procedures shall take into consideration a  
14 results-oriented approach in order to minimize the time  
15 required to conduct such investigations and studies. The  
16 President shall emphasize performance-based standards  
17 where feasible and, where appropriate, provide means to  
18 update the most practicable methods under such perform-  
19 ance-based approaches. The President shall, as appro-  
20 priate, employ a phased approach to site characterization  
21 and remediation in which remedies are arrived at through  
22 a sequence of investigations and actions. Information  
23 gathered in one phase shall be used to inform each succes-  
24 sive phase until final remediation goals are determined  
25 and attained.

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

10       “(h) INSTITUTIONAL CONTROLS.—

11               “(1) ASSURANCES.—In any case in which the  
12       President selects a remedial action that relies on re-  
13       strictions on the use of land, water, or other re-  
14       sources or other activities to provide protection, the  
15       President shall ensure that such controls, taken to-  
16       gether with other response measures, are adequate  
17       to protect human health and the environment. Insti-  
18       tutional controls which form a significant portion of  
19       the basis for a finding that a set of remedial options  
20       will adequately protect human health and the envi-  
21       ronment must be—

22                       “(A) enforceable;

23                       “(B) publicly noticed; and

24                       “(C) as appropriate for deed restrictions or  
25       other similar measures, incorporated in the rec-

1            ordation systems of the appropriate jurisdiction  
2            where the property is located.

3            The President may allow for a reasonable schedule  
4            for appropriate public notice and recordation.

5            “(2) IDENTIFICATION AND REGISTRY—Each  
6            record of decision with respect to a facility shall  
7            clearly identify any institutional controls that re-  
8            strict uses of land, water, or other resources or other  
9            activities at the facility. The President shall also  
10           provide the identity of the Government official who  
11           is primarily responsible for monitoring and enforcing  
12           the institutional controls. The President shall main-  
13           tain a registry of restrictions on the use of land,  
14           water, or other resources through institutional con-  
15           trols that are included in final records of decision as  
16           part of the basis of decision at National Priorities  
17           List facilities.

18           “(3) REPORT.—The President shall, in con-  
19           sultation with representatives of State and local gov-  
20           ernments, study the use and effectiveness of institu-  
21           tional controls at National Priorities List facilities.  
22           Within 3 years after the date of enactment of this  
23           subsection, and after issuance of a draft report and  
24           opportunity for public comment, the President shall  
25           issue a final report on the use and effectiveness of

1 institutional controls at National Priorities List fa-  
2 cilities, together with recommendations to improve  
3 efficiency and effectiveness.”.

4 **SEC. 102. OBJECTIVE RISK ASSESSMENT STANDARDS.**

5 Title I (42 U.S.C. 9621) is amended by adding the  
6 following new section at the end thereof:

7 **“SEC. 127. OBJECTIVE RISK ASSESSMENT PRINCIPLES,**  
8 **GUIDELINES, AND REVIEWS.**

9 “(a) **GENERAL PRINCIPLES.**—Risk assessments and  
10 characterizations conducted under this Act shall—

11 “(1) provide scientifically objective assessments,  
12 estimates, and characterizations which neither mini-  
13 mize nor exaggerate the nature and magnitude of  
14 risks to human health and the environment;

15 “(2) distinguish scientific findings from other  
16 considerations;

17 “(3) be based on the best, relevant, and current  
18 scientific and technical information, including avail-  
19 able or reasonably obtainable (A) epidemiologic data,  
20 (B) data on bioavailability, and (C) site-specific and  
21 all other relevant information made available to the  
22 President; and

23 “(4) be based on a careful analysis of the  
24 weight of scientific evidence that supports conclu-

1 sions about risk to human health and the environ-  
2 ment.

3 “(b) GUIDELINES.—(1) Within 2 years after the en-  
4 actment of this section, the President shall update and  
5 publish exposure assessments and ecological risk assess-  
6 ment guidelines which are consistent with the principles  
7 in subsection (a). Ecological risk guidelines shall address  
8 how to evaluate the significance of risks to populations  
9 of plant and animal species, ecological communities, and  
10 ecosystems.

11 “(2) Final guidelines under this subsection shall be  
12 established after external peer review and notice and op-  
13 portunity for comment on draft guidelines.

14 “(c) STUDY OF SUBSTANCES.—(1) The President  
15 shall conduct a study of the cancer potency values of 12  
16 hazardous substances listed under paragraph (2) of sec-  
17 tion 104(i) that are frequently found to pose significant  
18 risks at National Priorities List facilities. The study may  
19 also include a review of other health effects values. The  
20 President shall not include a substance in the study under  
21 this subsection if such substance is under scientific re-  
22 evaluation pursuant to title XIV of the Safe Drinking  
23 Water Act.

24 “(2) The President shall make a scientifically objec-  
25 tive assessment of different methodologies for determining

1 the health effects of chemical mixtures at relevant doses  
2 based on reasonable exposure scenarios at National Prior-  
3 ities List facilities.

4 “(3) For purposes of such study and assessments,  
5 within 30 days after the date of the enactment of this sec-  
6 tion, the President shall obtain public comments on such  
7 study and assessments. Not later than 15 months after  
8 the date of the enactment of this section, the President  
9 shall publish a draft of such assessments. After receiving  
10 such comments on such draft assessments, and after ex-  
11 ternal peer review, but within 2 years after the date of  
12 the enactment of this section, the President shall complete  
13 the study and publish the assessments under this sub-  
14 section. The publication of the final assessments shall be  
15 considered final agency action.

16 “(4) The study and assessments under this sub-  
17 section shall include a discussion, to the extent relevant,  
18 of both laboratory and epidemiological data of sufficient  
19 quality which finds, or fails to find, a significant correla-  
20 tion between health risks and a potential toxin. Where  
21 conflicts among such data appear to exist, or where animal  
22 data are used as a basis to assess human health risks,  
23 the study and assessments shall include discussion of dif-  
24 ferences in study designs, comparative physiology, routes

1 of exposure, bioavailability, pharmacokinetics, and any  
2 other relevant and significant factor.

3 “(5) Where the study and assessment involve applica-  
4 tion of any significant assumption, inference, or model, the  
5 President shall—

6 “(A) state the weight of scientific evidence sup-  
7 porting a selection relative to other plausible alter-  
8 natives;

9 “(B) fully describe any model used in the risk  
10 assessment and make explicit the assumptions incor-  
11 porated in the model; and

12 “(C) indicate the extent to which any signifi-  
13 cant model has been validated by, or conflicts with,  
14 empirical data.

15 “(6) To the extent scientifically appropriate, the  
16 President shall include, among other estimates or health  
17 effects values, central estimates of risks or health effects  
18 values, using the most plausible assumptions, given the  
19 weight of the scientific information available to the Presi-  
20 dent. Where significant assumptions have substantially  
21 similar scientific support, the President shall provide a de-  
22 scription of the range of estimates or values.

23 “(d) LEAD-IN-SOILS REVIEW.—(1) Not later than 30  
24 days after the date of the enactment of this subsection,  
25 the Administrator shall enter into a contract with the Na-

1 tional Academy of Sciences to review existing science (and  
2 any new science made available prior to completion of the  
3 review) on the relationship, if any, between lead in residen-  
4 tial soils and blood lead levels. The review shall be consist-  
5 ent with section 127(a) and shall include an assessment  
6 of whether, and, if so, to what extent, blood lead levels  
7 are affected by removing lead-containing soil at varying  
8 levels; an assessment of whether, and, if so, to what ex-  
9 tent, blood lead levels are affected by variation in the type  
10 of lead compounds, soil type, and other site-specific fac-  
11 tors; and a review of the methodologies for modeling the  
12 impact of soil lead levels on blood lead levels.

13       “(2) The National Academy of Sciences shall com-  
14 plete the review under paragraph (1) no later than 6  
15 months after contracting with the Administrator. The re-  
16 view shall include an opportunity for peer review and pub-  
17 lic comment and participation. The National Academy of  
18 Sciences shall report its findings, in writing, to Congress  
19 and the Administrator within 30 days after completing its  
20 review.

21       “(e) RECONCILIATION OF DATA.—(1) The President  
22 shall reconcile any empirical data made available to the  
23 President from a statistically significant representation of  
24 residents concerning lead in blood along with any other  
25 relevant information (including the review under sub-

1 section (d)), in the process of making estimates of risks  
2 based on models, methodologies, guidance, or rules con-  
3 cerning the exposure, uptake, bioavailability, and biokinet-  
4 ics of lead in soils. No projections based on any model,  
5 methodology, guidance, or rule concerning the exposure,  
6 uptake, bioavailability, or biokinetics of lead in soils may  
7 be used to predict blood lead levels or to select remedial  
8 actions unless the projections have been reconciled with  
9 empirical data as required by this subsection.

10 “(2) For purposes of paragraph (1), the term ‘re-  
11 concile’ means to compare all relevant information on a  
12 technical basis and, in any case where there are dif-  
13 ferences between empirical data and data or projections  
14 of data based on any model, methodology, guidance, or  
15 rule, to explain in writing each difference and to make  
16 a judgment based on the weight of the scientific evi-  
17 dence.”.

18 **SEC. 103. REMEDY UPDATES AND REMEDY REVIEW BOARD.**

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

20 (1) by inserting after “REVIEW.—” the follow-  
21 ing:

22 “(1) FIVE-YEAR REVIEW.—”; and

23 (2) by adding at the end the following new  
24 paragraphs:

25 “(2) REVIEW BY REQUEST.—

1           “(A) IN GENERAL.—To ensure that  
2 records of decision reflect the current state of  
3 knowledge with respect to remediation science,  
4 technology, and engineering; best available facil-  
5 ity data; and most recent policy and guidance  
6 of the Environmental Protection Agency, and to  
7 improve the cost-effectiveness of site remedi-  
8 ation while ensuring reliable long-term protec-  
9 tion of human health and the environment, the  
10 President, upon receiving a request from an in-  
11 terested party, shall review a past Superfund  
12 record of decision. If appropriate, based on such  
13 review, the President shall modify the record of  
14 decision. The President shall not be required to  
15 conduct more than one review of a record of de-  
16 cision under this paragraph.

17           “(B) COSTS.—The President may establish  
18 rules requiring a party requesting review under  
19 this paragraph to pay the reasonable costs to  
20 the Federal and State governments associated  
21 with reviewing the record of decision.

22           “(C) PAST RECORD OF DECISION DE-  
23 FINED.—For the purpose of this subsection, the  
24 term “past Superfund record of decision”  
25 means a record of decision selecting a remedy

1 at a site on the National Priorities List that  
2 was signed prior to October 2, 1995, and has  
3 not been reviewed pursuant to United States  
4 Environmental Protection Agency, Office of  
5 Solid Waste and Emergency Response Direc-  
6 tive, EPA540/F-96/026, or otherwise updated  
7 since October 2, 1995.

8 “(D) ADMINISTRATIVE RECORD.—The re-  
9 sults of the President’s review of a record of de-  
10 cision under this subsection and the basis for  
11 the President’s decision to update or not update  
12 a remedy shall be placed in the administrative  
13 record for the facility.

14 “(E) JUDICIAL REVIEW.—The President’s  
15 decision under this subsection to modify or not  
16 modify a remedy following a review under this  
17 subsection shall not be subject to judicial re-  
18 view.

19 “(F) LIMITATION ON STATUTORY CON-  
20 STRUCTION.—Nothing in this subsection may  
21 be construed to affect the authority of the  
22 President to modify or amend a record of deci-  
23 sion.

24 “(3) NATIONAL SUPERFUND REMEDY REVIEW  
25 BOARD.—

1           “(A) ESTABLISHMENT.—The President shall  
2 establish a National Superfund Remedy Review  
3 Board to control remedy costs, and to provide for  
4 protective, consistent, and cost-effective remedial de-  
5 cisions, at facilities on the National Priorities List.

6           “(B) THRESHOLD FOR REVIEW.—For remedial  
7 alternatives evaluated and identified after the date  
8 of the enactment of this paragraph, following com-  
9 pletion of the evaluation or remedial alternatives and  
10 identification of a preferred remedy, the Board shall  
11 review remedies for those facilities on the National  
12 Priorities List for which the estimated cost of the  
13 preferred remedy exceeds \$15,000,000. If requested,  
14 the Board may review remedies for any facility for  
15 which the estimated cost for the preferred remedy is  
16 \$15,000,000 or less.

17           “(C) BOARD MEMBERSHIP.—The Board shall  
18 consist of experts on remedy selection, cost-effective-  
19 ness, and implementation of this Act. Such experts  
20 may be selected from the Environmental Protection  
21 Agency, State environmental agencies, and other  
22 Federal departments and agencies, including the De-  
23 partment of Defense and the Department of Energy.  
24 No person who participated in the development of a

1 remedy for a facility may be a member of the Board  
2 reviewing such remedy.

3 “(D) PUBLIC PARTICIPATION.—For each rem-  
4 edy that is subject to review under this paragraph,  
5 the President shall notify the State, the affected  
6 local government, the affected community (including  
7 any community assistance group), and the poten-  
8 tially responsible parties that the review will take  
9 place. Such notice shall include a brief description  
10 of the preferred remedy and information regarding  
11 the location of the administrative record established  
12 for the facility under section 113(k). The Board  
13 shall review all comments that are received during  
14 the period for public comment. The Board is not re-  
15 quired to review any comments that exceed 4,000  
16 words or are not received during such period.

17 “(E) BOARD RECOMMENDATIONS.—With re-  
18 spect to a facility for which the Board conducts a re-  
19 view under this paragraph, the Board shall make  
20 recommendations to the Regional Administrator of  
21 the Environmental Protection Agency for the region  
22 in which the facility is located. The Regional Admin-  
23 istrator shall make such recommendations publicly  
24 available and shall place such recommendations in  
25 the administrative record for the facility immediately

1 upon receipt. When the proposed remedial alter-  
2 native for the facility is issued, the President shall  
3 explain any deviations from the Board's rec-  
4 ommendations.

5 “(F) REVIEWS OF REMEDIES PROPOSED BY  
6 STATES UNDER SECTION 151.—This section shall  
7 apply to remedies developed by States under section  
8 151. To the extent practicable, a majority of the  
9 members of the Board reviewing any such remedies  
10 shall be officials from State environmental agencies.  
11 This paragraph shall not apply to remedies devel-  
12 oped by States under section 152, although the Ad-  
13 ministrator shall encourage such States to provide  
14 reviews of remedies in a manner consistent with this  
15 paragraph.”.

16 **SEC. 104. PUBLIC HEALTH AUTHORITIES.**

17 (a) DISEASE REGISTRY AND MEDICAL CARE PROVID-  
18 ERS.—Section 104(i)(1) of such Act (42 U.S.C.  
19 9604(i)(1)) is amended as follows:

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

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

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

6           (b) DETERMINING HEALTH EFFECTS.—Section  
7           104(i)(5)(A) of such Act (42 U.S.C. 9604(i)(5)(A)) is  
8           amended as follows:

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

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

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

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

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

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

3 (c) PUBLIC HEALTH AT NPL FACILITIES.—Section  
4 104(i)(6) of such Act (42 U.S.C. 9604(i)(6)) is amended  
5 as follows:

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

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

23 “(ii) The Administrator of ATSDR shall design pub-  
24 lic health assessments that take into account the needs

1 and conditions of the affected community, in cooperation  
2 with States.

3 “(iii) The Administrator of the Environmental Pro-  
4 tection Agency shall place highest priority on facilities  
5 with releases of hazardous substances which result in ac-  
6 tual ongoing human exposures at levels of public health  
7 concern or adverse health effects as identified in a public  
8 health assessment conducted by the ATSDR or are rea-  
9 sonably anticipated based on currently known facts.”.

10 (2) In subparagraph (D), by inserting “(i)”  
11 after “(D)” and by adding the following at the end  
12 of the subparagraph: “The President and the Ad-  
13 ministrator of ATSDR shall develop strategies to ob-  
14 tain relevant on-site and off-site characterization  
15 data for use in the health assessment, the President  
16 shall, to the maximum extent practicable, provide  
17 the Administrator of ATSDR with the data and in-  
18 formation necessary to make public health assess-  
19 ments sufficiently prior to the choice of remedial ac-  
20 tions to allow ATSDR to complete these assess-  
21 ments. Where deemed appropriate, the Adminis-  
22 trator of ATSDR shall provide to the President as  
23 soon as practicable after site discovery, recommenda-  
24 tions for sampling environmental media for hazard-  
25 ous substances of public health concern. To the ex-

1 tent feasible, the President shall incorporate such  
2 recommendations into its site investigation activities.

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

6 “(I) The Administrator of ATSDR shall ac-  
7 tively collect from Community Assistance Groups  
8 (‘CAGs’), from State and local public health authori-  
9 ties, and from other sources in communities affected  
10 or potentially affected by releases of hazardous sub-  
11 stances data regarding exposure, relevant human ac-  
12 tivities, and other factors.

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

21 (3) In subparagraph (H), by striking “health  
22 assessment” each place it appears and inserting  
23 “public health assessment”.

24 (d) HEALTH STUDIES.—Subparagraph (A) of section  
25 104(i)(7) of such Act (42 U.S.C. 9604(i)(7)) is amended

1 to read as follows: “(A) Whenever in the judgment of the  
2 Administrator of ATSDR it is appropriate on the basis  
3 of the results of a public health assessment or on the basis  
4 of other appropriate information, the Administrator of  
5 ATSDR shall conduct a human health study of exposure  
6 or other health effects for selected groups or individuals  
7 in order to determine the desirability of conducting full  
8 scale epidemiologic or other health studies of the entire  
9 exposed population.”.

10 (e) DISTRIBUTION OF MATERIALS TO HEALTH PRO-  
11 FESSIONALS AND MEDICAL CENTERS.—Paragraph (14)  
12 of section 104(i) of such Act (42 U.S.C. 9604(i)) is  
13 amended to read as follows:

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

17 “(A) assemble, develop as necessary, and dis-  
18 tribute to the State and local health officials, tribes,  
19 medical colleges, physicians, nursing institutions,  
20 nurses, and other health professionals and medical  
21 centers, appropriate educational materials (including  
22 short courses) on the medical surveillance, screening,  
23 and methods of prevention, diagnosis, and treatment  
24 of injury or disease related to exposure to hazardous  
25 substances (giving priority to those listed in para-

1 graph (2)), through means the Administrator of  
2 ATSDR considers appropriate; and

3 “(B) assemble, develop as necessary, and dis-  
4 tribute to the general public and to at-risk popu-  
5 lations appropriate educational materials and other  
6 information on human health effects of hazardous  
7 substances.”.

8 (f) GRANT AWARDS, CONTRACTS, AND COMMUNITY  
9 ASSISTANCE ACTIVITIES.—Section 104(i)(15) of such Act  
10 (42 U.S.C. 6904(i)(15)) is amended as follows:

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

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

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

21 (4) By adding at the end the following new sub-  
22 paragraphs:

23 “(B) When a public health assessment is conducted  
24 at a facility on the National Priorities List, or a facility  
25 is being evaluated for inclusion on the National Priorities

1 List, the Administrator of ATSDR may provide the assist-  
2 ance specified in this paragraph to public or private non-  
3 profit entities, individuals, and community-based groups  
4 that may be affected by the release or threatened release  
5 of hazardous substances in the environment.

6 “(C) The Administrator of the ATSDR, pursuant to  
7 the grants, cooperative agreements, and contracts referred  
8 to in this paragraph, is authorized and directed to provide,  
9 where appropriate, diagnostic services, health data reg-  
10 istries and preventative public health education to commu-  
11 nities affected by the release of hazardous substances.”.

12 (g) PEER REVIEW COMMITTEE.—Subsection (i) of  
13 section 104 of such Act is amended by adding the follow-  
14 ing at the end thereof:

15 “(19) The Administrator of ATSDR shall establish  
16 an external peer review committee of qualified health sci-  
17 entists who serve for fixed periods and meet periodically  
18 to—

19 “(A) provide guidance on initiation of studies;

20 “(B) assess the quality of study reports funded  
21 by the agency; and

22 “(C) provide guidance on effective and objective  
23 risk characterization and communication.

24 The peer review committee may include additional specific  
25 experts representing a balanced group of stakeholders on

1 an ad hoc basis for specific issues. Meetings of the com-  
2 mittee should be open to the public.”.

3 **SEC. 105. INDIAN HEALTH PROVISIONS.**

4 Section 104(i) (42 U.S.C. 9406(i)) is amended as fol-  
5 lows:

6 (1) In paragraph (1)—

7 (A) by inserting “the Indian Health Serv-  
8 ice” after “the Secretary of Transportation”;

9 (B) by inserting “and tribal” after “and  
10 local”;

11 (C) in subparagraph (A) (as amended by  
12 this Act) by inserting “and Indian tribes” after  
13 “the States”; and

14 (D) in subparagraph (C) by inserting “In-  
15 dian tribes” after “States,”.

16 (2) In paragraph (4) by—

17 (A) striking “State officials and local offi-  
18 cials” and inserting “State, tribal, and local of-  
19 ficials”; and

20 (B) inserting in the second sentence “or  
21 Indian tribes” after “States”.

22 (3) In paragraph (5)(A) by inserting “and the  
23 Indian Health Service” after “Public Health Serv-  
24 ice”.

1           (4) In paragraph (6)(C) by inserting “where  
2 low population density is not used as an excluding  
3 risk factor” after “health appears highest”.

4           (5) In paragraph (6)(E)—

5                 (A) by inserting “Indian tribe” after  
6 “Any”; and

7                 (B) by inserting at the end of the subpara-  
8 graph the following: “If the ATSDR or the Ad-  
9 ministrator of the Environmental Protection  
10 Agency does not act on the recommendations of  
11 the State or Indian tribe, then the Administra-  
12 tors must respond in writing to the State or  
13 tribe why they have not acted on the rec-  
14 ommendations.”.

15           (6) In paragraph (6)(F) by striking “and” after  
16 “emissions,” and inserting “and any other pathways  
17 resulting from subsistence activities” after “contami-  
18 nation”.

19           (7) In paragraph (6)(G) by striking the period  
20 at the end of the last sentence and inserting the fol-  
21 lowing: “and give special consideration, where appro-  
22 priate, to any practices of the affected community  
23 that may result in increased exposure to hazardous  
24 substances, pollutants, or contaminants, such as  
25 subsistence hunting, fishing, and gathering.”.

1 (8) In paragraph (10)—

2 (A) by striking “and” at the end of sub-  
3 paragraph (D);

4 (B) by striking the period at the end of  
5 subparagraph (E) and inserting “; and”; and

6 (C) by inserting after revised subpara-  
7 graph (E) the following new subparagraph:

8 “(F) and the health impacts from pollut-  
9 ants, contaminants, and hazardous substances  
10 on Indian tribes from covered facilities.”.

11 **SEC. 106. HAZARD RANKING SYSTEM.**

12 Section 105(c) (42 U.S.C. 9605(c)) is amended by  
13 inserting after paragraph (4) the following new para-  
14 graphs:

15 “(5) RISK PRIORITIZATION.—In setting prior-  
16 ities under subsection (a)(8), the President shall  
17 place highest priority on facilities with releases of  
18 hazardous substances which result in actual ongoing  
19 human exposures at levels of public health concern  
20 or demonstrated adverse health effects as identified  
21 in a health assessment conducted by the Agency for  
22 Toxic Substances and Disease Registry or are rea-  
23 sonably anticipated based on currently known facts.

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

4 **SEC. 107. REMOVAL ACTIONS.**

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

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

11          (2) by striking “\$2,000,000” and inserting  
12          “\$3,000,000”; and

13          (3) by striking “12 months” and inserting “two  
14          years”.

15 **SEC. 108. HAZARDOUS SUBSTANCE PROPERTY USE.**

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

18          “(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

19                 “(1) AUTHORITY OF PRESIDENT TO ACQUIRE  
20                 EASEMENTS.—In order to prevent exposure to, re-  
21                 duce the likelihood of, or otherwise respond to a re-  
22                 lease or threatened release of a hazardous substance,  
23                 the President may acquire, at fair market value, or  
24                 for other consideration as agreed to by the parties,  
25                 a hazardous substance easement which restricts, lim-

1 its, or controls the use of land, water, or other natu-  
2 ral resources, including specifying permissible or im-  
3 permissible uses of land, prohibiting specified activi-  
4 ties upon property, prohibiting the drilling of wells  
5 or use of ground water, or restricting the use of sur-  
6 face water.

7 “(2) USE OF EASEMENTS.—A hazardous sub-  
8 stance easement and notice of a property use restric-  
9 tion under this subsection may be used wherever in-  
10 stitutional controls have been selected as a compo-  
11 nent of remedial action for a site listed on the Na-  
12 tional Priorities List.

13 “(3) PERSONS SUBJECT TO EASEMENTS.—A  
14 hazardous substance easement shall be enforceable  
15 for 20 years and may be renewed for additional 20-  
16 year periods where necessary to meet the standards  
17 of this section (unless terminated and released as  
18 provided for in this section) against any owner of  
19 the affected property and all persons who subse-  
20 quently acquire interest in the property or rights to  
21 use the property, including lessees, licensees, and  
22 any other person with an interest in the property,  
23 without respect to privity or lack of privity of estate  
24 or contract, lack of benefit running to any other  
25 property, assignment of the easement to another

1 party, or any other circumstance which might other-  
2 wise affect the enforceability of easements or similar  
3 deed restrictions under the laws of the State. The  
4 easement shall be binding upon holders of any other  
5 interests in the property regardless of whether such  
6 interests are recorded or whether they were recorded  
7 prior or subsequent to the easement, and shall re-  
8 main in effect notwithstanding any foreclosure or  
9 other assertion of such interests.

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

12 “(A) a legal description of the property af-  
13 fected;

14 “(B) the name or names of any current  
15 owner or owners of the property as reflected in  
16 public land records;

17 “(C) a description of the release or threat-  
18 ened release; and

19 “(D) a statement as to the nature of the  
20 restriction, limitation, or control created by the  
21 easement.

22 “(5) USE RESTRICTION NOTICE.—Whenever the  
23 President acquires a hazardous substance easement  
24 or assigns a hazardous substance easement to an-  
25 other party, the President shall record a notice of

1 property use restriction in the public land records  
2 for the jurisdiction in which the affected property is  
3 located. Such a notice shall specify restrictions, limi-  
4 tations, or controls on the use of land, water, or  
5 other natural resources provided for in the hazard-  
6 ous substance easement.

7 “(6) FILING OF NOTICE.—Wherever recording  
8 in the public land records is required under this sub-  
9 section, the President shall file the notice or other  
10 instrument in the appropriate office within the State  
11 (or governmental subdivision) in which the affected  
12 property is located, as designated by State law. If  
13 the State has not by law designated one office for  
14 the recording of interests in real property or claims  
15 or rights burdening real property, the document or  
16 notice shall be filed in the office of the clerk of the  
17 United States district court for the district in which  
18 the affected property is located.

19 “(7) METHODS OF ACQUIRING EASEMENTS.—  
20 The President may acquire a hazardous substance  
21 easement by purchase or other agreement, by con-  
22 demnation, or by any other means permitted by law.  
23 Compensation for such easement shall be at fair  
24 market value, or for other consideration as agreed to  
25 by the parties, for the interest acquired. The direct

1 cost of such easements, ensuring adequate public no-  
2 tice of such easements, and otherwise tracking and  
3 maintaining the protections afforded by the ease-  
4 ments shall be considered response costs which are  
5 recoverable under this Act.

6 “(8) ASSIGNMENT OF EASEMENTS TO PARTIES  
7 OTHER THAN THE PRESIDENT.—

8 “(A) AUTHORITY TO ASSIGN.—The Presi-  
9 dent may assign an easement acquired under  
10 this subsection to a State or other governmental  
11 entity that has the capability of effectively en-  
12 forcing the easement over the period of time  
13 necessary to achieve the purposes of the ease-  
14 ment. In the case of any assignment, the ease-  
15 ment shall be fully enforceable by the assignee.  
16 Any assignment of such an easement by the  
17 President may be made by following the same  
18 procedures as are used for the transfer of an  
19 interest in real property to a State under sub-  
20 section (j).

21 “(B) EFFECT OF ASSIGNMENT.—Any in-  
22 terest in property granted to a State or other  
23 governmental entity which restricts, limits, or  
24 controls the use of land, water, or other natural  
25 resources in order to prevent exposure to, re-

1           duce the likelihood of, or otherwise respond to,  
2           a release or threatened release of a hazardous  
3           substance, and which is expressly designated in  
4           writing as a hazardous substance easement  
5           within the meaning of this paragraph, shall cre-  
6           ate the same rights, have the same legal effect,  
7           and be enforceable in the same manner as a  
8           hazardous substance easement held by the  
9           President regardless of whether the interest in  
10          property is otherwise denominated as an ease-  
11          ment, covenant, or any other form of property  
12          right.

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

1 is located, any relevant community assistance group  
2 established under section 117, the affected commu-  
3 nity, and the general public.

4 “(10) TERMINATION OF EASEMENTS.—An ease-  
5 ment acquired under this subsection shall remain in  
6 force until it expires by its terms or until the holder  
7 of the easement executes and records a termination  
8 and release in accordance with the terms of the ease-  
9 ment and approved by the Administrator of the En-  
10 vironmental Protection Agency or the relevant as-  
11 signee. Such termination shall be recorded in the  
12 same manner as the easement.

13 “(11) ENFORCEMENT.—

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

1           diligently prosecuting an action in court to en-  
2           force the easement.

3           “(B) ENFORCEMENT ACTIONS.—The  
4           President may take appropriate enforcement ac-  
5           tions to ensure compliance with the terms of  
6           the easement whenever the Administrator of the  
7           Environmental Protection Agency determines  
8           that the terms set forth in the easement are  
9           being violated. If the easement has been as-  
10          signed to a party other than the President and  
11          that party has not taken appropriate enforce-  
12          ment actions, the President may notify the as-  
13          signee of the violation. If the party does not  
14          take appropriate enforcement actions within 30  
15          days of such notification, or sooner in the case  
16          of an imminent hazard, the President may initi-  
17          ate such enforcement actions.

18          “(12) APPLICABILITY OF OTHER PROVISIONS.—  
19          Holding a hazardous substance easement shall not  
20          subject either the holder thereof or the owner of the  
21          affected property to liability under section 107. Any  
22          such easement acquired by the President shall not  
23          be subject to the requirements of subsection (j) or  
24          section 120(h).”.

1 **SEC. 109. EFFECTIVE DATE AND TRANSITION RULES.**

2 The amendments made by this title shall apply—

3 (1) to any final remedial action selected under  
4 the Comprehensive Environmental Response, Com-  
5 pensation, and Liability Act of 1980 for which the  
6 Record of Decision (hereinafter in this section re-  
7 ferred to as the “ROD”) was signed, or the consent  
8 decree was lodged, after the date of the enactment  
9 of this Act; and

10 (2) to any modifications made to any ROD  
11 after the date of enactment of this Act.

12 **TITLE II—LIABILITY**

13 **SEC. 201. PARTIES NOT RESPONSIBLE FOR POLLUTION.**

14 (a) IN GENERAL.—Section 107 (42 U.S.C. 9607) is  
15 amended by adding at the end the following:

16 “(o) EXEMPTIONS AND LIMITATIONS OF LIABIL-  
17 ITY.—

18 “(1) PRE-1987 GENERATORS AND TRANSPORT-  
19 ERS.—No person (other than the United States or  
20 a department, agency or instrumentality of the Unit-  
21 ed States) shall be liable under paragraph (3) or (4)  
22 of subsection (a) for a release or threatened release  
23 at a facility or vessel not owned by the United  
24 States listed on the National Priorities List, if no  
25 activity of such person described in such paragraph  
26 (3) or (4) occurred after January 1, 1987, unless it

1 is demonstrated by a preponderance of the evidence  
2 that—

3 “(A) such person generated or transported  
4 hazardous substances that have contributed sig-  
5 nificantly or could contribute significantly to  
6 the costs of the response or to the costs of the  
7 natural resource damages;

8 “(B) such person has impeded the per-  
9 formance of the response action or natural re-  
10 source damage restoration;

11 “(C) such person is legally affiliated with  
12 a liable person at the facility or vessel through  
13 any direct familial, contractual, corporate, or fi-  
14 nancial relationship to the facility other than  
15 that arising from a contract for the disposal,  
16 treatment, or transportation of the hazardous  
17 substances at, to, or from the facility; or

18 “(D) such person has not substantively  
19 complied with all requests made under the au-  
20 thority of sections 104(e), 122(g)(2), and 128  
21 with respect to such facility or vessel.

22 “(2) MUNICIPAL SOLID WASTE AND SEWAGE  
23 SLUDGE.—No person (other than the United States  
24 or a department, agency or instrumentality of the  
25 United States) shall be liable under paragraph (3)

1 or (4) of subsection (a) for a release or threatened  
2 release at any facility or vessel not owned by the  
3 United States listed on the National Priorities List  
4 if the activity of such person described in such para-  
5 graph (3) or (4) involved only municipal solid waste  
6 or sewage sludge, unless it is demonstrated by a pre-  
7 ponderance of the evidence that—

8 “(A) the hazardous substances contained  
9 in such waste or sludge have contributed sig-  
10 nificantly or could contribute significantly to  
11 the costs of the response or to the costs of the  
12 natural resource damages;

13 “(B) such person has impeded the per-  
14 formance of the response action or natural re-  
15 source damage restoration; or

16 “(C) such person has not substantively  
17 complied with all requests made under the au-  
18 thority of sections 104(e), 122(g)(2), and 128  
19 with respect to such facility or vessel.

20 “(3) DE MICROMIS EXEMPTION.—No person  
21 (other than the United States or a department,  
22 agency or instrumentality of the United States) shall  
23 be liable under paragraph (3) or (4) of subsection  
24 (a) for a release or threatened release at any facility  
25 or vessel if the activity of such person described in

1 such paragraph (3) or (4) involved no more than  
2 110 gallons of liquid materials containing hazardous  
3 substances or more than 200 pounds of solid mate-  
4 rials containing hazardous substances, unless it is  
5 demonstrated by a preponderance of the evidence  
6 that—

7 “(A) such hazardous substances have con-  
8 tributed significantly or could contribute signifi-  
9 cantly to the costs of the response or to the  
10 costs of the natural resource damage restora-  
11 tion;

12 “(B) such person has impeded the per-  
13 formance of a response action or natural re-  
14 source damage restoration; or

15 “(C) such person has not substantively  
16 complied with all requests made under the au-  
17 thority of section 104(e).

18 “(4) FACILITIES ACQUIRED BY INHERITANCE  
19 OR BEQUEST.—No person shall be liable under this  
20 section for costs or damages at any facility or vessel  
21 to the extent that liability at such facility or vessel  
22 is based solely on the person’s status as an owner  
23 under paragraph (1) of subsection (a) for a release  
24 or threat of release from the facility or vessel, and

1 the person acquired the facility or vessel by inherit-  
2 ance or bequest if the person—

3 “(A) acquired the real property on which  
4 the facility concerned is located, or acquired the  
5 vessel, after placement of the hazardous sub-  
6 stance occurred at the facility or vessel;

7 “(B) did not cause, contribute to, or con-  
8 sent to the release or threat of release; and

9 “(C) exercised due care with respect to the  
10 hazardous substance concerned, including pre-  
11 cautions against foreseeable acts of third par-  
12 ties, taking into consideration the characteris-  
13 tics of such hazardous substance, in light of all  
14 relevant facts and circumstances.

15 “(5) CERTAIN TAX EXEMPT ORGANIZATIONS.—

16 A person’s liability under this section with respect to  
17 a release or threatened release from a facility or ves-  
18 sel shall be limited to the lesser of the fair market  
19 value of the facility or vessel or the actual proceeds  
20 of the sale of the facility or vessel received by the  
21 person, to the extent such liability is based solely on  
22 the person’s status under paragraph (1) of sub-  
23 section (a) as owner of the facility or vessel if the  
24 person—

1           “(A) holding title, either outright or in  
2 trust, to the facility or vessel is an organization  
3 described in section 501(c)(3) of the Internal  
4 Revenue Code of 1986 and exempt from tax  
5 under section 501(a) of such Code and holds  
6 such title as a result of a charitable donation  
7 that qualifies under sections 170, 2055, or  
8 2522 of such Code;

9           “(B) exercised due care with respect to the  
10 hazardous substance concerned, including pre-  
11 cautions against foreseeable acts of third par-  
12 ties, taking into consideration the characteris-  
13 tics of such hazardous substance, in light of all  
14 relevant facts and circumstances;

15           “(C) did not cause, contribute to, or con-  
16 sent to the release or threat of release; and

17           “(D) acquired the real property on which  
18 the facility concerned is located, or acquired the  
19 vessel, after placement of the hazardous sub-  
20 stance occurred at the facility or vessel.

21           “(6) CONSTRUCTION CONTRACTORS.—No per-  
22 son shall be liable under this section for costs or  
23 damages at any facility or vessel to the extent that  
24 liability is based solely on a person’s construction ac-  
25 tivities at a facility or vessel if such person can dem-

1 onstrate by a preponderance of evidence that such  
2 construction activities were specifically directed by  
3 and carried out in accordance with a contract with  
4 an owner or operator of the facility or vessel.

5 “(7) RAILROAD OWNERS.—No person shall be  
6 liable under this section for costs or damages at any  
7 facility to the extent that liability is based solely on  
8 the status of the person as a railroad owner or oper-  
9 ator of a spur track, including a spur track over  
10 land subject to an easement, to a facility that is  
11 owned or operated by a person that is not affiliated  
12 with the railroad owner or operator, if—

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

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

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

21 “(8) GRANTEES OF CERTAIN EASEMENTS.—No  
22 person shall be liable under this section for costs or  
23 damages at any facility for a release or threat of re-  
24 lease from the facility to the extent that liability is  
25 based solely on the status of the person as—

1           “(A) a holder of a pipeline right-of-way or  
2           easement; or

3           “(B) a holder of a gas or oil lease;  
4 if the holder of such right-of-way, easement, or lease did  
5 not cause, contribute to, or consent to the release or threat  
6 of release.

7           “(9) INAPPLICABILITY.—An exemption under  
8           paragraph (4), (5), (6), (7), or (8) shall not apply  
9           to any person with respect to any facility or vessel  
10          if it is demonstrated that—

11           “(A) such person has impeded the per-  
12          formance of a response action or natural re-  
13          source damage restoration at such facility or  
14          vessel;

15           “(B) such person has refused to provide  
16          cooperation and facility access to persons au-  
17          thorized to conduct response actions or natural  
18          resource damage restorations at the facility or  
19          vessel; or

20           “(C) such person has not substantively  
21          complied with all requests made under the au-  
22          thority of section 104(e) with respect to such  
23          facility or vessel.

24           “(10) LIMITATIONS ON LIABILITY OF MUNICI-  
25          PALITIES.—

1           “(A) SMALL MUNICIPALITIES.—With re-  
2           spect to a facility listed on the National Prior-  
3           ities List at which the predominant sources of  
4           contamination initially originated with parties  
5           liable under subparagraph (3) or (4) of sub-  
6           section (a) prior to the enactment of the  
7           Superfund Reform Act, that is owned or oper-  
8           ated only by small municipalities and that is  
9           not subject to the criteria for solid waste land-  
10          fills published under subtitle D of the Solid  
11          Waste Disposal Act (42 U.S.C. 6941 et seq.)  
12          at part 258 of title 40, Code of Federal Regula-  
13          tions (or a successor regulation), the aggregate  
14          liability of all small municipalities for response  
15          costs incurred on or after the date of enactment  
16          of this subsection shall be the lesser of—

17                   “(i) 10 percent of the total amount of  
18                   response costs at the facility; or

19                   “(ii) the costs of compliance with the  
20                   requirements of subtitle D of the Solid  
21                   Waste Disposal Act (42 U.S.C. 6941 et  
22                   seq.) for the facility (as if the facility had  
23                   continued to accept municipal solid waste  
24                   through January 1, 1997).

1           “(B) AGGREGATE LIABILITY OF LARGE  
2 MUNICIPALITIES.—With respect to a facility  
3 listed on the National Priorities List at which  
4 the predominant sources of contamination origi-  
5 nated with parties liable under subparagraph  
6 (3) or (4) of subsection (a) prior to the enact-  
7 ment of the Superfund Reform Act, that is  
8 owned or operated only by large municipalities  
9 and that is not subject to the criteria for solid  
10 waste landfills published under subtitle D of the  
11 Solid Waste Disposal Act (42 U.S.C. 6941 et  
12 seq.) at part 258 of title 40, Code of Federal  
13 Regulations (or a successor regulation), the ag-  
14 gregate liability of all large municipalities for  
15 response costs incurred on or after the date of  
16 enactment of this subsection shall be the lesser  
17 of—

18                   “(i) 20 percent of the proportion of  
19 the total amount of response costs at the  
20 facility; or

21                   “(ii) the costs of compliance with the  
22 requirements of subtitle D of the Solid  
23 Waste Disposal Act (42 U.S.C. 6941 et  
24 seq.) for the facility (as if the facility had

1 continued to accept municipal solid waste  
2 through January 1, 1997).

3 “(C) AGGREGATE LIABILITY OF MUNICI-  
4 PALITIES AND NONMUNICIPALITIES.—With re-  
5 spect to a facility listed on the National Prior-  
6 ities List that is owned and operated by a com-  
7 bination of small and large municipalities or  
8 persons other than municipalities and that is  
9 subject to the criteria for solid waste landfills  
10 published under subtitle D of the Solid Waste  
11 Disposal Act (42 U.S.C. 6941 et seq.) at part  
12 28 of title 40, Code of Federal Regulations (or  
13 a successor regulation)—

14 “(i) the allocator shall determine the  
15 proportion of the contamination of the  
16 landfill that was made during the owner-  
17 ship or operation of it by small and large  
18 municipalities and persons other than mu-  
19 nicipalities during the time the facility was  
20 in operation; and

21 “(ii) shall allocate among the parties  
22 an appropriate percentage of total liability  
23 which for the municipal parties shall not  
24 exceed the aggregate liability percentages  
25 stated in paragraphs (1) and (2).

1           “(D) LIMITATIONS.—The liability limita-  
2           tions of this paragraph shall not apply to—

3                   “(i) a person that acted in violation of  
4                   subtitle C of the Solid Waste Disposal Act  
5                   (42 U.S.C. Sec. 6921 et seq.);

6                   “(ii) a person that owned or operated  
7                   a facility in violation of the applicable re-  
8                   quirements for municipal solid waste land-  
9                   fill units under subtitle D of the Solid  
10                  Waste Disposal Act (42 U.S.C. Sec. 6941  
11                  et seq.) after October 9, 1991;

12                  “(iii) a person that did not act pursu-  
13                  ant to and in substantial compliance with  
14                  any other applicable permit, license, or  
15                  other approval or authorization relating to  
16                  solid waste or sewage sludge disposal is-  
17                  sued by an appropriate Federal, State, In-  
18                  dian tribe, or local government authority,  
19                  and such violation caused contamination of  
20                  the facility; or

21                  “(iv) a person that impedes the per-  
22                  formance of a response action.

23           “(11) TREATMENT OF NON-LIABLE PARTIES.—

24           The Administrator shall seek to minimize the admin-  
25           istrative and legal burdens on parties that are not

1 liable pursuant to this section. To the extent prac-  
2 ticable, the Administrator shall—

3 “(A) inform such parties that they are ex-  
4 empted from liability pursuant to this section,  
5 and offer them written assurances establishing  
6 their exempt status; and

7 “(B) eliminate or minimize any need for  
8 such parties to retain legal counsel in connec-  
9 tion with administrative or legal proceedings  
10 concerning the facility at issue.

11 “(p) SIGNIFICANT CONTRIBUTIONS.—For purposes  
12 of paragraphs (1), (2), and (3) of subsection (o), a dem-  
13 onstration that hazardous substances have contributed  
14 significantly or could contribute significantly to the costs  
15 of a response or to natural resource damages shall be  
16 based upon the following factors in relationship to the  
17 costs of the response or to the natural resource damages:

18 “(1) The degree to which the person caused,  
19 contributed to, or consented to the release or threat  
20 of release of hazardous substances at the facility.

21 “(2) The amount of hazardous substances con-  
22 tributed by the person. Any person who arranged for  
23 the disposal or treatment, or arranged with a trans-  
24 porter for transport for disposal or treatment, of  
25 hazardous substances constituting less than one per-

1 cent by volume of the hazardous substances at a fa-  
2 cility shall be presumed not to have contributed sig-  
3 nificantly to the costs of a response or to natural re-  
4 source damages.

5 “(3) The degree of toxicity of the hazardous  
6 substances contributed by the person.

7 “(4) The mobility of the hazardous substances  
8 contributed by the person.

9 “(5) The degree of involvement of the person in  
10 the generation, transportation, treatment, storage,  
11 or disposal of the hazardous substances it contrib-  
12 uted, including whether the person exercised control  
13 over the owner or operator of the facility or vessel  
14 during the period when such activities occurred.

15 “(6) The degree of care exercised by the person  
16 with respect to the hazardous substances it contrib-  
17 uted, taking into account the characteristics of the  
18 hazardous substances.

19 “(7) The cooperation of the person in perform-  
20 ing any response action and in providing complete  
21 and timely information pursuant to sections 104(e)  
22 and 122(g)(2).”.

23 (b) EFFECTIVE DATE AND TRANSITION RULES.—  
24 The amendments made by this section shall take effect

1 upon the date of the enactment of this Act, except that  
2 such amendments shall not apply in the following:

3           (1) Any action brought by any person other  
4 than the United States under section 107 or 113 of  
5 the Comprehensive Environmental Response, Com-  
6 pensation, and Liability Act of 1980 for contribution  
7 to response costs or natural resource damage res-  
8 toration actually incurred by such person before No-  
9 vember 9, 1997.

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

13 **SEC. 202. CLARIFICATIONS OF CERTAIN LIABILITY.**

14           (a) AMOUNT OF LIABILITY.—Section 107(c)(3) (42  
15 U.S.C. 9607(c)(3)) is amended in the first sentence by  
16 striking “at least equal to,” and all that follows through  
17 the end of the sentence and inserting “up to three times  
18 the amount of such response costs.”.

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

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

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

3           (2) In paragraph (4)(B)—

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

6                   (B) by inserting “, other than the United  
7                   States, a State, or an Indian tribe,” before the  
8                   phrase “consistent with the national contin-  
9                   gency plan”.

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

13           “by such person—  
14           from which there is a release, or a threatened release, that  
15           causes the incurrence of response costs, of a hazardous  
16           substance, shall be liable for—”.

17           (4) By designating the text beginning with  
18           “The amounts recoverable” and ending with “this  
19           subsection commences.” as paragraph (5) and align-  
20           ing the margin of such text with paragraph (4).

21           (5) By adding the following new paragraph at  
22           the end thereof:

23                   “(6) The costs recoverable under this section  
24                   shall not include any costs incurred by the United

1 States for management support, for research and  
2 development, or for enforcement.”.

3 **SEC. 203. AMENDMENTS TO SECTION 106.**

4 (a) ADMINISTRATIVE ORDERS.—Section 106(a) (42  
5 U.S.C. 9606(a)) is amended by adding at the end the fol-  
6 lowing: “The President may not amend such administra-  
7 tive orders or issue additional orders relating to the facil-  
8 ity without a subsequent finding of an imminent and sub-  
9 stantial endangerment. No order may be issued under this  
10 section against any person who would not be liable for  
11 costs or damages referred to in section 107(a). In any case  
12 in which the President issues an order to a person under  
13 this subsection, the President shall provide information  
14 concerning the evidence that indicates that each element  
15 of liability contained in section 107(a) is present. In the  
16 case of a person who is found liable by an allocator under  
17 section 128, the President may issue orders under this sec-  
18 tion only in accordance with section 128(m).”.

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

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

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

23 (3) by inserting before the period “, or be re-  
24 quired to comply with such order, or both, even if  
25 another person has complied, or is complying, with

1 the terms of the same order or another order per-  
2 taining to the same facility and release or threatened  
3 release”; and

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

5 “(B) For purposes of this subsection and section  
6 107(e)(3), a ‘sufficient cause’ includes, without limitation,  
7 an objectively reasonable belief by the person to whom the  
8 order is issued that—

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

11 “(ii) that the action to be performed pursuant  
12 to the order is inconsistent with the national contin-  
13 gency plan.

14 **SEC. 204. CIVIL PROCEEDINGS.**

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

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

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

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

1           “(2) ACTIONS FOR RECOVERY OF COSTS.—(A)

2           Except as provided in subparagraph (C), an initial  
3           action for recovery of costs referred to in section  
4           107 must be commenced—

5                   “(i) for a removal action, within 3 years  
6                   after completion of all removal action taken  
7                   with respect to the facility, including off-site  
8                   disposal of any removed materials, except that  
9                   if physical on-site construction of the remedial  
10                  action is initiated within 3 years after the com-  
11                  pletion of all removal action taken with respect  
12                  to the facility, costs incurred for removal action  
13                  may be recovered in a cost recovery action  
14                  brought under clause (ii); and

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

18           “(B) In any such action described in this para-  
19           graph, the court shall enter a declaratory judgment  
20           on liability for response costs or damages that will  
21           be binding in such action or in any subsequent ac-  
22           tion or actions to recover further response costs or  
23           damages. A subsequent action or actions under sec-  
24           tion 107 for further response costs at the vessel or  
25           facility may be maintained at any time during the

1 response action, but must be commenced no later  
2 than 3 years after the date of completion of all re-  
3 sponse action. Except as otherwise provided in this  
4 paragraph, an action may be commenced under sec-  
5 tion 107 for recovery of costs at any time after such  
6 costs have been incurred.

7 “(C) An action by any potentially responsible  
8 party against another potentially responsible party  
9 for recovery of any response costs or damages must  
10 be commenced within the later of—

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

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

16 “(I) the date of judgment in any ac-  
17 tion under this Act for recovery of such  
18 costs or damages, or

19 “(II) the date of any administrative  
20 order or judicial settlement for recovery of  
21 the costs or damages paid or incurred pur-  
22 suant to such a settlement.”.

23 **SEC. 205. LIMITATIONS ON CONTRIBUTION ACTIONS.**

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

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

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

6 (B) By striking “, during or following any  
7 civil action under section 106 or under section  
8 107(a).” and inserting “in a claim asserted  
9 under section 107(a).”.

10 (C) In the second sentence, by striking  
11 “this section” and inserting “section 107(a),  
12 this section,”.

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

15 (2) By amending paragraph (2) to read as fol-  
16 lows:

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

1 in an administrative or judicially approved settle-  
2 ment shall not be liable for contribution or any other  
3 claims by persons other than the United States Gov-  
4 ernment acting under section 107(a)(4)(A) (and not  
5 as a potentially responsible party) regarding re-  
6 sponse actions, response costs or damages addressed  
7 in the settlement for which the State or Indian tribe  
8 has a claim under this title. Such settlement does  
9 not discharge any other potentially responsible per-  
10 sons unless its terms so provide, but it reduces the  
11 potential liability of such other persons by the  
12 amount of the settlement. The protection afforded  
13 by this subsection shall include protection against  
14 claims, under Federal or State law, that may be as-  
15 serted against the settling party for recovery of re-  
16 sponse costs or damages incurred or paid by another  
17 person, if such costs or damages are addressed in  
18 the settlement, but shall not include protection  
19 against claims based on contractual indemnification  
20 or other express contractual agreements to pay such  
21 costs or damages.”.

22 (3) By adding at the end the following new  
23 paragraph:

24 “(4) LIMITATIONS ON CONTRIBUTION AC-  
25 TIONS.—(A) There shall be no right of contribution

1 under this subsection in any of the following cir-  
2 cumstances:

3 “(i) The person asserting the right of con-  
4 tribution has waived the right in a settlement  
5 pursuant to this Act.

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

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

12 “(B) Any person who commences an action for  
13 contribution shall be liable to the person against  
14 whom the claim of contribution is brought for all  
15 reasonable costs of defending against the claim, in-  
16 cluding all reasonable attorneys’ and expert witness  
17 fees, if—

18 “(i) the action is barred by subparagraph  
19 (A);

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

1                   “(iii) the action is brought during the mor-  
2                   atorium pursuant to section 128 (relating to al-  
3                   location).”.

4 **SEC. 206. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

5           (a) **EXTENSION OF NEGLIGENCE STANDARD.**—Sub-  
6 section (a) of section 119 (42 U.S.C. 9619(a)) is amended  
7 as follows:

8           (1) In paragraph (1), by striking out “title or  
9           under any other Federal law” and inserting in lieu  
10           thereof “title, under any other Federal law or under  
11           the law of any State or political subdivision of a  
12           State”.

13           (2) by adding at the end of paragraph (1) the  
14           following: “Notwithstanding the preceding sentence,  
15           this section shall not apply in determining the liabil-  
16           ity of a response action contractor under the law of  
17           any State or political subdivision thereof if the State  
18           has adopted a law determining the liability of a re-  
19           sponse action contractor.”.

20           (3) By adding at the end of paragraph (2) the  
21           following: “Such conduct shall be evaluated based on  
22           the generally accepted standards and practices in ef-  
23           fect at the time and place that the conduct oc-  
24           curred.”.

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

7 (c) INDEMNIFICATION FOR THREATENED RE-  
8 LEASES.—Section 119(c)(5) is amended in subparagraph  
9 (A) by inserting “or threatened release” after “release”  
10 both places it appears.

11 (d) CLARIFICATION OF LIABILITY.—Section 119(a)  
12 (42 U.S.C. 9219(a)) is amended by inserting after para-  
13 graph (4) the following new paragraph:

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

18 (e) LIMITATION ON ACTIONS.—Section 119 is  
19 amended by adding at the end the following new sub-  
20 section:

21 “(g) LIMITATION ON ACTIONS AGAINST RESPONSE  
22 ACTION CONTRACTORS.—No action to recover for any in-  
23 jury to property, real or personal, or for bodily injury or  
24 wrongful death, or any other expenses or costs arising out  
25 of the performance of services under a response action

1 contract, nor any action for contribution or indemnity for  
2 damages sustained as a result of such injury, shall be  
3 brought against any response action contractor more than  
4 6 years after the completion of work at any site under  
5 such contract. Notwithstanding the preceding sentence,  
6 this section shall not—

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

10           “(2) affect any right of indemnification that  
11 such response action contractor may have under this  
12 section or may acquire by written agreement with  
13 any party; or

14           “(3) apply in any State or political subdivision  
15 thereof if the State has adopted a statute of repose  
16 determining the liability of a response action con-  
17 tractor.”.

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

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

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

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

3           (2) By striking “any remedial action under this  
4           Act at a facility listed on the National Priorities  
5           List, or any removal action under this Act,” and in-  
6           serting in lieu thereof “any response as defined by  
7           section 101(25),”.

8   **SEC. 207. EXPEDITED FINAL SETTLEMENTS.**

9           Section 122 of the Comprehensive Environmental Re-  
10          sponse, Compensation, and Liability Act of 1980 is  
11          amended as follows:

12           (1) Subsection (g) is amended by striking “(g)”  
13           and all that follows through the end of subparagraph  
14           (A) of paragraph (1) and inserting in lieu thereof  
15           the following:

16           “(g) EXPEDITED FINAL SETTLEMENT.—

17           “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-  
18           TLEMENT.—The President shall, as promptly as pos-  
19           sible, offer to reach a final administrative or judicial  
20           settlement with potentially responsible parties who,  
21           in the judgment of the President, meet one or more  
22           of the following conditions for eligibility for an expe-  
23           dited settlement:

24           “(A) The potentially responsible party’s li-  
25           ability is based solely on paragraph (3) or (4)

1 of section 107(a) and the party's individual con-  
2 tribution of hazardous substances at the facility  
3 is de minimis. The contribution of hazardous  
4 substances to a facility by a potentially respon-  
5 sible party is de minimis if both of the following  
6 conditions are met:

7 “(i) The potentially responsible par-  
8 ty's volumetric contribution of materials  
9 containing hazardous substances is insign-  
10 nificant in comparison to the total volu-  
11 metric contributions of materials contain-  
12 ing hazardous substances at the facility.  
13 An individual contribution is presumed to  
14 be insignificant if it is one percent or less  
15 of the total volumetric contribution at the  
16 facility, unless the Administrator identifies  
17 a different threshold based on site-specific  
18 factors.

19 “(ii) The potentially responsible par-  
20 ty's hazardous substances do not present  
21 toxic or other hazardous effects that are  
22 significantly greater than those of other  
23 hazardous substances at the facility.”.

1           (2) Such subsection (g) is further amended by  
2 inserting after subparagraph (B) of paragraph (1)  
3 the following:

4           “(C)(i) The potentially responsible party’s  
5 liability is based solely on paragraph (3) or (4)  
6 of section 107(a), and the potentially respon-  
7 sible party can demonstrate an inability to pay  
8 response costs.

9           “(ii) For purposes of this subparagraph,  
10 the following provisions apply:

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

23           “(II) Any business requesting such  
24 consideration shall promptly provide the  
25 President with all relevant information

1           needed to determine the business’s ability  
2           to pay.

3           “(III) The business shall demonstrate  
4           the amount of its ability to pay. If the  
5           business employs fewer than 75 employees  
6           or has annual gross revenues of less than  
7           \$5,000,000, the President shall perform  
8           any analysis that may be required to dem-  
9           onstrate the business’s ability to pay. The  
10          President, in his discretion, may perform  
11          such analysis for any other party or re-  
12          quire such other party to perform the anal-  
13          ysis.

14          “(IV) If the President determines that  
15          a small business is unable to pay its total  
16          settlement amount immediately, the Presi-  
17          dent shall consider alternative payment  
18          methods as may be necessary or appro-  
19          priate. The methods to be considered may  
20          include installment payments to be paid  
21          during a period of not to exceed 10 years  
22          and the provision of in-kind services.

23          “(iii) Any municipality which is a poten-  
24          tially responsible party may submit for consid-  
25          eration by the President an evaluation of the

1 potential impact of the settlement on essential  
2 services that the municipality must provide, and  
3 the feasibility of making delayed payments or  
4 payments over time. If a municipality asserts  
5 that it has additional environmental obligations  
6 besides its potential liability under this Act,  
7 then the municipality may create a list of the  
8 obligations, including an estimate of the costs  
9 of complying with such obligations.

10 “(iv) Any municipality which is a poten-  
11 tially responsible party may establish an inabil-  
12 ity to pay through an affirmative showing that  
13 such payment of its liability under this Act  
14 would either—

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

22 “(II) necessitate a violation of legal  
23 requirements or limitations of general ap-  
24 plicability concerning the assumption and

1 maintenance of fiscal municipal obliga-  
2 tions.

3 “(v) This subparagraph shall not limit or  
4 affect the President’s authority to evaluate any  
5 person’s ability to pay or to enter into settle-  
6 ments with any person based on that person’s  
7 inability to pay.”.

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

10 “(2) BASIS OF DETERMINATION.—Any person  
11 who enters into a settlement pursuant to this sub-  
12 section shall provide any information requested by  
13 the President or by an allocator in accordance with  
14 section 128 (relating to allocation information-gath-  
15 ering authority) or section 104(e) of this Act. The  
16 determination of whether a person is eligible for an  
17 expedited settlement shall be made on the basis of  
18 all information available to the President at the time  
19 the determination is made. The President’s deter-  
20 mination as to the eligibility of a party that is not  
21 a department, agency, or instrumentality of the  
22 United States for settlement pursuant to this section  
23 shall not be subject to judicial review. If the Presi-  
24 dent determines that a party is not eligible for a set-  
25 tlement pursuant to this section, the President shall

1 explain the basis for that determination in writing to  
2 any person who requests such a settlement.

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

14 (4) Subsection (g) is further amended by  
15 amending paragraph (5) by inserting the following  
16 before the first sentence: “A party who enters into  
17 a settlement pursuant to paragraph (1)(A) or (1)(C)  
18 of this subsection shall be deemed to have resolved  
19 its liability under this Act to the United States for  
20 all matters addressed in the settlement.”.

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

22 (A) By amending the heading to read as  
23 follows: “AUTHORITY TO SETTLE CLAIMS FOR  
24 FINES, CIVIL PENALTIES, PUNITIVE DAMAGES,  
25 AND COST RECOVERY.—”.

1 (B) In paragraph (1):

2 (i) In the first sentence, by striking  
3 “costs incurred” and inserting “past and  
4 future costs incurred or that may be in-  
5 curred”.

6 (ii) In the first sentence, by inserting  
7 after “if the claim has not been referred to  
8 the Department of Justice for further ac-  
9 tion.” the following: “The head of any de-  
10 partment or agency with the authority to  
11 seek fines, civil penalties, or punitive dam-  
12 ages under this Act may consider, com-  
13 promise, and settle claims for any such  
14 fines, civil penalties, or punitive damages  
15 which may otherwise be assessed in civil  
16 administrative or judicial proceedings if  
17 the claim has not been referred to the De-  
18 partment of Justice for further action.”.

19 **SEC. 208. ALLOCATIONS AT MULTI-PARTY FACILITIES.**

20 Title I (42 U.S.C. 9601 et seq.) is amended by adding  
21 after section 127 the following new section:

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

23 **“(a) ELIGIBILITY FOR ALLOCATION.—**

24 **“(1) MANDATORY ALLOCATION.—**Except as  
25 provided in paragraph (2), the President shall

1 initiate the allocation process established under this  
2 section for each response action at a non-federally  
3 owned facility listed on the National Priorities List  
4 which is eligible for fair share funding under this  
5 section.

6 “(2) INELIGIBLE RESPONSE ACTIONS.—The  
7 allocation process under this section shall not apply  
8 to any response action for which there has been a  
9 final settlement, decree, or order that determined  
10 the liability and share of responsibility of all poten-  
11 tially responsible parties at the facility before No-  
12 vember 9, 1997.

13 “(3) SCOPE OF ALLOCATIONS.—Each allocation  
14 under this section shall apply to the costs incurred  
15 on or after November 9, 1997, in performing any  
16 response actions at a facility that have not been  
17 completed before November 9, 1997, unless the allo-  
18 cator determines, in consultation with the President,  
19 that it should apply only to one or more of such re-  
20 sponse actions at the facility.

21 “(b) MORATORIUM ON LITIGATION AND ENFORCE-  
22 MENT.—

23 “(1) MORATORIUM ON LITIGATION.—No person  
24 may commence any civil action or assert any claim  
25 under this Act seeking recovery of any response

1 costs, or contribution toward such costs, in  
2 connection with any response action at a facility for  
3 which the President is required to initiate an alloca-  
4 tion under this section, until 90 days after issuance  
5 of the allocator's report or of a second or subsequent  
6 report under this section.

7 “(2) STAY.—If any action or claim referred to  
8 in paragraph (1) is pending on the date of  
9 enactment of this section or on the date by which  
10 the President is required to initiate an allocation,  
11 such action or claim (including any pendent claim  
12 under State law over which a court is exercising ju-  
13 risdiction) shall be stayed until 90 days after the  
14 issuance of the allocator's report or of a second or  
15 subsequent report under this section, unless the  
16 court determines that a stay will result in manifest  
17 injustice.

18 “(3) TOLLING OF LIMITATIONS PERIOD.—Any  
19 applicable limitations period with respect to actions  
20 subject to paragraph (1) shall be tolled from the  
21 earlier of—

22 “(A) the date of listing of the facility on  
23 the National Priorities List, if such listing oc-  
24 curs after the date of enactment of this section;  
25 or

1           “(B) the date by which the President is re-  
2           quired to initiate the allocation process pursu-  
3           ant to this section;  
4           until 90 days after the issuance of the allocator’s  
5           report or a second or subsequent report under this  
6           section.

7           “(4) MORATORIUM ON ENFORCEMENT.—After  
8           the date of enactment of this section, the  
9           Administrator shall not issue any order nor require  
10          the Attorney General to maintain any suit under  
11          section 106 to or against any persons at any facility  
12          that is the subject of an allocation under subsection  
13          (a) until 90 days after the issuance of the allocator’s  
14          report or of a second or subsequent report under  
15          this section, except an order requiring the perform-  
16          ance of a response action that is necessary to ad-  
17          dress a release at the facility that constitutes a pub-  
18          lic health or environmental emergency. Nothing in  
19          this subparagraph shall affect the Administrator’s  
20          ability to respond to releases or threatened releases  
21          of hazardous substances pursuant to section 104  
22          prior to such time and seek recovery of such costs  
23          pursuant to section 107.

24          “(c) ALLOCATION PROCESS.—

1           “(1) FLEXIBLE PROCESS.—Each allocation  
2 under this section shall be performed by a neutral  
3 third-party allocator, who shall conduct the alloca-  
4 tions—

5                   “(A) in a fair and impartial manner;

6                   “(B) in an efficient, orderly, time-sensitive  
7 manner; and

8                   “(C) in a manner consistent with section  
9 107(o)(11) that imposes as few burdens as pos-  
10 sible on parties not liable for response costs.

11           “(2) INITIATION OF ALLOCATION.—The Presi-  
12 dent shall initiate the allocation process for a facility  
13 by performing a comprehensive search for all parties  
14 potentially liable pursuant to section 107(a) at the  
15 facility not later than the date of the commencement  
16 of the remedial investigation at the facility. With re-  
17 spect to a facility eligible for an allocation where a  
18 remedial investigation has been completed as of the  
19 date of enactment of the Superfund Reform Act, the  
20 Administrator shall initiate allocations as expedi-  
21 tiously as possible, but in any event not later than  
22 12 months after such date of enactment.

23           “(3) RETENTION OF ALLOCATOR.—The Admin-  
24 istrator shall, not later than 90 days after initiating  
25 the allocation process, enter into a contract with a

1 neutral allocator for the performance of the alloca-  
2 tion. The President, not later than 90 days after the  
3 date of enactment of the Superfund Reform Act,  
4 shall establish by rule a process for the expedited se-  
5 lection and retention by contract at each facility of  
6 a neutral allocator, acceptable both to the potentially  
7 responsible parties and to a representative of the  
8 Fund, to conduct the allocations under this section.  
9 Each contract by which the Administrator retains an  
10 allocator shall authorize the allocator to acquire rea-  
11 sonable support services, including secretarial, clerical,  
12 computer support, legal, and investigative serv-  
13 ices. The President shall not issue any rule that lim-  
14 its the discretion of the allocator in the conduct of  
15 the allocation.

16 “(4) PARTIES TO THE ALLOCATION.—

17 “(A) FEDERAL GOVERNMENT.—The Ad-  
18 ministrator or the Attorney General shall par-  
19 ticipate in the allocation process as the rep-  
20 resentative of the Fund.

21 “(B) ALLOCATION PARTIES.—

22 “(i) INITIAL ALLOCATION PARTIES.—  
23 Promptly after the retention of an allo-  
24 cator, the Administrator shall transmit to  
25 the allocator a list of all potentially respon-

1           sible parties at the facility. Such list shall  
2           specifically designate parties that, in the  
3           judgment of the Administrator based on a  
4           preponderance of the evidence using the  
5           factors set forth in section 107(p), are lia-  
6           ble under section 107(a), notwithstanding  
7           the exemptions to liability set forth in sec-  
8           tion 107(o). For purposes of this section,  
9           such parties shall be known as significant  
10          contributors. Such list shall also designate  
11          the parties whose liability, in the judgment  
12          of the Administrator, is eliminated or lim-  
13          ited pursuant to section 107(o). The Ad-  
14          ministrator shall also transmit to the allo-  
15          cator all information gathered concerning  
16          the involvement of all parties at the facil-  
17          ity.

18                 “(ii) NOMINATED PARTIES.—The allo-  
19          cator shall allow each potentially respon-  
20          sible party on the list transmitted by the  
21          Administrator under clause (i) a period of  
22          60 days to nominate additional potentially  
23          responsible parties. Each such nomination  
24          shall include all available information re-  
25          garding the potential liability of each per-

1 son named and a recommendation on  
2 whether the person should be considered to  
3 be a significant contributor as defined in  
4 section 107(p). The allocator shall not in-  
5 clude a nominated person on the list of al-  
6 location parties unless it appears from the  
7 nomination, based on a preponderance of  
8 the evidence, that the person is potentially  
9 liable under section 107(a). Any allocation  
10 party that receives a zero share in the  
11 allocator's final report shall be entitled to  
12 recover three times its costs of participat-  
13 ing in the allocation process (including rea-  
14 sonable attorney's fees) from any person  
15 that nominated the party. Any allocation  
16 party that is not identified in the  
17 allocator's final report as a significant con-  
18 tributor shall be entitled to recover its  
19 costs of participating in the allocation  
20 process (including reasonable attorney's  
21 fees) from any person that recommended  
22 to the allocator that such allocation party  
23 be considered a significant contributor.

1       “(d) INFORMATION-GATHERING AUTHORITY.—The  
2 allocator may gather such information as necessary to con-  
3 duct a fair and impartial allocation. The allocator may—

4           “(1) exercise the information-gathering author-  
5 ity of the Administrator under section 104(e);

6           “(2) in the allocator’s sole discretion, permit  
7 discovery or conduct hearings;

8           “(3) request that the Attorney General enforce  
9 any information request or subpoena issued by the  
10 allocator and, if the Attorney General does not re-  
11 spond promptly to the request, retain counsel to en-  
12 force the information request or subpoena; and

13           “(4) request that the Attorney General seek to  
14 impose civil penalties for any failure to submit a  
15 complete and timely answer to an information re-  
16 quest or subpoena or for any unlawful conduct with-  
17 in the allocation process, or criminal penalties under  
18 section 1001 of title 18, United States Code, for any  
19 false or misleading material statements in connec-  
20 tion with the allocation process.

21       “(e) CONFIDENTIALITY OF INFORMATION.—

22           “(1) IN GENERAL.—All persons involved in the  
23 allocation shall assure the confidentiality at all times  
24 of all information submitted to the allocator. Infor-  
25 mation submitted to the allocator shall not be—

1           “(A) disclosed to any person except as may  
2           be required by court order, issued only when  
3           necessary to prevent manifest injustice;

4           “(B) subject to disclosure to any person  
5           under section 552 of title 5, United States  
6           Code; or

7           “(C) discoverable or admissible in any  
8           Federal, State, or local judicial or administra-  
9           tive proceeding (if not independently discover-  
10          able or admissible).

11          “(2) NO WAIVER.—The submission to the allo-  
12          cator of information shall not constitute a waiver of  
13          any privilege under any Federal or State law or rule.

14          “(f) EQUITABLE FACTORS FOR ALLOCATION.—

15          “(1) FACTORS.—The allocator shall prepare a  
16          nonbinding allocation of percentage shares of re-  
17          sponsibility to each allocation party and to the fair  
18          share funding (as defined in subsection (g)), in ac-  
19          cordance with the provisions of this section and  
20          without regard to any theory of joint and several li-  
21          ability, based on the following:

22                 “(A) The degree to which the allocation  
23                 party caused, contributed to, or consented to  
24                 the release or threat of release of hazardous  
25                 substances at the facility.

1           “(B) The amount of hazardous substances  
2 contributed by each allocation party.

3           “(C) The degree of toxicity of the haz-  
4 arduous substances contributed by each alloca-  
5 tion party.

6           “(D) The mobility of the hazardous  
7 substances contributed by each allocation party.

8           “(E) The degree of involvement of each  
9 allocation party in the generation, transpor-  
10 tation, treatment, storage, or disposal of the  
11 hazardous substances it contributed.

12           “(F) The degree of care exercised by each  
13 allocation party with respect to the hazardous  
14 substances it contributed, taking into account  
15 the characteristics of the hazardous substances.

16           “(G) The cooperation of each allocation  
17 party in performing any response action and in  
18 providing complete and timely information to  
19 the allocator.

20           “(H) Such other equitable factors as the  
21 allocator determines are appropriate.

22           “(2) PRESUMPTION.—The allocator shall pre-  
23 sume that the parties designated by the Adminis-  
24 trator pursuant to subsection (c)(4)(B) as parties  
25 whose liability is eliminated under section 107(o) are

1 not significant contributors. Such presumption is re-  
2 buttable by a preponderance of the evidence.

3 “(g) FAIR SHARE FUNDING.—For each response ac-  
4 tion that is the subject of an allocation under this section,  
5 the allocator shall determine the share of liability, if any,  
6 to be allocated to the Fund for that response action. Such  
7 amount shall be referred to as the ‘fair share funding’ of  
8 that response action. The fair share funding shall consist  
9 of the sum of following amounts:

10 “(1) The amount attributable to the aggregate  
11 share of liability that the allocator determines to be  
12 attributable to insolvent, defunct, or unidentifiable  
13 parties that are not affiliated with any viable alloca-  
14 tion party.

15 “(2) The amount that is the difference be-  
16 tween—

17 “(A) the amount attributable to the aggre-  
18 gate share of liability that the allocator deter-  
19 mines to be attributable to allocation parties  
20 who have resolved their liability to the United  
21 States for the response action; and

22 “(B) the amount actually paid by those  
23 parties to the United States to resolve their li-  
24 ability.

1           “(3) The amount attributable to the aggregate  
2           share of liability that the allocator determines to be  
3           attributable to persons (known or unknown) who are  
4           entitled to an exemption from liability under section  
5           107(o) or any other provision of this Act.

6           “(h) ALLOCATOR’S REPORT.—Not later than 24  
7           months after the date on which the Administrator enters  
8           into a contract to retain an allocator, the allocator shall  
9           provide a written final allocation report to the Adminis-  
10          trator and the allocation parties specifying the percentage  
11          share of responsibility of each allocation party (without  
12          regard to section 107(o)) and of the fair share funding.  
13          The allocator shall separately list those parties that are  
14          significant contributors as defined in section 107(p) (and  
15          therefore remain liable for response costs), and those par-  
16          ties that are not liable pursuant to section 107(o). Before  
17          issuing the final allocation report, the allocator shall allow  
18          each allocation party to comment on a draft allocation re-  
19          port. The allocator’s actions shall not be subject to judicial  
20          review.

21          “(i) COMPLETE ALLOCATION BY THE PARTIES.—The  
22          allocator shall promptly adopt, in lieu of issuing any allo-  
23          cation report, any agreement among some or all of the  
24          allocation parties that allocates 80 percent of the recover-  
25          able costs of a response action at a facility to the signato-

1 ries, if the settlement contains a waiver of all claims  
2 against all other allocation parties for contribution toward  
3 such costs.

4 “(j) REJECTION OF ALLOCATION REPORT.—

5 “(1) REJECTION.—The Administrator and the  
6 Attorney General may jointly reject a report issued  
7 by an allocator only if the Administrator and the At-  
8 torney General jointly publish, not later than 90  
9 days after the Administrator receives the report, a  
10 written determination that—

11 “(A) no rational interpretation of the facts  
12 before the allocator, in light of the factors re-  
13 quired to be considered, would form a reason-  
14 able basis for the shares assigned to the parties;  
15 or

16 “(B) the allocation process was directly  
17 and substantially affected by bias, procedural  
18 error, fraud, or unlawful conduct.

19 “(2) FINALITY.—A report issued by an allo-  
20 cator may not be rejected after the date that is 90  
21 days after the date on which the United States ac-  
22 cepts a settlement offer (excluding an expedited set-  
23 tlement under section 122(g)) based on the alloca-  
24 tion.

1           “(3) DELEGATION.—The authority to make a  
2           determination under this subsection may not be dele-  
3           gated to any officer or employee below the level of  
4           an Assistant Administrator or an Assistant Attorney  
5           General with authority for implementing this Act.

6           “(k) SECOND AND SUBSEQUENT ALLOCATIONS.—If  
7           a report is rejected under subsection (j), the allocation  
8           parties shall select an allocator to perform, on an expe-  
9           dited basis, a new allocation based on the same record  
10          available to the previous allocator. The moratorium and  
11          tolling provisions of subsection (b) shall then be extended  
12          until 180 days after the date of the issuance of any second  
13          or subsequent allocation report.

14          “(l) SETTLEMENTS BASED ON ALLOCATIONS.—

15                 “(1) CASH-OUT SETTLEMENTS.—Subject to the  
16                 Administrator’s authority pursuant to subsection  
17                 (m), any allocation party shall be entitled to resolve  
18                 its liability to the United States for response actions  
19                 subject to an allocation if, not later than 90 days  
20                 after the date of issuance of a report by the allo-  
21                 cator, the party—

22                         “(A) offers to settle with the United States  
23                         based on its allocated share as specified by the  
24                         allocator; and

1           “(B) agrees to the other terms and condi-  
2           tions stated in this subsection.

3           “(2) PERFORMANCE SETTLEMENTS.—Using the  
4           procedures set forth in section 122, the Adminis-  
5           trator and one or more parties may enter into an  
6           agreement requiring the performance of response ac-  
7           tions subject to an allocation.

8           “(3) PROVISIONS OF SETTLEMENTS.—Each set-  
9           tlement based on an allocation under this subsection  
10          shall include—

11           “(A) a waiver of contribution rights  
12           against all persons that are potentially respon-  
13           sible parties for any response action addressed  
14           in the settlement;

15           “(B) a covenant not to sue consistent with  
16           section 122(f) and, except in the case of a cash-  
17           out settlement, provisions regarding perform-  
18           ance or adequate assurance of performance of  
19           the response action;

20           “(C) in the case of a settlement under  
21           paragraph (1), a premium, not to exceed 10  
22           percent, that is calculated on a facility-specific  
23           basis and reflects the actual risk to the United  
24           States of not recovering response costs for the  
25           response action, despite the diligent prosecution

1 of litigation against any viable allocation party  
2 that has not resolved its liability to the United  
3 States, except that no premium shall apply if  
4 all allocation parties participate in the settle-  
5 ment or if the settlement covers 100 percent of  
6 the response costs subject to the allocation;

7 “(D) complete protection from all claims  
8 for contribution regarding the response action  
9 addressed in the settlement; and

10 “(E) provisions through which a settling  
11 party shall receive prompt reimbursement from  
12 the Fund under subsection (n) of any response  
13 costs incurred by the party for any response ac-  
14 tion that is the subject of the allocation in ex-  
15 cess of the allocated share of the party.

16 “(m) ADMINISTRATIVE ORDERS.—

17 “(1) POST-ALLOCATION ISSUANCE OF SECTION  
18 106 ORDERS.—Except as provided in paragraph (2),  
19 upon the expiration of the moratorium period under  
20 subsection (b)(4), the President may issue orders  
21 under section 106 to a person or persons found lia-  
22 ble at the facility by the allocator only if the aggre-  
23 gate allocated share or shares of such person’s or  
24 persons’ liability exceed 15 percent.

1           “(2) WAIVER.—The President may issue an  
2 order under section 106 to a person to whom the  
3 President otherwise would be prohibited from issuing  
4 an order under paragraph (1) if the person waives  
5 in writing the prohibition provided by paragraph (1)  
6 against being issued an order.

7           “(3) ORDER IN LIEU OF OTHER ACTION FOR  
8 RECOVERY.—An administrative order issued under  
9 section 106 shall be in lieu of any action by the  
10 United States or any other person against a party  
11 for recovery of response costs in connection with the  
12 response action, or for contribution toward the costs  
13 of the response action.

14           “(n) POST-ALLOCATION PERFORMANCE.—

15           “(1) IN GENERAL.—An allocation party that in-  
16 curs costs after the date of enactment of this section  
17 for the performance (whether under a consent decree  
18 or settlement or under an administrative order is-  
19 sued under section 106) of a response action that is  
20 the subject of an allocation under this section to an  
21 extent that exceeds the percentage share of the allo-  
22 cation party, as determined by the allocator, shall be  
23 entitled to prompt reimbursement from the Fund of  
24 the excess amount. Such right to reimbursement

1 shall not be contingent on recovery by the United  
2 States of any response costs from any person.

3 “(2) TERMS AND CONDITIONS.—

4 “(A) TIMING.—

5 “(i) IN GENERAL.—A reimbursement  
6 payment shall be paid during the course of  
7 the response action that was the subject of  
8 the allocation, with reasonable progress  
9 payments at significant milestones.

10 “(ii) CONSTRUCTION.—Reimburse-  
11 ment for the construction portion of the re-  
12 sponse action shall be paid not later than  
13 120 days after the date of actual comple-  
14 tion of the construction.

15 “(B) EQUITABLE OFFSET.—A reimburse-  
16 ment payment is subject to equitable offset or  
17 recoupment by the Administrator at any time if  
18 the allocation party fails to perform the re-  
19 sponse action in a proper and timely manner.

20 “(C) WAIVER.—An allocation party seek-  
21 ing reimbursement under this subsection waives  
22 the right to seek recovery of response costs in  
23 connection with the response action, or con-  
24 tribution toward the response costs, from any  
25 other person.

1 “(3) AMOUNTS OWED.—

2 “(A) DELAY IF FUNDS ARE UNAVAIL-  
3 ABLE.—If funds are unavailable in any fiscal  
4 year to reimburse all allocation parties pursuant  
5 to paragraph (1), the Administrator may delay  
6 payment until funds are available.

7 “(B) PRIORITY.—The priority for reim-  
8 bursement shall be based on the length of time  
9 that has passed since any settlement between  
10 the United States and the allocation parties  
11 pursuant to subsection (1).—

12 “(C) PAYMENT FROM FUNDS MADE AVAIL-  
13 ABLE IN SUBSEQUENT FISCAL YEARS.—Any  
14 amount due and owing in excess of available ap-  
15 propriations in any fiscal year shall be paid  
16 from amounts made available in subsequent fis-  
17 cal years, along with interest on the unpaid bal-  
18 ances at the rate equal to that of the current  
19 average market yield on outstanding marketable  
20 obligations of the United States with a maturity  
21 of 1 year.

22 “(o) POST-SETTLEMENT LITIGATION.—

23 “(1) IN GENERAL.—Subject to subsection (l),  
24 and on the expiration of the moratorium period  
25 under subsection (b)(4), the Administrator may

1 commence an action under section 107 against any  
2 party that has not resolved its liability to the United  
3 States following an allocation and may seek to re-  
4 cover any response costs not recovered through set-  
5 tlements with other persons, including all or any of  
6 the amounts constituting the fair share funding.

7 “(2) CERTIFICATION.—In commencing or main-  
8 taining an action under section 107 against a party  
9 after the expiration of the moratorium period under  
10 subsection (b)(4), the Attorney General shall certify  
11 in the complaint that the defendant failed to settle  
12 the matter based on the share that the allocation re-  
13 port assigned to the party.

14 “(3) IMPLER.—A defendant in an action  
15 under paragraph (1) may implead an allocation  
16 party only if the allocation party did not resolve its  
17 liability to the United States.

18 “(4) RESPONSE COSTS.—

19 “(A) ALLOCATION PROCESS.—The cost of  
20 implementing the allocation process under this  
21 section, including reasonable fees and expenses  
22 of the allocator, shall be deemed a necessary re-  
23 sponse cost.

1           “(B) FUNDING OF FUND SHARES.—The  
2 costs of all fair share funding under this sec-  
3 tion—

4                   “(i) shall be considered as a necessary  
5 cost of response; and

6                   “(ii) shall be recoverable under section  
7 107 only from an allocation party that has  
8 not reached a settlement under subsection  
9 (l) and has not received an order issued  
10 under section 106.”.

11 **SEC. 209. TRANSITION RULES RELATING TO CERTAIN NON-**  
12 **LIABLE PARTIES.**

13           Title I (42 U.S.C. 9601 et seq.) is further amended  
14 by adding at the end the following new section:

15 **“SEC. 129. TRANSITION RULES RELATING TO CERTAIN NON-**  
16 **LIABLE PARTIES.**

17           “(a) COSTS INCURRED AFTER NOVEMBER 7, 1997,  
18 BY NONLIABLE PARTIES.—With respect to facilities for  
19 which an allocation under section 128 has been performed,  
20 the Administrator shall reimburse nonliable parties for  
21 costs of response incurred by them after November 9,  
22 1997, at such facilities in accordance with the reimburse-  
23 ment provisions in section 128(n).

24           “(b) CONTINUED PERFORMANCE REQUIRED.—The  
25 amendments to this Act made by the Superfund Reform

1 Act shall not affect the responsibility of a nonliable party  
2 to perform a response action if ordered to do so under  
3 section 106 or if required to do so under a settlement or  
4 consent decree entered into with the United States before  
5 the date of the enactment of this section.

6 “(c) NONLIABLE PARTY DEFINED.—For purposes of  
7 this section, the term ‘nonliable party’ means a potentially  
8 responsible party who becomes exempt from liability under  
9 this Act on the date of the enactment of the Superfund  
10 Reform Act because of the amendments made by that  
11 Act.”.

12 **SEC. 210. CLARIFICATION OF LIABILITY UNDER CERCLA**  
13 **FOR RECYCLING TRANSACTIONS.**

14 Title I (42 U.S.C. 9601 et seq.) is further amended  
15 by adding at the end the following new section:

16 **“SEC. 130. RECYCLING TRANSACTIONS.**

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

21 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-  
22 poses of this section, the term ‘recyclable material’ means  
23 scrap paper, scrap plastic, scrap glass, scrap textiles,  
24 scrap rubber (other than whole tires), scrap metal, or  
25 spent lead-acid, spent nickel-cadmium, and other spent

1 batteries, as well as minor amounts of material incident  
2 to or adhering to the scrap material as a result of its nor-  
3 mal and customary use prior to becoming scrap.

4       “(c) TRANSACTIONS INVOLVING SCRAP PAPER,  
5 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions  
6 involving scrap paper, scrap plastic, scrap glass, scrap tex-  
7 tiles, or scrap rubber (other than whole tires) shall be  
8 deemed to be arranging for recycling if the person who  
9 arranged for the transaction (by selling recyclable material  
10 or otherwise arranging for the recycling of recyclable ma-  
11 terial) can demonstrate by a preponderance of the evi-  
12 dence that all of the following criteria were met at the  
13 time of the transaction:

14               “(1) The recyclable material met a commercial  
15 specification grade.

16               “(2) A market existed for the recyclable mate-  
17 rial.

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

21               “(4) The recyclable material could have been a  
22 replacement or substitute for a virgin raw material,  
23 or the product to be made from the recyclable mate-  
24 rial could have been a replacement or substitute for

1 a product made, in whole or in part, from a virgin  
2 raw material.

3 “(5) For transactions occurring 90 days or  
4 more after the date of enactment of this section, the  
5 person exercised reasonable care to determine that  
6 the facility where the recyclable material would be  
7 handled, processed, reclaimed, or otherwise managed  
8 by another person (hereinafter in this section re-  
9 ferred to as a ‘consuming facility’) was in compli-  
10 ance with substantive (not procedural or administra-  
11 tive) provisions of any Federal, State, or local envi-  
12 ronmental law or regulation, or compliance order or  
13 decree issued pursuant thereto, applicable to the  
14 handling, processing, reclamation, storage, or other  
15 management activities associated with recyclable ma-  
16 terial.

17 “(6) For purposes of this subsection, ‘reason-  
18 able care’ shall be determined using criteria that in-  
19 clude (but are not limited to)—

20 “(A) the price paid in the recycling trans-  
21 action;

22 “(B) the ability of the person to detect the  
23 nature of the consuming facility’s operations  
24 concerning its handling, processing, reclama-

1           tion, or other management activities associated  
2           with recyclable material; and

3           “(C) the result of inquiries made to the ap-  
4           propriate Federal, State, or local environmental  
5           agency (or agencies) regarding the consuming  
6           facility’s past and current compliance with sub-  
7           stantive (not procedural or administrative) pro-  
8           visions of any Federal, State, or local environ-  
9           mental law or regulation, or compliance order  
10          or decree issued pursuant thereto, applicable to  
11          the handling, processing, reclamation, storage,  
12          or other management activities associated with  
13          the recyclable material. For the purposes of this  
14          paragraph, a requirement to obtain a permit  
15          applicable to the handling, processing, reclama-  
16          tion, or other management activity associated  
17          with the recyclable materials shall be deemed to  
18          be a substantive provision.

19          “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

20                 “(1) Transactions involving scrap metal shall be  
21                 deemed to be arranging for recycling if the person  
22                 who arranged for the transaction (by selling recycla-  
23                 ble material or otherwise arranging for the recycling  
24                 of recyclable material) can demonstrate by a prepon-

1 derance of the evidence that at the time of the  
2 transaction—

3 “(A) the person met the criteria set forth  
4 in subsection (c) with respect to the scrap  
5 metal;

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

15 “(C) the person did not melt the scrap  
16 metal prior to the transaction.

17 “(2) For purposes of paragraph (1)(C), melting  
18 of scrap metal does not include the thermal separa-  
19 tion of 2 or more materials due to differences in  
20 their melting points (referred to as ‘sweating’).

21 “(3) For purposes of this subsection, the term  
22 ‘scrap metal’ means bits and pieces of metal parts  
23 (e.g., bars, turnings, rods, sheets, wire) or metal  
24 pieces that may be combined together with bolts or  
25 soldering (e.g., radiators, scrap automobiles, railroad

1 box cars), which when worn or superfluous can be  
2 recycled, except for scrap metals that the Adminis-  
3 trator excludes from this definition by regulation  
4 and steel shipping containers of a capacity from 30  
5 liters to and including 3,000 liters, whether intact or  
6 not, having any hazardous substance (but not metal  
7 bits or pieces) contained in or adhering thereto.

8 “(e) TRANSACTIONS INVOLVING BATTERIES.—

9 “(1) Transactions involving spent lead-acid bat-  
10 teries, spent nickel-cadmium batteries, or other  
11 spent batteries shall be deemed to be arranging for  
12 recycling if the person who arranged for the trans-  
13 action (by selling recyclable material or otherwise ar-  
14 ranging for the recycling of recyclable material) can  
15 demonstrate by a preponderance of the evidence that  
16 at the time of the transaction—

17 “(A) the person met the criteria set forth  
18 in subsection (c) with respect to the spent lead-  
19 acid batteries, spent nickel-cadmium batteries,  
20 or other spent batteries, but did not recover the  
21 valuable components of such batteries; and

22 “(B)(i) with respect to transactions involv-  
23 ing lead-acid batteries, the person was in com-  
24 pliance with applicable Federal environmental  
25 regulations or standards, and any amendments

1           thereto, regarding the storage, transport, man-  
2           agement, or other activities associated with the  
3           recycling of spent lead-acid batteries;

4           “(ii) with respect to transactions involving  
5           nickel-cadmium batteries, Federal environ-  
6           mental regulations or standards are in effect re-  
7           garding the storage, transport, management, or  
8           other activities associated with the recycling of  
9           spent nickel-cadmium batteries, and the person  
10          was in compliance with applicable regulations or  
11          standards or any amendments thereto; or

12          “(iii) with respect to transactions involving  
13          other spent batteries, Federal environmental  
14          regulations or standards are in effect regarding  
15          the storage, transport, management, or other  
16          activities associated with the recycling of such  
17          batteries, and the person was in compliance  
18          with applicable regulations or standards or any  
19          amendments thereto.

20          “(2) For purposes of paragraph (1)(A), a per-  
21          son who, by contract, arranges or pays for process-  
22          ing of batteries by an unrelated third person and re-  
23          ceives from such third person materials reclaimed  
24          from such batteries shall not thereby be deemed to  
25          recover the valuable components of such batteries.

1 “(f) EXCLUSIONS.—

2 “(1) The exemptions set forth in subsections  
3 (c), (d), and (e) shall not apply if—

4 “(A) the person had an objectively reason-  
5 able basis to believe at the time of the recycling  
6 transaction—

7 “(i) that the recyclable material would  
8 not be recycled;

9 “(ii) that the recyclable material  
10 would be burned as fuel, or for energy re-  
11 covery or incineration; or

12 “(iii) for transactions occurring before  
13 90 days after the date of the enactment of  
14 this section, that the consuming facility  
15 was not in compliance with a substantive  
16 (not procedural or administrative) provi-  
17 sion of any Federal, State, or local envi-  
18 ronmental law or regulation, or compliance  
19 order or decree issued pursuant thereto,  
20 applicable to the handling, processing, rec-  
21 lamation, or other management activities  
22 associated with the recyclable material;

23 “(B) the person had reason to believe that  
24 hazardous substances had been added to the re-

1 cyclable material for purposes other than proc-  
2 essing for recycling;

3 “(C) the person failed to exercise reason-  
4 able care with respect to the management and  
5 handling of the recyclable material (including  
6 adhering to customary industry practices cur-  
7 rent at the time of the recycling transaction de-  
8 signed to minimize, through source control, con-  
9 tamination of the recyclable material by hazard-  
10 ous substances); or

11 “(D) with respect to any item of a recycla-  
12 ble material, the item—

13 “(i) contained polychlorinated  
14 biphenyls at a concentration in excess of  
15 50 parts per million or any new standard  
16 promulgated pursuant to applicable Fed-  
17 eral laws; or

18 “(ii) is an item of scrap paper con-  
19 taining at the time of the recycling trans-  
20 action a concentration of a hazardous sub-  
21 stance that has been determined by the  
22 Administrator, after notice and comment,  
23 to present a significant risk to human  
24 health or the environment in light of the

1 nature of scrap paper management and re-  
2 cycling.

3 “(2) For purposes of this subsection, an objec-  
4 tively reasonable basis for belief shall be determined  
5 using criteria that include (but are limited to) the  
6 size of the person’s business, customary industry  
7 practices (including customary industry practices  
8 current at the time of the recycling transaction de-  
9 signed to minimize, through source control, contami-  
10 nation of the recyclable material by hazardous sub-  
11 stances), the price paid in the recycling transaction,  
12 and the ability of the person to detect the nature of  
13 the consuming facility’s operations concerning its  
14 handling, processing, reclamation, or other manage-  
15 ment activities associated with the recyclable mate-  
16 rial.

17 “(3) For purposes of this subsection, a require-  
18 ment to obtain a permit applicable to the handling,  
19 processing, reclamation, or other management activi-  
20 ties associated with recyclable material shall be  
21 deemed to be a substantive provision.

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

1       “(h) REGULATIONS.—The Administrator has the au-  
2       thority, under section 115, to promulgate additional regu-  
3       lations concerning this section.

4       “(i) EFFECT ON PENDING OR CONCLUDED AC-  
5       TIONS.—The exemptions provided in this section shall not  
6       affect any concluded judicial or administrative action or  
7       any pending judicial action initiated by the United States  
8       prior to enactment of this section.

9       “(j) LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN  
10       ACTIONS.—Any person who commences an action in con-  
11       tribution against a person who is not liable by operation  
12       of this section shall be liable to that person for all reason-  
13       able costs of defending that action, including all reason-  
14       able attorney’s and expert witness fees.

15       “(k) RELATIONSHIP TO LIABILITY UNDER OTHER  
16       LAWS.—Nothing in this section shall affect—

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

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

1           **TITLE III—BROWNFIELDS**

2   **SEC. 301. SHORT TITLE.**

3           This title may be cited as the “Land Recycling Act  
4 of 1997”.

5   **SEC. 302. FINDINGS.**

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

7               (1) Brownfields are parcels of land that contain  
8               or contained abandoned or under used commercial  
9               or industrial facilities, the expansion or redevelop-  
10              ment of which is complicated by the actual or poten-  
11              tial presence of hazardous substances, pollutants, or  
12              contaminants.

13              (2) Brownfields, which may number in the hun-  
14              dreds of thousands nationwide, threaten the environ-  
15              ment, devalue surrounding property, erode State and  
16              local tax bases, and prevent job growth.

17              (3) The primary environmental reason that cur-  
18              rent owners and prospective developers do not rede-  
19              velop brownfields is their legitimate fears about the  
20              potential liability under environmental laws associ-  
21              ated with the cleanup and redevelopment of these  
22              sites.

23              (4) Current Federal law poses a barrier to the  
24              cleanup and redevelopment of brownfields, leading  
25              instead to the development of so-called greenfields,

1 contributing to urban sprawl, creating infrastructure  
2 problems, and reducing recreational and agricultural  
3 opportunities.

4 (5) Cleanup and redevelopment of brownfields  
5 will reduce environmental contamination, encourage  
6 job growth, enhance State and local tax bases, and  
7 curb the development of greenfields.

8 (6) Many States have enacted voluntary clean-  
9 up programs to address the brownfields problem by  
10 allowing for the consideration of future land use in  
11 deciding appropriate cleanup standards and provid-  
12 ing clear releases of liability upon completion of  
13 cleanups.

14 (7) State voluntary response programs have  
15 been very effective in promoting the cleanup and re-  
16 development of brownfields while ensuring the ade-  
17 quate protection of human health and the environ-  
18 ment.

19 (b) PURPOSES AND OBJECTIVES.—The purposes and  
20 objectives of this section are—

21 (1) to increase significantly the pace of re-  
22 sponse activities at contaminated sites by promoting  
23 and encouraging the creation, development, and en-  
24 hancement of State voluntary response programs;  
25 and

1           (2) to remove existing Federal barriers to the  
2           cleanup of brownfield sites; and

3           (3) to benefit the public health, welfare, and the  
4           environment by cleaning up and returning contami-  
5           nated sites to economically productive or other bene-  
6           ficial uses.

7   **SEC. 303. CLEANUPS PURSUANT TO STATE VOLUNTARY RE-**  
8                           **SPONSE PROGRAM.**

9           (a) **PROHIBITION ON ENFORCEMENT.**—Except as  
10          otherwise provided in this section, neither the President  
11          nor any other person (other than a State) may use any  
12          authority of the Comprehensive Environmental Response,  
13          Compensation, and Liability Act of 1980 (42 U.S.C. 9601  
14          et seq.) or of the Solid Waste Disposal Act (42 U.S.C.  
15          6901 et seq.) to commence an administrative or judicial  
16          action under either of those Acts with respect to any re-  
17          lease or threatened release at a facility that is, or has  
18          been, the subject of a voluntary response plan in a State  
19          that meets the requirements of subsection (b).

20          (b) **STATE REQUIREMENTS.**—The prohibition in sub-  
21          section (a) applies with respect to a facility in a State only  
22          if the State submits to the Administrator of the Environ-  
23          mental Protection Agency a certification that the State  
24          has enacted into law a voluntary response program, that  
25          the State has committed the financial and personnel re-

1 sources necessary to carry out such program, and that  
2 such program will be implemented in a manner protective  
3 of human health and the environment.

4 (c) LIMITATION ON PROHIBITION.—The prohibition  
5 under subsection (a) and the exemption under subsection  
6 (f) shall not apply with respect to—

7 (1) any facility listed on the National Priorities  
8 List, unless the Administrator, on a facility-by-facil-  
9 ity basis and pursuant to an agreement with the  
10 State concerned, makes a finding that a facility list-  
11 ed on the National Priorities List is eligible to par-  
12 ticipate in a State voluntary cleanup program meet-  
13 ing the requirements of subsection (b);

14 (2) any facility for which the Governor of a  
15 State has requested Environmental Protection Agen-  
16 cy assistance to perform a response action;

17 (3) any facility owned or operated by a depart-  
18 ment, agency, or instrumentality of the United  
19 States; or

20 (4) a release or threatened release to the extent  
21 that a response action is required pursuant to an ad-  
22 ministrative order or judicial order or decree entered  
23 into by the United States under any of the following  
24 laws:

1 (A) The Comprehensive Environmental Re-  
2 sponse, Compensation, and Liability Act of  
3 1980 (42 U.S.C. 9601 et seq.).

4 (B) The Solid Waste Disposal Act (42  
5 U.S.C. 6901 et seq.).

6 (C) The Federal Water Pollution Control  
7 Act (33 U.S.C. 1251 et seq.).

8 (D) The Toxic Substances Control Act (15  
9 U.S.C. 2601 et seq.).

10 (E) Title XIV of the Public Health Service  
11 Act (commonly known as the Safe Drinking  
12 Water Act) (42 U.S.C. 300f et seq.).

13 (d) AUTHORITY TO GATHER INFORMATION.—The  
14 prohibition in subsection (a) shall not affect the authority  
15 of the Administrator to carry out investigations, monitor-  
16 ing, surveys, testing, or other information gathering au-  
17 thorized under section 104(b) of the Comprehensive Envi-  
18 ronmental Response, Compensation, and Liability Act of  
19 1980 (42 U.S.C. 9604(b)) at facilities where there may  
20 be an imminent and substantial endangerment to human  
21 health or the environment, but only for purposes of deter-  
22 mining whether the facility qualifies for listing on the Na-  
23 tional Priorities List pursuant to section 105 of that Act.

1 (e) PRIOR ACTIONS.—Nothing in this section shall  
2 affect administrative or judicial action commenced prior  
3 to the date of enactment of this section.

4 (f) PERMITS AND OTHER REQUIREMENTS.—No Fed-  
5 eral permit or permit revision shall be required for re-  
6 sponse actions conducted entirely onsite to respond to re-  
7 leases that are subject to the prohibition under subsection  
8 (a).

9 (g) DEFINITIONS.—For purposes of this section:

10 (1) VOLUNTARY RESPONSE PROGRAM.—The  
11 term “voluntary response program” means a pro-  
12 gram established by a State specifically to allow a  
13 person to respond voluntarily to the release or  
14 threatened release of hazardous substances at facili-  
15 ties in the State.

16 (2) VOLUNTARY RESPONSE PLAN.—The term  
17 “voluntary response plan” means a plan for re-  
18 sponding to the release or threatened release of haz-  
19 ardous substances at a particular facility under a  
20 State voluntary response program.

21 (h) ASSISTANCE TO STATES.—The Administrator  
22 shall provide technical, financial, and other assistance to  
23 States to establish and enhance voluntary response pro-  
24 grams. The Administrator shall encourage the States to  
25 develop risk sharing pools, indemnity pools, or insurance

1 mechanisms to provide financing for response actions  
2 under their voluntary response programs.

3 (i) EFFECT OF RESPONSE.—Performance of a vol-  
4 untary response action pursuant to this section shall not  
5 constitute an admission of liability under any Federal,  
6 State, or local law or regulation or in any citizens suit  
7 or other private action.

8 **SEC. 304. INNOCENT LANDOWNERS.**

9 (a) IN GENERAL.—Section 107 (42 U.S.C. 9607) is  
10 further amended by adding at the end the following new  
11 subsection:

12 “(q) INNOCENT LANDOWNERS.—

13 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-  
14 MENT.— A person who has acquired real property  
15 shall have made all appropriate inquiry within the  
16 meaning of subparagraph (B) of section 101(35) if  
17 he establishes that, within 180 days prior to the  
18 time of acquisition, an environmental site assess-  
19 ment of the real property was conducted which  
20 meets the requirements of this subsection.

21 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-  
22 SESSMENT.—For purposes of this subsection, the  
23 term ‘environmental site assessment’ means an as-  
24 sessment conducted in accordance with the stand-  
25 ards set forth in the American Society for Testing

1 and Materials (ASTM) Standard E1527–94, titled  
2 ‘Standard Practice for Environmental Site Assess-  
3 ments: Phase I Environmental Site Assessment  
4 Process’ or with alternative standards issued by rule  
5 by the Administrator or promulgated or developed  
6 by others and designated by rule by the Adminis-  
7 trator. Before issuing or designating alternative  
8 standards, the Administrator shall first conduct a  
9 study of commercial and industrial practices con-  
10 cerning environmental site assessments in the trans-  
11 fer of real property in the United States. Any such  
12 standards issued or designated by the Administrator  
13 shall also be deemed to constitute commercially rea-  
14 sonable and generally accepted standards and prac-  
15 tices for purposes of this paragraph. In issuing or  
16 designating any such standards, the Administrator  
17 shall consider requirements governing each of the  
18 following:

19 “(A) Interviews of owners, operators, and  
20 occupants of the property to determine informa-  
21 tion regarding the potential for contamination.

22 “(B) Review of historical sources as nec-  
23 essary to determine previous uses and occupan-  
24 cies of the property since the property was first  
25 developed. For purposes of this subclause, the

1 term ‘historical sources’ means any of the fol-  
2 lowing, if they are reasonably ascertainable: re-  
3 corded chain of title documents regarding the  
4 real property, including all deeds, easements,  
5 leases, restrictions, and covenants, aerial photo-  
6 graphs, fire insurance maps, property tax files,  
7 USGS 7.5 minutes topographic maps, local  
8 street directories, building department records,  
9 zoning/land use records, and any other sources  
10 that identify past uses and occupancies of the  
11 property.

12 “(C) Determination of the existence of re-  
13 corded environmental cleanup liens against the  
14 real property which have arisen pursuant to  
15 Federal, State, or local statutes.

16 “(D) Review of reasonably ascertainable  
17 Federal, State, and local government records of  
18 sites or facilities that are likely to cause or con-  
19 tribute to contamination at the real property,  
20 including, as appropriate, investigation reports  
21 for such sites or facilities; records of activities  
22 likely to cause or contribute to contamination at  
23 the real property, including landfill and other  
24 disposal location records, underground storage  
25 tank records, hazardous waste handler and gen-

1 erator records and spill reporting records; and  
2 such other reasonably ascertainable Federal,  
3 State, and local government environmental  
4 records which could reflect incidents or activi-  
5 ties which are likely to cause or contribute to  
6 contamination at the real property.

7 “(E) A visual site inspection of the real  
8 property and all facilities and improvements on  
9 the real property and a visual inspection of im-  
10 mediately adjacent properties, including an in-  
11 vestigation of any hazardous substance use,  
12 storage, treatment, and disposal practices on  
13 the property.

14 “(F) Any specialized knowledge or experi-  
15 ence on the part of the defendant.

16 “(G) The relationship of the purchase  
17 price to the value of the property if  
18 uncontaminated.

19 “(H) Commonly known or reasonably as-  
20 certainable information about the property.

21 “(I) The obviousness of the presence or  
22 likely presence of contamination at the prop-  
23 erty, and the ability to detect such contamina-  
24 tion by appropriate investigation.

1 A record shall be considered to be ‘reasonably ascer-  
2 tainable’ for purposes of this paragraph if a copy or  
3 reasonable facsimile of the record is publicly avail-  
4 able by request (within reasonable time and cost  
5 constraints) and the record is practically reviewable.

6 “(3) MAINTENANCE OF INFORMATION.—No  
7 presumption shall arise under paragraph (1) unless  
8 the defendant has maintained a compilation of the  
9 information reviewed and gathered in the course of  
10 the environmental site assessment.”.

11 (b) CROSS REFERENCE.—Section 101(35)(B) (42  
12 U.S.C. 9601(35)(B)) is amended by inserting after “all  
13 appropriate inquiry” the following: “(as specified in sec-  
14 tion 107(o))”.

15 **SEC. 305. BONA FIDE PROSPECTIVE PURCHASER LIABILITY.**

16 (a) LIABILITY.—Section 107 (42 U.S.C. 9607) is fur-  
17 ther amended by adding at the end the following new sub-  
18 sections:

19 “(r) BONA FIDE PROSPECTIVE PURCHASER.—(1)  
20 Notwithstanding paragraphs (1) through (4) of subsection  
21 (a), a person who does not impede the performance of a  
22 response action or natural resource restoration at a facil-  
23 ity shall not be liable to the extent liability at such facility  
24 is based solely on paragraph (1) of subsection (a) for a

1 release or threat of release from the facility, and the per-  
2 son is a bona fide prospective purchaser of the facility.

3 “(2) For purposes of this subsection, the term ‘bona  
4 fide prospective purchaser’ means a person who acquires  
5 ownership of a facility after the date of enactment of this  
6 subsection, or a tenant of such a person, who can establish  
7 each of the following by a preponderance of the evidence:

8 “(A) All active disposal of hazardous substances  
9 at the facility occurred before that person acquired  
10 the facility.

11 “(B) The person made all appropriate inquiry  
12 into the previous ownership and uses of the facility  
13 and its real property in accordance with generally  
14 accepted commercial and customary standards and  
15 practices. Standards described in subsection (q)(2)  
16 (relating to innocent landowners) shall satisfy the  
17 requirements of this subparagraph. In the case of  
18 property for residential or other similar use, pur-  
19 chased by a nongovernmental or noncommercial en-  
20 tity, a site inspection and title search that reveal no  
21 basis for further investigation satisfy the require-  
22 ments of this subparagraph.

23 “(C) The person provided all legally required  
24 notices with respect to the discovery or release of  
25 any hazardous substances at the facility.

1           “(D) The person exercised appropriate care  
2           with respect to hazardous substances found at the  
3           facility by taking reasonable steps to stop on-going  
4           releases, prevent threatened future releases of haz-  
5           ardous substances, and prevent or limit human or  
6           natural resource exposure to hazardous substances  
7           previously released into the environment.

8           “(E) The person provides full cooperation, as-  
9           sistance, and facility access to persons authorized to  
10          conduct response actions at the facility, including  
11          the cooperation and access necessary for the installa-  
12          tion, integrity, operation, and maintenance of any  
13          complete or partial response action at the facility.

14          “(F) The person is not affiliated with any other  
15          person liable for response costs at the facility,  
16          through any direct or indirect familial relationship,  
17          or any contractual, corporate, or financial relation-  
18          ship other than that created by the instruments by  
19          which title to the facility is conveyed or financed.

20          “(s) PROSPECTIVE PURCHASER AND WINDFALL  
21          LIEN.—(1) In any case in which there are unrecovered  
22          response costs at a facility for which an owner of the facil-  
23          ity is not liable by reason of subsection (r), and the condi-  
24          tions described in paragraph (2) are met, the United

1 States shall have a lien upon such facility for such unre-  
2 covered costs. Such lien—

3 “(A) shall not exceed the increase in fair mar-  
4 ket value of the property attributable to the response  
5 action at the time of a subsequent sale or other dis-  
6 position of property;

7 “(B) shall arise at the time costs are first in-  
8 curred by the United States with respect to a re-  
9 sponse action at the facility;

10 “(C) shall be subject to the requirements for  
11 notice and validity established in paragraph (3) of  
12 subsection (l); and

13 “(D) shall continue until the earlier of satisfac-  
14 tion of the lien or recovery of all response costs in-  
15 curred at the facility.

16 “(2) The conditions referred to in paragraph (1) are  
17 the following:

18 “(A) A response action for which there are un-  
19 recovered costs is carried out at the facility.

20 “(B) Such response action increases the fair  
21 market value of the facility above the fair market  
22 value of the facility that existed within 6 months be-  
23 fore the response action was taken.”.

1 **SEC. 306. CONTIGUOUS PROPERTIES.**

2 Section 107 (42 U.S.C. 9607) is further amended by  
3 adding at the end the following new subsection:

4 “(u) CONTIGUOUS PROPERTIES.—(1) A person  
5 (other than the United States or a department, agency,  
6 or instrumentality of the United States) who owns or oper-  
7 ates real property that is contiguous to or otherwise simi-  
8 larly situated with respect to real property on which there  
9 has been a release or threatened release of a hazardous  
10 substance and that is or may be contaminated by such  
11 release shall not be liable under subsection (a) (1) or (2)  
12 by reason of such ownership or operation solely by reason  
13 of such contamination if such person—

14 “(A) did not cause, contribute to, or consent to  
15 the release or threatened release;

16 “(B) provides full cooperation, assistance, and  
17 facility access to persons authorized to conduct re-  
18 sponse actions at the facility, including the coopera-  
19 tion and access necessary for the installation, integ-  
20 rity, operation, and maintenance of any complete or  
21 partial response action at the facility; and

22 “(C) is not affiliated with any other person lia-  
23 ble for response costs at the facility, through any di-  
24 rect or indirect familial relationship, or any contrac-  
25 tual, corporate, or financial relationship.

1       “(2) The President may issue an assurance of no en-  
2       forcement action under this Act to any such person and  
3       may grant any such person protection against cost recov-  
4       ery and contribution actions pursuant to section 113(f)(2).  
5       Such person may also petition the President to exclude  
6       from the description of a National Priorities List site such  
7       contiguous real property, if such property is or may be  
8       contaminated solely by ground water that flows under  
9       such property and is not used as a source of drinking  
10      water. The President may grant such a petition pursuant  
11      to such procedures as he deems appropriate.”.

12      **TITLE IV—NATURAL RESOURCE**  
13                                      **DAMAGES**

14      **SEC. 401. NATURAL RESOURCES DEFINED.**

15           Section 101(16) (42 U.S.C. 9601(16)) is amended by  
16      striking “belonging to” and all that follows before the pe-  
17      riod at the end.

18      **SEC. 402. CONSULTATION WITH NATURAL RESOURCES**  
19                                      **TRUSTEES.**

20           Section 104(c)(2) is amended by inserting “and the  
21      affected natural resource trustee or trustees” after “State  
22      or States”.

1 **SEC. 403. LIABILITY.**

2 Section 107(f) (42 U.S.C. 9607(f)) is amended by  
3 striking “(f)(1)” and all that follows through the period  
4 at the end of paragraph (1) and inserting the following:

5 “(f) NATURAL RESOURCES LIABILITY.—

6 “(1) LIABILITY.—

7 “(A) LIABILITY TO UNITED STATES,  
8 STATES, AND INDIAN TRIBES.—Except as pro-  
9 vided by subparagraph (B), in the case of an  
10 injury to, destruction of, or loss of natural re-  
11 sources under subsection (a)(2)(C), liability  
12 shall be—

13 “(i) to the United States Government,  
14 for natural resources belonging to, man-  
15 aged by, or held in trust by the United  
16 States Government or selected for transfer  
17 (but not transferred on or before the date  
18 of the injury, destruction, or loss) to an  
19 Alaska Native Corporation as part of the  
20 acreage entitlement of the Corporation  
21 under the Alaska Native Claims Settlement  
22 Act (43 U.S.C. 1601 et seq.);

23 “(ii) to a State, for natural resources  
24 within the State belonging to, managed by,  
25 or held in trust by the State or allocated

1 to the State pursuant to an interstate com-  
2 pact to which the State is a signatory; and

3 “(iii) to an Indian tribe, for natural  
4 resources belonging to, managed by, grant-  
5 ed rights to by treaty, or held in trust by  
6 the tribe, or belonging to a member of  
7 such tribe if such resources are subject to  
8 a trust restriction on alienation; and

9 “(B) EXCEPTIONS TO LIABILITY REQUIRE-  
10 MENTS.—No liability to the United States, a  
11 State, or an Indian tribe, shall be imposed  
12 under subsection (a)(2)(C) where the party  
13 sought to be charged has demonstrated that the  
14 injury to, destruction of, or loss of natural re-  
15 sources complained of were specifically identi-  
16 fied as an irreversible and irretrievable commit-  
17 ment of natural resources in an environmental  
18 impact statement, or other comparable environ-  
19 ment analysis, and the decision to grant a per-  
20 mit or license authorizes such commitment of  
21 natural resources, and the facility or project  
22 was otherwise operating within the terms of its  
23 permit or license, so long as, in the case of in-  
24 jury to, destruction of, or loss of an Indian  
25 tribe occurring pursuant to a Federal permit or

1 license, the issuance of that permit or license  
2 was not inconsistent with the fiduciary duty of  
3 the United States with respect to the Indian  
4 tribe.

5 “(C) PUBLIC TRUSTEES OF NATURAL RE-  
6 SOURCES.—The President, the authorized rep-  
7 resentative of a State, or the authorized rep-  
8 resentative of an Indian tribe shall act on be-  
9 half of the public or the Indian tribe, as appro-  
10 priate, as trustee for a natural resource to re-  
11 cover for injury to, destruction of, or loss of  
12 natural resources under this section.”.

13 **SEC. 404. DESIGNATION OF TRUSTEES.**

14 (a) DESIGNATION OF INDIAN TRIBE.—Section  
15 107(f)(2) (42 U.S.C. 9607(f)(2)) is amended—

16 (1) by striking the paragraph heading and in-  
17 serting the following: “DESIGNATION OF FEDERAL,  
18 STATE, AND INDIAN TRIBE.—”; and

19 (2) by amending subparagraph (C) to read as  
20 follows:

21 “(C) INDIAN TRIBE.—The elected council  
22 or elected head official of an Indian tribe shall  
23 designate Indian tribe officials who may act on  
24 behalf of the Indian tribe as trustees for natu-  
25 ral resources under this Act and shall notify the

1           President of such designations. Such Indian  
2           tribe officials shall assess damages to natural  
3           resources for the purposes of this Act for those  
4           natural resources under their trusteeship.”.

5           (b) RELATIONSHIP AMONG TRUSTEES.—Section  
6 107(f)(2) (42 U.S.C. 9607(f)(2)) is further amended by  
7 adding at the end the following:

8                   “(E) DESIGNATION OF LEAD DECISION-  
9           MAKING TRUSTEE.—

10                   “(i) IN GENERAL.—If more than one  
11           trustee is designated for a natural resource  
12           under this paragraph, the following trustee  
13           may elect to serve as the lead decisionmak-  
14           ing trustee for the resource:

15                   “(I) The United States, for re-  
16           sources exclusively belonging to or  
17           held in trust by the United States or  
18           for which the United States exercises  
19           primary management under the En-  
20           dangered Species Act of 1973 (16  
21           U.S.C. 1531 et seq.), the Magnuson-  
22           Stevens Fishery Conservation and  
23           Management Act (16 U.S.C. 1801 et  
24           seq.), the Migratory Bird Treaty Act  
25           (16 U.S.C. 703 et seq.), the Marine

1 Mammal Protection Act of 1972 (16  
2 U.S.C. 1631 et seq.), the Wild Free-  
3 Roaming Horses and Burros Act (16  
4 U.S.C. 1331 et seq.), or the Bald  
5 Eagle Protection Act (16 U.S.C. 668  
6 et seq.).

7 “(II) An Indian tribe, for re-  
8 sources belonging exclusively to such  
9 tribe or for which the tribe is the pri-  
10 mary manager pursuant to a treaty.

11 “(III) A State, if the State is a  
12 trustee for the resource and sub-  
13 clauses (I) and (II) do not apply.

14 “(ii) RESPONSIBILITY OF LEAD DECI-  
15 SIONMAKING TRUSTEE.—A lead decision-  
16 making trustee for a resource designated  
17 under this subparagraph shall be respon-  
18 sible for determining the measurement of  
19 damages for the resource after soliciting  
20 and considering the views of the other  
21 trustees for the resource.

22 “(iii) LIMITATION.—A trustee may  
23 not be designated as a lead decisionmaking  
24 trustee for a resource under this subpara-  
25 graph if the trustee is a potentially respon-

1                   sible party with respect to damages to the  
2                   resource.”.

3 **SEC. 405. DETERMINATION OF CAUSATION.**

4           Section 107(f) (42 U.S.C. 9607(f)) is amended by  
5 adding at the end the following:

6                   “(3) DETERMINATION OF CAUSATION.—Any de-  
7                   termination of whether injury to, destruction of, or  
8                   loss of a natural resource results from a release  
9                   under subsection (a)(2)(C) shall be made in accord-  
10                  ance with the Restatement (Second) of Torts, as in  
11                  effect on the date of the enactment of this para-  
12                  graph.”.

13 **SEC. 406. MEASURE OF DAMAGES.**

14           Section 107(f) (42 U.S.C. 9607(f)) is further amend-  
15 ed by adding at the end the following:

16                   “(4) MEASURE OF DAMAGES.—

17                   “(A) IN GENERAL.—The measure of dam-  
18                   ages to a natural resource under subsection  
19                   (a)(2)(C) shall be limited to the following:

20                   “(i) Reasonable costs of restoration of  
21                   the resource.

22                   “(ii) The reasonable cost of temporary  
23                   restoration measures.

24                   “(iii) The costs of reasonable assess-  
25                   ment of damages to the resource.

1           “(B) NONUSE VALUES.—There shall be no  
2 recovery under this Act based on non-use val-  
3 ues.

4           “(C) CONTINGENT VALUATION METHODOLOGY.—Contingent valuation methodology and  
5 other economic polling techniques shall not be  
6 used to value either lost natural resource serv-  
7 ices or any particular restoration alternative.”.

9 **SEC. 407. DAMAGE ASSESSMENTS.**

10         Section 107(f) (42 U.S.C. 9607(f)) is further amend-  
11 ed by adding at the end the following:

12           “(5) DAMAGE ASSESSMENTS.—

13           “(A) IN GENERAL.—To the extent prac-  
14 ticable, a Federal, State, or Indian trustee des-  
15 igned under this subsection shall base any  
16 measure of damages under paragraph (4) with  
17 respect to a site on an assessment of the spe-  
18 cific conditions and restoration requirements at  
19 the site.

20           “(B) ASSESSMENT REQUIREMENTS.—Any  
21 assessment used by a trustee under subpara-  
22 graph (A) shall be based on, and performed in  
23 accordance with, generally accepted scientific  
24 and technical standards, literature, and meth-

1           odologies that ensure the validity, reliability,  
2           and cost-effectiveness of assessment results.”.

3 **SEC. 408. SELECTION OF RESTORATION ALTERNATIVES.**

4           Section 107(f) (42 U.S.C. 9607(f)) is further amend-  
5 ed by adding at the end the following:

6           “(7) SELECTION OF RESTORATION ALTER-  
7 NATIVES.—

8           “(A) IN GENERAL.—In selecting a range of  
9 possible restoration alternatives, a Federal,  
10 State, or Indian tribe trustee, designated under  
11 this subsection shall select reasonable measures  
12 that are feasible and cost-effective.

13           “(B) PREFERENCE.—A trustee may give  
14 preference to any alternatives selected under  
15 subparagraph (A) that meet the following re-  
16 quirements:

17           “(i) Notwithstanding the limitations  
18 in paragraph (4), the incremental costs are  
19 justified by the incremental benefits.

20           “(ii) Restoration is achieved in a time-  
21 ly manner.

22           “(C) REPLACEMENT.—With the concur-  
23 rence of the affected trustees, any restoration  
24 alternative selected may include temporary re-  
25 placement of the services, or some portion

1           thereof, which would otherwise have been pro-  
2           vided by the injured natural resources.”.

3 **SEC. 409. USE OF SUMS RECOVERED BY TRUSTEES.**

4           Section 107(f) (42 U.S.C. 9607(f)) is further amend-  
5 ed by adding at the end the following:

6           “(8) USE OF SUMS RECOVERED BY TRUST-  
7 EES.—

8           “(A) USE OF SUMS RECOVERED BY THE  
9 UNITED STATES.—Damages recovered by the  
10 United States Government as a trustee under  
11 this subsection shall be retained by the trustee,  
12 without further appropriation, for use only to  
13 restore, replace, or acquire the equivalent of  
14 such natural resources.

15           “(B) USE OF SUMS RECOVERED BY A  
16 STATE, OR INDIAN TRIBE.—Damages recovered  
17 by a State or Indian tribe as a trustee under  
18 this subsection shall be available for use only to  
19 restore, replace, or acquire the equivalent of  
20 such natural resources by the State or Indian  
21 tribe.”.

22 **SEC. 410. RELATION TO OTHER LAWS; DAMAGES OCCUR-**  
23 **RING BEFORE DECEMBER 11, 1980.**

24           Section 107(f) (42 U.S.C. 9607(f)) is further amend-  
25 ed by adding at the end the following:

1           “(9) RELATION TO OTHER LAWS.—

2                   “(A) DOUBLE RECOVERY PROHIBITED.—

3           Any trustee who receives compensation for in-  
4           jury to, destruction of, or loss of a natural re-  
5           source pursuant to this section shall be pre-  
6           cluded from recovering compensation for the in-  
7           jury to, destruction of, or loss of the same natu-  
8           ral resource pursuant to any other State or  
9           Federal law. Any trustee who receives com-  
10          pensation for injury to, destruction of, or loss  
11          of a natural resource pursuant to any other  
12          Federal or State law shall be precluded from re-  
13          ceiving compensation for injury to, destruction  
14          of, or loss of the same natural resource as pro-  
15          vided in this section.

16                   “(B) DOUBLE LIABILITY PROHIBITED.—

17          Any person who pays compensation to one or  
18          more parties for injury to, destruction of, or  
19          loss of a natural resource pursuant to this sec-  
20          tion shall not be required to pay compensation  
21          for injury to, destruction of, or loss of the same  
22          natural resource pursuant to this Act or any  
23          other State or Federal law. Any person who  
24          pays compensation for injury to, destruction of,  
25          or loss of a natural resource pursuant to any

1 other Federal or State law shall not be required  
2 to pay compensation for injury to, destruction  
3 of, or loss of the same natural resource as pro-  
4 vided in this section.

5 “(C) PERSON DEFINED.—In this para-  
6 graph, the term ‘person’ has the meaning given  
7 such term by section 101 and also includes an  
8 Indian tribe.

9 “(10) DAMAGES OCCURRING BEFORE DECEM-  
10 BER 11, 1980.—There shall be no recovery for in-  
11 jury to, destruction of, or loss of natural resources  
12 under the authority of subsection (a)(2)(C) where  
13 such injury, destruction, or loss and the release of  
14 a hazardous substance from which such injury, de-  
15 struction, or loss resulted have occurred wholly be-  
16 fore December 11, 1980.”.

17 **SEC. 411. RESTORATION.**

18 Section 107(f) (42 U.S.C. 9607(f)) is further amend-  
19 ed by adding at the end the following:

20 “(11) RESTORATION.—

21 “(A) RESTORATION GOAL DEFINED.—An  
22 injury to, destruction of, or loss of natural re-  
23 sources, for the purposes of evaluating damages  
24 and identifying restoration alternatives under  
25 this subsection or section 106, shall mean a

1 measurable adverse change in a population or  
2 community of organisms that exceeds the natu-  
3 ral variability of the population or community  
4 of organisms to an ecologically significant de-  
5 gree, as a result of a release of a hazardous  
6 substance. The goal of any restoration shall be  
7 to restore injured natural resources to their  
8 baseline condition for the reasonably anticipated  
9 use of the natural resources as measured by the  
10 consumptive and nonconsumptive services pro-  
11 vided by such resources. For purposes of this  
12 subparagraph:

13 “(i) The term ‘consumptive services’  
14 means the use of a natural resource by the  
15 public that includes activities such as fish-  
16 ing and trapping in which resources are  
17 harvested.

18 “(ii) The term ‘nonconsumptive serv-  
19 ices’ means the physical use of the re-  
20 source by the public in a manner that does  
21 not reduce the stock of the resource. Such  
22 uses include activities related to visitation,  
23 such as hiking, wildlife viewing, and pho-  
24 tography, as well as ecological services  
25 such as flood control and filtration.

1                   “(B) MEASUREMENT OF RESTORATION OF  
2 CERTAIN RESOURCES.—

3                   “(i) RESOURCES PROTECTED UNDER  
4 WILDERNESS ACT OR MARINE PROTECTION,  
5 RESEARCH, AND SANCTUARIES ACT OF  
6 1972.—For purposes of this subsection,  
7 restoration of an injured, damaged, or lost  
8 biological resource that is protected under  
9 the Wilderness Act (16 U.S.C. 1131 et  
10 seq.), or that is located in a marine sanc-  
11 tuary designated under the Marine Protec-  
12 tion, Research, and Sanctuaries Act of  
13 1972 (16 U.S.C. 1431 et seq.), may be  
14 measured by reinstatement of populations  
15 of such resource to the condition that  
16 would exist had the release not occurred.

17                   “(ii) RESOURCES PROTECTED UNDER  
18 ENDANGERED SPECIES ACT OF 1973.—For  
19 purposes of this subsection, restoration of  
20 a resource that is protected under the En-  
21 dangered Species Act of 1973 (16 U.S.C.  
22 1531 et seq.) may be measured by compli-  
23 ance with existing or planned recovery  
24 plans and requirements developed for such

1 resource under section 1533(f) of such  
2 Act.”.

3 **SEC. 412. USE OF MEDIATION.**

4 Section 122(f) (42 U.S.C. 9622(f)) is amended by  
5 adding at the end the following new paragraph:

6 “(7) USE OF MEDIATION.—Any Federal natural  
7 resource trustee, State natural resource trustee, or  
8 Indian tribe seeking damages for injury to, destruc-  
9 tion of, or loss of natural resources in accordance  
10 with subsections (a) and (f) of section 107 may initi-  
11 ate mediation for such claim with any potentially re-  
12 sponsible parties by means of the mediation proce-  
13 dure or other alternative dispute resolution method  
14 recognized by the district court in which the action  
15 is filed. Such mediation shall be initiated not later  
16 than 120 days after the filing of such action. Such  
17 120-day period may be extended upon agreement of  
18 all parties.”.

19 **SEC. 413. APPLICABILITY.**

20 (a) IN GENERAL.—The amendments made by this  
21 title shall not apply to an action to recover natural re-  
22 source damages under section 107(f) in which a trial has  
23 begun before July 1, 1997, or in which a final settlement,  
24 decree, or order has been issued before such date.

1 (b) EXPIRED ACTIONS UNDER SECTION 113(g)(1).—  
 2 The amendments made by this title shall not be construed  
 3 to affect any action for damages that has expired under  
 4 section 113(g)(1) of the Comprehensive Environmental  
 5 Response, Compensation, and Liability Act of 1980 (42  
 6 U.S.C. 9601 et seq.), as in effect on the day before the  
 7 date of the enactment of this Act.

## 8 **TITLE V—STATE ROLE**

### 9 **SEC. 501. STATE DELEGATION AT NPL FACILITIES.**

10 (a) STATE DELEGATION.—Title I of the Comprehen-  
 11 sive Environmental Response, Compensation, and Liabil-  
 12 ity Act of 1980 (42 U.S.C. 9601 et seq.) is amended—

13 (1) by inserting after the heading for title I the  
 14 following:

15 **“Subtitle A—General Provisions”;**

16 and

17 (2) by adding at the end the following new sub-  
 18 title:

19 **“Subtitle B—State Role**

20 **“SEC. 151. STATE DELEGATION AT NPL FACILITIES.**

21 **“(a) STATE AUTHORITY.—**

22 **“(1) ACTIONS FOR WHICH AUTHORITY MAY BE**  
 23 **DELEGATED.—**The Administrator may, in accord-  
 24 **ance with this section, delegate authority to a State**  
 25 **to take any or all of the following actions at any or**

1 all facilities within the State that are listed on the  
2 National Priorities List:

3 “(A) Response actions under section 104.

4 “(B) Response actions under section  
5 106(a) and enforcement under section 106(b).

6 “(C) Cost recovery actions under section  
7 107.

8 “(D) Authority under subsections (e) and  
9 (h) (other than (h)(2)) of section 120.

10 “(E) Remedy selections under section 121.

11 “(F) Settlements under section 122.

12 “(G) Allocations under section 128.

13 “(H) Community participation activities  
14 under section 117, other than the making of  
15 grants for technical assistance under section  
16 117(e).

17 “(2) APPLICATION FOR STATE AUTHORITY.—

18 The Governor of a State may submit to the Admin-  
19 istrator an application for State delegation of one or  
20 more of the authorities listed in paragraph (1) with  
21 respect to one or more facilities, and may seek  
22 amendments to its delegated authority to add or de-  
23 lete facilities or actions for which authority is dele-  
24 gated. Any such application shall contain the follow-  
25 ing:

1           “(A) A list of facilities on the National  
2           Priorities List within the State for which au-  
3           thority is requested and a list of actions for  
4           which authority is requested.

5           “(B) A certification that the State has  
6           adequate legal authority to request, accept, ad-  
7           minister, and enforce the authority requested.

8           “(C) A certification that the State has the  
9           financial and personnel resources, organization,  
10          and expertise to administer and enforce the au-  
11          thority requested.

12          “(3) APPROVAL AND DISAPPROVAL OF APPLICA-  
13          TION.—

14                 “(A) IN GENERAL.—On the last day of the  
15                 180-day period beginning on the date the Ad-  
16                 ministrator receives an application made in ac-  
17                 cordance with paragraph (2), the application is  
18                 deemed to be approved unless within such 180-  
19                 day period the Administrator disapproves the  
20                 application, or a specified portion of the appli-  
21                 cation, by making one of the following findings:

22                         “(i) A finding that the State does not  
23                         have adequate legal authority to request,  
24                         accept, administer, or enforce the authority  
25                         requested.

1           “(ii) A finding that the State does not  
2           have the financial and personnel resources,  
3           organization, or expertise to administer  
4           and enforce the authority requested.

5           “(B) TERMS AND CONDITIONS PROHIB-  
6           ITED.—The Administrator may not place any  
7           terms or conditions on a delegation made pur-  
8           suant to this section, except that the Adminis-  
9           trator may prescribe requirements to ensure  
10          timely and effective recovery of response costs  
11          paid by funds from the Hazardous Substance  
12          Superfund established under subchapter A of  
13          chapter 98 of the Internal Revenue Code of  
14          1986.

15          “(C) EXPLANATION AND RESUBMITTAL.—  
16          If the Administrator disapproves an application  
17          by making one of the findings in clause (i) or  
18          (ii) of subparagraph (A), the Administrator  
19          shall notify the Governor in writing of the dis-  
20          approval and explain the basis for such finding  
21          within 180 days after receiving the application.  
22          A notification under this subparagraph is final  
23          agency action for purposes of judicial review. A  
24          Governor may submit a revised application any  
25          time after receiving notice of disapproval.

1 “(b) STATE RESPONSIBILITIES AND AUTHORITIES.—

2 “(1) CERTIFICATION OF USE OF FUNDS.—Not  
3 later than one year after a State receives funds pur-  
4 suant to subsection (d), and annually thereafter for  
5 as long as the State receives such funds, the Gov-  
6 ernor of the State shall submit to the Administrator  
7 the following:

8 “(A) A certification that the State has  
9 used the funds in accordance with the require-  
10 ments of this section and this Act.

11 “(B) Information describing the manner in  
12 which the State has used the funds.

13 “(C) Such other information about the use  
14 of the funds as the Administrator considers  
15 necessary.

16 “(2) COST RECOVERY.—All response costs that  
17 are paid by the State using State funds and that are  
18 recovered under section 107 by a State for costs in-  
19 curred at a facility for which the State has delegated  
20 authority to take such action pursuant to subsection  
21 (a) shall be retained by the State. All response costs  
22 that are paid by funds from the Hazardous Sub-  
23 stance Superfund established under subchapter A of  
24 chapter 98 of the Internal Revenue Code of 1986  
25 and that are recovered under section 107 by a State

1 for costs incurred at a facility for which the State  
2 has delegated authority to take such action pursuant  
3 to subsection (a) shall be deposited into such  
4 Superfund. The Administrator may take actions  
5 under section 107 to recover response costs at such  
6 a facility. In any action commenced in a court of the  
7 United States by a State to recover costs described  
8 in this paragraph, the Administrator may intervene  
9 as a matter of right.

10 “(c) FEDERAL RESPONSIBILITIES AND AUTHORI-  
11 TIES.—

12 “(1) REVIEW OF USE OF FUNDS.—The Admin-  
13 istrator shall review any certification submitted by a  
14 Governor pursuant to subsection (b)(1). If the Ad-  
15 ministrator finds that funds were used in a manner  
16 that is inconsistent with the provisions of this Act,  
17 the Administrator shall notify the Governor in writ-  
18 ing. If the Governor fails to demonstrate promptly  
19 after receiving such notice that the Administrator’s  
20 finding is in error, or that the inconsistency is being  
21 corrected, the Administrator may request reimburse-  
22 ment of such sums as the Administrator has found  
23 to be used in a manner inconsistent with this Act or  
24 bring an action in the appropriate United States dis-  
25 trict court to recover the amount of funds used in

1 a manner inconsistent with the provisions of this  
2 Act.

3 “(2) WITHDRAWAL OF DELEGATION.—

4 “(A) CERTIFIED STATES.—If the Adminis-  
5 trator finds that a State does not meet the re-  
6 quirements for a delegation of authority under  
7 subsection (a)(2), or is exercising such author-  
8 ity in a manner inconsistent with the require-  
9 ments of this Act, the Administrator may with-  
10 draw all of the State’s delegated authority after  
11 providing notice and an opportunity to correct  
12 deficiencies pursuant to subparagraph (B). If  
13 the Administrator finds that the State is failing  
14 to meet the cost recovery requirements pre-  
15 scribed by the Administrator pursuant to sub-  
16 section (a)(3)(C), the Administrator may with-  
17 draw all of the cost recovery authority delegated  
18 to the State under subsection (a)(1)(C).

19 “(B) NOTICE AND OPPORTUNITY TO REC-  
20 TIFY.—The Administrator shall notify a State  
21 in writing prior to withdrawing authority dele-  
22 gated pursuant to subsection (a). If the State  
23 has not addressed the deficiencies listed in the  
24 Administrator’s notification in a timely manner

1 after receiving the notification, the authority  
2 may be withdrawn.

3 “(3) DELISTING FROM NATIONAL PRIORITIES  
4 LIST.—(A) Upon receipt of a written statement de-  
5 scribed in subparagraph (B) from a Governor with  
6 respect to a facility, the Administrator shall publish  
7 a notice in the Federal Register to delist the facility  
8 (or portion thereof) from the National Priorities  
9 List.

10 “(B) The written statement referred to in sub-  
11 paragraph (A) is a written statement from a Gov-  
12 ernor with respect to a facility stating that—

13 “(i) no further action to address the con-  
14 tamination at the facility (or portion thereof) is  
15 necessary to protect human health and the envi-  
16 ronment; or

17 “(ii) response action has been completed in  
18 accordance with an enforceable agreement to  
19 clean up the facility or cleanup is proceeding at  
20 the facility under the Solid Waste Disposal Act.

21 “(4) PROHIBITED ACTIONS.—Except upon re-  
22 quest from the State or as provided in subsections  
23 (b)(4) and (d), the Administrator is prohibited from  
24 taking any actions under sections 104, 106, 107,  
25 117 (other than 117(e)), 121, 122, and section 128

1 (relating to allocations), and under subsections (e)  
2 and (h) (other than subsection (h)(2)) of section  
3 120, at any facility on the National Priorities List  
4 for which authority to take such actions has been  
5 delegated to a State under this section.

6 “(d) RELATIONSHIP TO COOPERATIVE AGREE-  
7 MENTS.—Nothing in this section shall affect the authority  
8 of the Administrator under section 104(d)(1) of this Act  
9 to enter into a cooperative agreement with a State or polit-  
10 ical subdivision or Indian Tribe.”

11 (b) CONFORMING AMENDMENT.—Section 106(a) of  
12 such Act is amended by inserting after “Attorney General  
13 of the United States” the following: “(or, in the case of  
14 a State delegation under section 151, the appropriate  
15 State official)”.

16 **SEC. 502. STATE AUTHORIZATION AT NPL FACILITIES.**

17 Subtitle B of title I of the Comprehensive Environ-  
18 mental Response, Compensation, and Liability Act of  
19 1980, as added by section 501, is further amended by add-  
20 ing at the end the following new section:

21 **“SEC. 152. STATE AUTHORIZATION AT NPL FACILITIES.**

22 “(a) STATE AUTHORITY.—

23 “(1) ACTIONS FOR WHICH A STATE MAY RE-  
24 CEIVE AUTHORIZATION.—The Administrator may, in  
25 accordance with this section, authorize a State to

1 implement the State’s hazardous substance response  
2 program in lieu of the response action authorities of  
3 this Act at any or all of the facilities within the  
4 State that are listed on the National Priorities List.

5 “(2) APPLICATION FOR STATE AUTHORIZA-  
6 TION.—The Governor of a State may submit to the  
7 Administrator an application for State authorization  
8 with respect to one or more facilities, and may seek  
9 amendments to its authorization to add or delete fa-  
10 cilities. Any such application shall contain the fol-  
11 lowing:

12 “(A) A list of facilities on the National  
13 Priorities List within the State for which au-  
14 thorization is requested.

15 “(B) A certification that the State has  
16 adequate legal authority, financial and person-  
17 nel resources, organization, and expertise to ad-  
18 minister and enforce State hazardous substance  
19 response program at the facilities for which au-  
20 thorization is requested.

21 “(C) A certification that the State hazard-  
22 ous substance response program for which au-  
23 thorization is requested, or any Federal hazard-  
24 ous response authority delegated under section  
25 121, will not use Federal funds to relieve from

1 liability for a release any person who is liable  
2 under section 107.

3 “(D) A certification that response actions  
4 taken by the State under the authorization will  
5 protect public health and the environment.

6 “(3) APPROVAL AND DISAPPROVAL OF APPLICA-  
7 TION.—

8 “(A) IN GENERAL.—On or before the last  
9 day of the 180-day period beginning on the date  
10 the Administrator receives an application made  
11 in accordance with paragraph (2), the Adminis-  
12 trator shall approve or disapprove the applica-  
13 tion by making one of the following findings:

14 “(i) A finding that the State does not  
15 have the financial and personnel resources,  
16 organization, or expertise to administer or  
17 enforce the State hazardous substance re-  
18 sponse program at the facilities for which  
19 authorization is requested.

20 “(ii) A finding that the State’s imple-  
21 mentation of the hazardous substance re-  
22 sponse authority would use Federal funds  
23 to relieve from liability for a release any  
24 person who is liable under section 107.

1           “(iii) A finding that response actions  
2           taken by the State under the authorization  
3           will not protect public health and the envi-  
4           ronment.

5           “(B) PRESUMPTIVE APPROVAL.—(i) Not-  
6           withstanding subparagraph (A), if a State sub-  
7           mits an application that includes, in addition to  
8           the information in paragraph (2), a certification  
9           that it meets any 3 of the criteria set forth in  
10          clause (ii), the application is deemed to be ap-  
11          proved unless within the 180-day period re-  
12          ferred to in subparagraph (A) the Adminis-  
13          trator makes a finding that—

14               “(I) the application is incomplete or  
15               inaccurate;

16               “(II) the State does not meet 3 of the  
17               criteria set forth in clause (ii); or

18               “(III) the State’s implementation of  
19               the hazardous substance response author-  
20               ity would use Federal funds to relieve from  
21               liability for a release a person who is po-  
22               tentially liable under section 107.

23               “(ii) The criteria referred to in clause (ii)  
24               are the following:

1           “(I) A State cleanup program to re-  
2           mediate hazardous waste sites has been in  
3           effect for at least 10 years before the date  
4           of submission of an application by the  
5           State under paragraph (2).

6           “(II) Since the date on which a State  
7           cleanup program to remediate hazardous  
8           waste sites went into effect, the State has  
9           expended or obligated at least \$10,000,000  
10          from its State cleanup fund or other State  
11          source of cleanup funding (including direct  
12          appropriations).

13          “(III) The State cleanup program has  
14          at least 100 full-time equivalent employees.

15          “(IV) At least 200 response actions at  
16          facilities not listed on the National Prior-  
17          ities List have been performed under the  
18          State cleanup program.

19          “(V) There are located in the State at  
20          least 100 non-Federal facilities listed on  
21          the National Priorities List, or at least 6  
22          non-Federal facilities listed on the Na-  
23          tional Priorities List per million State resi-  
24          dents.

1           “(C) TERMS AND CONDITIONS PROHIB-  
2           ITED.—The Administrator may not place any  
3           terms or conditions on an authorization made  
4           pursuant to this section, except that the Admin-  
5           istrator may prescribe requirements to ensure  
6           timely and effective recovery by the State of re-  
7           sponse costs paid by funds from the Hazardous  
8           Substance Superfund established under sub-  
9           chapter A of chapter 98 of the Internal Reve-  
10          nue Code of 1986.

11           “(D) EXPLANATION AND RESUBMITTAL.—  
12          If the Administrator disapproves an application  
13          by making one of the findings in clause (i), (ii),  
14          or (iii) of subparagraph (A), the Administrator  
15          shall notify the Governor in writing of the dis-  
16          approval and explain the basis for such finding  
17          within 180 days after receiving the application.  
18          A notification under this subparagraph is final  
19          agency action for purposes of judicial review. A  
20          Governor may submit a revised application any  
21          time after receiving notice of disapproval.

22          “(b) STATE RESPONSIBILITIES AND AUTHORITIES.—

23           “(1) CERTIFICATION OF USE OF FUNDS.—Not  
24          later than one year after a State receives funds pur-  
25          suant to subsection (d), and annually thereafter for

1 as long as the State receives such funds, the Gov-  
2 ernor of the State shall submit to the Administrator  
3 the following:

4 “(A) A certification that the State has  
5 used the funds in accordance with the require-  
6 ments of this section and State law.

7 “(B) Information describing the manner in  
8 which the State has used the funds.

9 “(C) Such other information about the use  
10 of the funds as the Administrator considers  
11 necessary.

12 “(2) COST RECOVERY.—All response costs that  
13 are paid by the State using State funds and that are  
14 recovered by a State under section 107 or under  
15 State cost recovery provisions for costs incurred at  
16 a facility for which the State has been authorized  
17 pursuant to subsection (a) shall be retained by the  
18 State. All response costs paid by funds from the  
19 Hazardous Substance Superfund established under  
20 subchapter A of chapter 98 of the Internal Revenue  
21 Code of 1986 recovered under section 107 or under  
22 State liability provisions by a State for costs in-  
23 curred at a facility for which the State has been au-  
24 thorized to take such action pursuant to subsection  
25 (a) shall be deposited into such Superfund. Notwith-

1 standing paragraph (1), the Administrator may take  
2 actions under section 107 to recover response costs  
3 at such a facility. In any action commenced in a  
4 court of the United States by a State to recover  
5 costs described in this paragraph, the Administrator  
6 may intervene as a matter of right.

7 “(c) FEDERAL RESPONSIBILITIES AND AUTHORI-  
8 TIES.—

9 “(1) REVIEW OF USE OF FUNDS.—The Admin-  
10 istrator shall review any certification submitted by a  
11 Governor pursuant to subsection (b)(1). If the Ad-  
12 ministrator finds that funds were used in a manner  
13 that is clearly inconsistent with the provisions of this  
14 section, the Administrator shall notify the Governor  
15 in writing. If the Governor fails to demonstrate  
16 promptly after receiving such notice that the Admin-  
17 istrator’s finding is in error, or that the inconsis-  
18 tency is being corrected, the Administrator may re-  
19 quest reimbursement of such sums as the Adminis-  
20 trator has found to be used in a manner clearly in-  
21 consistent with this section or bring an action in the  
22 appropriate United States district court to recover  
23 the amount of funds used in a manner clearly incon-  
24 sistent with the provisions of this section.

25 “(2) WITHDRAWAL OF AUTHORIZATION.—

1           “(A) CERTIFIED STATES.—If the Adminis-  
2           trator finds that a State does not meet the re-  
3           quirements for authorization under subsection  
4           (a)(2), or fails to meet terms and conditions for  
5           authorization added pursuant to subsection  
6           (a)(3)(C), or is exercising such authority in a  
7           manner clearly inconsistent with the require-  
8           ments of this section, the Administrator may  
9           withdraw the State’s authorization after provid-  
10          ing notice and an opportunity to correct defi-  
11          ciencies pursuant to subparagraph (B).

12           “(B) NOTICE AND OPPORTUNITY TO REC-  
13          TIFY.—The Administrator shall notify a State  
14          in writing prior to withdrawing authorization  
15          approved pursuant to subsection (a). If the  
16          State has not addressed the deficiencies listed  
17          in the Administrator’s notification in a timely  
18          manner after receiving the notification, the au-  
19          thority may be withdrawn.

20           “(3) DELISTING FROM NATIONAL PRIORITIES  
21          LIST.—(A) Upon receipt of a written statement de-  
22          scribed in subparagraph (B) from a Governor with  
23          respect to a facility, the Administrator shall publish  
24          a notice in the Federal Register to delist the facility

1 (or portion thereof) from the National Priorities  
2 List.

3 “(B) The written statement referred to in sub-  
4 paragraph (A) is a written statement from a Gov-  
5 ernor with respect to a facility stating that—

6 “(i) no further action to address the con-  
7 tamination at the facility (or portion thereof) is  
8 necessary to protect human health and the envi-  
9 ronment; or

10 “(ii) response action has been completed in  
11 accordance with an enforceable agreement to  
12 clean up the facility or cleanup is proceeding at  
13 the facility under the Solid Waste Disposal Act.

14 “(4) PROHIBITED ACTIONS.—Except upon re-  
15 quest from the State or as provided in subsection  
16 (d), the Administrator is prohibited from taking any  
17 actions under this Act at any facility on the Na-  
18 tional Priorities List for which authorization has  
19 been granted under this section.

20 “(d) RELATIONSHIP TO COOPERATIVE AGREEMENTS  
21 AND SECTION 131.—Nothing in this section shall affect  
22 the authority of the Administrator under section  
23 104(d)(1) of this Act to enter into a cooperative agree-  
24 ment with a State or political subdivision or Indian  
25 Tribe.”.

1 **SEC. 503. FEDERAL FUNDING OF STATE ACTIONS UNDER**  
2 **STATE DELEGATION OR STATE AUTHORIZA-**  
3 **TION.**

4 Subtitle B of title I of the Comprehensive Environ-  
5 mental Response, Compensation, and Liability Act of  
6 1980, as added by section 501, is further amended by add-  
7 ing at the end the following new section:

8 **“SEC. 153. FEDERAL FUNDING.**

9 “(a) **FUNDING FOR STATES WITH DELEGATED AU-**  
10 **THORITY.—**

11 “(1) **IN GENERAL.—**The Administrator shall  
12 fund the cost to a State of exercising any delegated  
13 authorities as such costs arise, where such costs may  
14 be determined on a site-specific basis, except as pro-  
15 vided in paragraph (3).

16 “(2) **ALLOCATION.—**The Administrator shall al-  
17 locate funds among States for program activities for  
18 which costs cannot be determined on a site-specific  
19 basis considering the following factors:

20 “(A) The cost of administering the dele-  
21 gated authority.

22 “(B) The number of facilities for which the  
23 State has been delegated authority.

24 “(C) The types of activities for which the  
25 State has been delegated authority.

1           “(D) The number of facilities within the  
2 State on the National Priorities List.

3           “(E) The number of other high priority fa-  
4 cilities within the State.

5           “(F) The need for development of the  
6 State program.

7           “(G) The need for additional personnel.

8           “(H) The amount of resources available  
9 through State programs for the cleanup of con-  
10 taminated facilities.

11           “(I) The benefit to human health and the  
12 environment of providing the funding.

13           “(3) REIMBURSEMENT FOR REMOVAL ACTIONS  
14 UNDER SECTION 104.—The cost to a State of exer-  
15 cising any delegated removal authority under section  
16 104 shall be reimbursed in accordance with section  
17 123.

18           “(b) FUNDING FOR STATES WITH AUTHORIZA-  
19 TION.—

20           “(1) IN GENERAL.—The Administrator shall  
21 fund the cost to a State of exercising any authority  
22 for which an authorization has been made under sec-  
23 tion 152 as such costs arise, where such costs may  
24 be determined on a site-specific basis.

1           “(2) AUTHORITY OF ADMINISTRATOR TO DENY  
2           OR RECOVER CERTAIN COSTS.—(A) With respect to  
3           site-specific costs attributable to a State cleanup  
4           standard, requirement, criteria, or limitation that is  
5           more stringent than a legally applicable Federal  
6           standard, requirement, criteria, or limitation, the  
7           Administrator may deny funding to the State for  
8           such costs, or seek recovery from the State of any  
9           funds from the Hazardous Substance Superfund  
10          used by the State for such costs, if the Adminis-  
11          trator makes the finding described in subparagraph  
12          (B).

13           “(B) The finding referred to in subparagraph  
14          (A) is a finding by the Administrator in the case of  
15          a remedial action to be undertaken solely under sec-  
16          tion 104 using the Hazardous Substance Superfund  
17          that selection of a remedial action that attains such  
18          level or standard of control will not provide a bal-  
19          ance between the need for protection of public health  
20          and the environment at the facility under consider-  
21          ation, and the availability of amounts from the Haz-  
22          ardous Substance Superfund to respond to other  
23          sites which present or may present a threat to public  
24          health or the environment, taking into consideration  
25          the relative immediacy of such threats.

1           “(3) ALLOCATION.—The Administrator shall al-  
2           locate funds among States for program activities for  
3           which costs cannot be determined on a site-specific  
4           basis considering the following factors:

5                   “(A) The cost of administering the author-  
6                   ity for which the State has received authoriza-  
7                   tion.

8                   “(B) The number of facilities for which the  
9                   State has received authorization.

10                  “(C) The need for additional personnel.

11                  “(D) The amount of resources available  
12                  through State programs for the cleanup of con-  
13                  taminated facilities.

14                  “(E) The benefit to human health and the  
15                  environment of providing the funding.

16           “(c) LIST OF ACTIVITIES.—In consultation with the  
17           States, the Administrator shall publish a list of the activi-  
18           ties for which costs may and may not be determined on  
19           a site-specific basis.

20           “(d) USE OF FUNDS.—A State may use funds pro-  
21           vided under this section to take any actions or perform  
22           any duties necessary to implement—

23                   “(1) any authority delegated to the State under  
24                   section 151; and

1           “(2) any State hazardous substance response  
2           program for which the State has received authoriza-  
3           tion under section 152.

4           “(e) COST SHARE.—A State may not use funds pro-  
5           vided under this section unless the State provides assur-  
6           ances that it will pay the amount described in section  
7           104(c)(3). A State may not use funds appropriated to  
8           carry out the purposes of this section to make such pay-  
9           ments.”.

10 **SEC. 504. STATE COST SHARE.**

11           Paragraph (3) of section 104(c) of the Comprehen-  
12           sive Environmental Response, Compensation, and Liabil-  
13           ity Act of 1980 (42 U.S.C. 9604(c)) is amended to read  
14           as follows:

15           “(3)(A) Neither the Administrator nor a State  
16           described in subparagraph (B) may provide any re-  
17           medial action pursuant to this section unless the  
18           State first enters into a contract or cooperative  
19           agreement with the Administrator providing assur-  
20           ances deemed adequate by the Administrator that  
21           the State will pay, in cash or through other in-kind  
22           contributions, 10 percent of the costs of the remedial  
23           action and 10 percent of the costs of operation and  
24           maintenance.

25           “(B) Subparagraph (A) applies to any State—

1           “(i) which has been delegated authority  
2           pursuant to section 151(a) to take remedial ac-  
3           tion; or

4           “(ii) which has received authorization  
5           under section 152(a).

6           “(C) Subparagraph (A) does not apply in the  
7           case of remedial action to be taken on land or water  
8           held by an Indian Tribe, held by the United States  
9           in trust for Indians, held by a member of an Indian  
10          Tribe (if such land or water is subject to a trust re-  
11          striction or alienation), or otherwise within the bor-  
12          ders of an Indian reservation.”.

13 **SEC. 505. CONCURRENCE OF GOVERNORS REQUIRED FOR**  
14 **ADDITIONS TO NATIONAL PRIORITIES LIST.**

15          (a) GOVERNORS’ CONCURRENCE REQUIRED.—Sec-  
16 tion 105 of the Comprehensive Environmental Response,  
17 Compensation, and Liability Act of 1980 (42 U.S.C.  
18 9605) is amended by adding at the end the following new  
19 subsection:

20          “(h) CONCURRENCE OF GOVERNORS REQUIRED FOR  
21 ADDITIONS TO NATIONAL PRIORITIES LIST.—The Presi-  
22 dent may add a facility to the National Priorities List only  
23 with the concurrence of the Governor of the State in which  
24 the facility is located.”.

1 (b) CROSS REFERENCE.—Subparagraph (B) of sec-  
2 tion 105(a)(8) is amended by inserting after “shall revise  
3 the list” the following: “, subject to subsection (h),”.

4 **SEC. 506. STATE AND LOCAL REIMBURSEMENT FOR RE-**  
5 **SPONSE ACTIONS.**

6 Section 123 is amended to read as follows:

7 **“SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOV-**  
8 **ERNMENTS.**

9 “(a) APPLICATION.—Any State or general purpose  
10 unit of local government for a political subdivision which  
11 is affected by a release or threatened release at any facility  
12 may apply to the President for reimbursement under this  
13 section.

14 “(b) REIMBURSEMENT.—

15 “(1) EMERGENCY RESPONSE.—The President is  
16 authorized to reimburse general purpose units of  
17 local government for expenses incurred in carrying  
18 out emergency response actions necessary to prevent  
19 or mitigate injury to human health or the environ-  
20 ment associated with the release or threatened re-  
21 lease of any hazardous substance or pollutant or  
22 contaminant. Such actions may include, where ap-  
23 propriate, security fencing to limit access, response  
24 to fires and explosions, and other activities which re-  
25 quire immediate response at the State or local level.

1           “(2) REMOVAL ACTIONS.—The President is au-  
2           thorized to reimburse States for expenses incurred in  
3           carrying out removal actions under section 104.

4           “(3) LIMITATIONS.—(A) Reimbursement under  
5           this section shall not supplant State or local funds  
6           normally provided for response.

7           “(B) No reimbursement may be provided under  
8           this subsection to any general purpose unit of local  
9           government or any State for expenses incurred be-  
10          fore the date of the enactment of the Superfund Re-  
11          form Act.

12          “(c) AMOUNT.—(1) The amount of any reimburse-  
13          ment to any general purpose unit of local government  
14          under subsection (b)(1) may not exceed \$25,000 for a sin-  
15          gle response. The reimbursement under this section with  
16          respect to a single facility shall be limited to the general  
17          purpose units of local government having jurisdiction over  
18          the political subdivision in which the facility is located.

19          “(2) The amount of any reimbursement to a State  
20          under subsection (b)(2) may not exceed \$50,000 for a sin-  
21          gle response. The reimbursement under this section with  
22          respect to a single facility shall be limited to the State  
23          in which the facility is located.

1       “(3) The amounts allowed for the State and general  
2 purpose units of local government may not be combined  
3 for any single response action.

4       “(d) PROCEDURE.—Reimbursements authorized pur-  
5 suant to this section shall be in accordance with rules pro-  
6 mulgated by the Administrator within 1 year after the  
7 date of the enactment of the Superfund Reform Act.”.

1 **TITLE VI—FEDERAL FACILITIES**

2 **SEC. 601. STATE ROLE AT FEDERAL FACILITIES.**

3 Subsection (g) of section 120 is amended to read as  
4 follows:

5 “(g) STATE ROLE AT FEDERAL FACILITIES.—

6 “(1) ENFORCEMENT AND DISPUTE RESOLU-  
7 TION.—(A) An interagency agreement under this  
8 section between a State and any department, agen-  
9 cy, or instrumentality of the United States shall be  
10 enforceable by the State or the Federal department,  
11 agency, or instrumentality in the United States dis-  
12 trict court for the district in which the facility is lo-  
13 cated. The district court shall have the jurisdiction  
14 to enforce compliance with any provision, standard,  
15 regulation, condition, requirement, order, or final de-  
16 termination which has become effective under such  
17 agreement, and to impose any appropriate civil pen-  
18 alty provided for any violation of the agreement, not  
19 to exceed \$25,000 per day.

20 “(B) At a Federal facility in a State to which  
21 the President’s authorities under subsection (e)(4)  
22 have been transferred pursuant to section 131(a), if  
23 the State does not concur in the remedy selection  
24 proposed by the Federal department, agency, or in-  
25 strumentality that owns or operates the facility, the

1 parties shall enter into dispute resolution as pro-  
2 vided in the interagency agreement. If there is no  
3 interagency agreement, the State shall, not later  
4 than 120 days after the transfer of authorities under  
5 section 131(a), enter into an agreement with the  
6 head of the department, agency, or instrumentality  
7 on a process for resolving disputes regarding remedy  
8 selection for the facility. If a dispute is unresolved  
9 after using the process under the interagency agree-  
10 ment or dispute resolution agreement, the head of  
11 the Federal department, agency, or instrumentality  
12 that owns the Federal facility and the Governor of  
13 the State shall attempt to resolve such dispute by  
14 consensus. If no agreement is reached between the  
15 head of the Federal department, agency, or instru-  
16 mentality and the Governor, the State may issue the  
17 final determination. In order to compel implementa-  
18 tion of the State's selected remedy, the State must  
19 bring a civil action in the appropriate United States  
20 district court. The district court shall have jurisdic-  
21 tion as provided in subparagraph (A) to issue any  
22 relief that may be necessary to implement the reme-  
23 dial action, to impose appropriate civil penalties not  
24 to exceed \$25,000 per day from the date the selected  
25 remedy becomes final, and to review any challenges

1 to the State’s final determination consistent with the  
2 standards set forth in section 113(j) of this Act.

3 “(2) LIMITATION.—Except as necessary to im-  
4 plement the transfer of the Administrator’s authori-  
5 ties to a State pursuant to section 131(a), nothing  
6 in this subsection shall be construed as altering,  
7 modifying, or impairing in any manner, or authoriz-  
8 ing the unilateral modification of, any terms of any  
9 agreement, permit, administrative or judicial order,  
10 decree, or interagency agreement existing on the ef-  
11 fective date of the Superfund Reform Act. Any other  
12 modifications or revisions of an interagency agree-  
13 ment entered into under this section shall require  
14 the consent of all parties to such agreement, and ab-  
15 sent such consent the agreement shall remain un-  
16 changed.

17 “(3) EFFECT ON OTHER AUTHORITIES.—Noth-  
18 ing in this subsection shall affect the exercise by a  
19 State of any other authorities that may be applicable  
20 to Federal facilities in the State.”.

21 **SEC. 602. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**  
22 **TION AT FEDERAL FACILITIES.**

23 (a) IN GENERAL.—Section 311 (42 U.S.C. 9660) is  
24 amended by adding at the end the following:

25 “(h) FEDERAL FACILITIES.—

1           “(1) DESIGNATION.—The President may des-  
2           ignate a facility that is owned or operated by any de-  
3           partment, agency, or instrumentality of the United  
4           States, and that is listed or proposed for listing on  
5           the National Priorities List, to facilitate the re-  
6           search, development, and application of innovative  
7           technologies for remedial action at the facility.

8           “(2) USE OF FACILITIES.—

9           “(A) IN GENERAL.—A facility designated  
10           under paragraph (1) shall be made available to  
11           Federal departments and agencies, State de-  
12           partments and agencies, and public and private  
13           instrumentalities, to carry out activities de-  
14           scribed in paragraph (1).

15           “(B) COORDINATION.—The Adminis-  
16           trator—

17           “(i) shall coordinate the use of the fa-  
18           cilities with the departments, agencies, and  
19           instrumentalities of the United States; and

20           “(ii) may approve or deny the use of  
21           a particular innovative technology for re-  
22           medial action at any such facility.

23           “(3) CONSIDERATIONS.—

24           “(A) EVALUATION OF SCHEDULES AND  
25           PENALTIES.—In considering whether to permit

1 the application of a particular innovative tech-  
2 nology for remedial action at a facility des-  
3 igned under paragraph (1), the Administrator  
4 shall evaluate the schedules and penalties appli-  
5 cable to the facility under any agreement or  
6 order entered into under section 120.

7 “(B) AMENDMENT OF AGREEMENT OR  
8 ORDER.—If, after an evaluation under subpara-  
9 graph (A), the Administrator determines that  
10 there is a need to amend any agreement or  
11 order entered into pursuant to section 120, the  
12 Administrator shall comply with all provisions  
13 of the agreement or order, respectively, relating  
14 to the amendment of the agreement or order.”.

15 (b) REPORT TO CONGRESS.—Section 311(e) (42  
16 U.S.C. 9660(e)) is amended—

17 (1) by striking “At the time” and inserting the  
18 following:

19 “(1) IN GENERAL.—At the time”; and

20 (2) by adding at the end the following:

21 “(2) ADDITIONAL INFORMATION.—A report  
22 under paragraph (1) shall include information on the  
23 use of facilities described in subsection (h)(1) for the  
24 research, development, and application of innovative

1 technologies for remedial activity, as authorized  
2 under subsection (h).”.

3 **SEC. 605. FEDERAL ENTITIES AND FACILITIES.**

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

5 (1) By amending the heading to read as follows:

6 **“SEC. 120. FEDERAL ENTITIES AND FACILITIES.”.**

7 (2) By amending paragraph (1) of subsection  
8 (a) to read as follows:

9 “(1)(A) Each department, agency, and instru-  
10 mentality of the executive, legislative, and judicial  
11 branches of the United States shall be subject to,  
12 and comply with, all Federal, State, interstate and  
13 local requirements, both substantive and procedural  
14 (including any requirements for permits or report-  
15 ing, or any provisions for injunctive relief and such  
16 sanctions as may be imposed by a court to enforce  
17 such relief), regarding response actions and damages  
18 related to, or management of, releases of hazardous  
19 substances, pollutants, or contaminants in the same  
20 manner, and to the same extent, as any nongovern-  
21 mental entity is subject to such requirements, in-  
22 cluding enforcement and liability (including natural  
23 resource damage liability) under sections 106 and  
24 107 of this title and the payment of reasonable serv-  
25 ice 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 or a State with dele-  
5 gated authority may issue an order under section  
6 106 of this Act to any department, agency, or in-  
7 strumentality of the executive, legislative, or judicial  
8 branch of the United States. The Administrator or  
9 a State with delegated authority shall initiate an ad-  
10 ministrative enforcement action against such a de-  
11 partment, agency, or instrumentality in the same  
12 manner and under the same circumstances as action  
13 would be initiated against any other person.

14 “(ii) No administrative order issued to such de-  
15 partment, agency, or instrumentality shall become  
16 final until such department, agency, or instrumentality  
17 has had the opportunity to confer with the Presi-  
18 dent or a State with delegated authority.

19 “(I) Each such department, agency, and instru-  
20 mentality shall have the right to contribution protec-  
21 tion set forth in section 113, when such department,  
22 agency, or instrumentality resolves its liability under  
23 this Act.”.

24 (3) By striking paragraph (4) of subsection (a).

1           (4) By inserting “(other than the indemnifica-  
2           tion requirements of section 119)” after “respon-  
3           sibility” in subsection (a)(3).

4 **SEC. 607. NOTIFICATION REGARDING UNCONTAMINATED**  
5 **PROPERTY AT FEDERAL FACILITIES.**

6           Subsection (d) of section 120 (42 U.S.C. 9620) is  
7 amended by adding at the end the following: “Upon identi-  
8 fication of parcels of uncontaminated property pursuant  
9 to subsection (h)(4), the President may provide notice that  
10 the listing does not include the identified clean parcels.”.

11 **SEC. 608. ANNUAL STUDIES OF PRIORITIES AT FEDERAL**  
12 **FACILITIES.**

13           (a) **STUDY REQUIREMENT.**—The head of each Fed-  
14 eral department, agency, or instrumentality each fiscal  
15 year shall conduct a study to determine priorities among  
16 environmental management activities, within the funds  
17 available for such activities during such fiscal year, at fa-  
18 cilities owned or operated by the department, agency, or  
19 instrumentality and on the National Priorities List.

20           (b) **USE OF STANDARD METHODOLOGIES.**—In con-  
21 ducting the study, the head of each department, agency,  
22 or instrumentality shall develop and apply standard meth-  
23 odologies for evaluating and ranking such priorities.

24           (c) **MATTERS TO BE CONSIDERED.**—In conducting  
25 the study, the head of the department, agency, or instru-

1 mentality shall consider a range of issues, including the  
2 following:

3 (1) Health, safety, and environmental risks.

4 (2) Reduction of infrastructure costs and life-  
5 cycle cleanup costs.

6 (3) Economic development concerns.

7 (4) Views of affected citizens.

8 (d) PARTICIPATION.—In conducting the study, the  
9 head of the department, agency, or instrumentality shall  
10 provide for the participation, at a minimum, of the State  
11 in which the facility is located; the Administrator of the  
12 Environmental Protection Agency or a State with author-  
13 ized under section 131; the department, agency, or instru-  
14 mentality being regulated; and any affected citizens  
15 or entities.

16 (e) REPORT.—Not later than 90 days after the date  
17 of the enactment of the annual appropriation Act provid-  
18 ing funds for a Federal department, agency, or instrumen-  
19 tality, the head of the department, agency, or instrumen-  
20 tality shall submit to Congress a report on the results of  
21 the study required by this section.

22 (f) EFFECT OF STUDY ON ENFORCEABLE AGREE-  
23 MENTS.—A study conducted under this section shall in no  
24 way impair or diminish the obligation of any department,  
25 agency, or instrumentality of the United States to comply

1 with requirements agreed to under section 120 of the  
2 Comprehensive Environmental Response, Compensation,  
3 and Liability Act of 1980, unless such requirements have  
4 been specifically—

5 (1) addressed; or

6 (2) waived;

7 without objection from the State or Federal regulating  
8 agency.

9 **SEC. 609. JUDICIAL REMOVALS.**

10 Section 113(b) is amended by inserting after the first  
11 sentence the following: “Any action initiated in any State  
12 or local court against the United States (or any depart-  
13 ment, agency, instrumentality, officer, or employee of the  
14 United States) regarding liability or response actions re-  
15 lated to, or the release, disposal, or management of, haz-  
16 ardous wastes or hazardous substances, may be removed  
17 by the United States (or any department, agency, instru-  
18 mentality, officer, or employee of the United States) to  
19 the appropriate United States District Court in accord-  
20 ance with section 1446 of title 28, United States Code.”.

21 **TITLE VII—COMMUNITY**  
22 **PARTICIPATION**

23 **SEC. 701. COMMUNITY INVOLVEMENT.**

24 Section 117(e) (42 U.S.C. 9617(e)) is amended to  
25 read as follows:

1       “(e) IMPROVEMENT OF PUBLIC PARTICIPATION IN  
2 THE SUPERFUND DECISIONMAKING PROCESS.—

3               “(1) IN GENERAL.—

4                       “(A) MEETINGS AND NOTICE.—In order to  
5 provide an opportunity for meaningful public  
6 participation in every significant phase of re-  
7 sponse activities under this Act, the Adminis-  
8 trator shall provide the opportunity for, and  
9 publish notice of, public meetings before or dur-  
10 ing performance of—

11                               “(i) a public health assessment and a  
12 preliminary assessment and site inspection;

13                               “(ii) a proposal that the site be added  
14 to the National Priorities List;

15                               “(iii) a remedial investigation/feasibil-  
16 ity study, as appropriate;

17                               “(iv) announcement of a proposed re-  
18 medial action plan; and

19                               “(v) completion of a final remedial de-  
20 sign.

21                       “(B) INFORMATION.—A public meeting  
22 under subparagraph (A) shall be designed to  
23 obtain information from the community, and  
24 disseminate information to the community, with

1           respect to a facility concerning the Administra-  
2           tor’s facility activities and pending decisions.

3           “(2) LIMITATION.—Nothing in this subsection  
4           shall be construed—

5                   “(A) to provide for public participation in  
6                   or otherwise affect any negotiation, meeting, or  
7                   other discussion that concerns only the poten-  
8                   tial liability or settlement of potential liability  
9                   of any person, whether prior to or following the  
10                  commencement of litigation or administrative  
11                  enforcement action;

12                  “(B) to provide for public participation in  
13                  or otherwise affect any negotiation, meeting, or  
14                  other discussion that is attended only by rep-  
15                  resentatives of the United States (or of a de-  
16                  partment, agency, or instrumentality of the  
17                  United States) with attorneys representing the  
18                  United States (or of a department, agency, or  
19                  instrumentality of the United States); or

20                  “(C) to waive, compromise, or affect any  
21                  privilege that may be applicable to a commu-  
22                  nication related to an activity described in sub-  
23                  paragraph (A) or (B).

24           “(3) EVALUATION.—

1           “(A) IN GENERAL.—To the extent prac-  
2           ticable, before and during the facility evalua-  
3           tion, the Administrator shall solicit and evalu-  
4           ate concerns, interests, and information from  
5           the community.

6           “(B) PROCEDURE.—An evaluation under  
7           subparagraph (A) shall include, as appro-  
8           priate—

9                   “(i) face-to-face community surveys to  
10                  identify the location of private drinking  
11                  water wells, historic and current or poten-  
12                  tial use of water, and other environmental  
13                  resources in the community;

14                   “(ii) a public meeting;

15                   “(iii) written responses to significant  
16                  concerns; and

17                   “(iv) other appropriate participatory  
18                  activities.

19           “(4) VIEWS AND PREFERENCES.—

20           “(A) SOLICITATION.—During the facility  
21           evaluation, the Administrator (or other person  
22           performing the facility evaluation) shall solicit  
23           the views and preferences of the community on  
24           the remediation and disposition of hazardous

1 substances or pollutants or contaminants at the  
2 facility.

3 “(B) CONSIDERATION.—The views and  
4 preferences of the community shall be described  
5 in the facility evaluation and considered in the  
6 screening of remedial alternatives for the facil-  
7 ity.

8 “(5) ALTERNATIVES.—Members of the commu-  
9 nity may propose remedial action alternatives, and  
10 the Administrator shall consider such alternatives in  
11 the same manner as the Administrator considers al-  
12 ternatives proposed by potentially responsible par-  
13 ties.

14 “(6) INFORMATION.—

15 “(A) THE COMMUNITY.—The Adminis-  
16 trator, with the assistance of the community as-  
17 sistance group under subsection (f) if there is  
18 one, shall provide information to the community  
19 and seek comment from the community  
20 throughout all significant phases of the re-  
21 sponse action at the facility.

22 “(B) TECHNICAL STAFF.—The Adminis-  
23 trator shall ensure that information gathered  
24 from the community during community out-

1 reach efforts reaches appropriate technical staff  
2 in a timely and effective manner.

3 “(C) RESPONSES.—The Administrator  
4 shall ensure that reasonable written or other  
5 appropriate responses will be made to signifi-  
6 cant information.

7 “(7) NONPRIVILEGED INFORMATION.—  
8 Throughout all phases of response action at a facil-  
9 ity, the Administrator shall make all nonprivileged  
10 information relating to a facility available to the  
11 public for inspection and copying without the need  
12 to file a formal request, subject to reasonable service  
13 charges as appropriate.

14 “(8) PRESENTATION OF RISK INFORMATION.—  
15 (A) The President, in carrying out responsibilities  
16 under this Act, shall ensure that the presentation of  
17 information on risk is unbiased and informative. The  
18 results of any facility-specific risk evaluation shall  
19 contain an explanation that clearly communicates  
20 the risks at the facility, and shall—

21 “(i) identify and explain all significant as-  
22 sumptions used in the evaluation, as well as al-  
23 ternative assumptions, the policy or value judg-  
24 ments used in choosing the assumptions, and

1           whether empirical data conflict with or validate  
2           the assumptions;

3           “(ii) present, to the extent feasible—

4                 “(I) the scientifically objective dis-  
5                 tribution of exposure estimates,

6                 “(II) estimates, including central esti-  
7                 mates, of exposure and risk using the most  
8                 plausible assumptions given the weight of  
9                 current scientific information available to  
10                the President,

11               “(III) groups identified under section  
12                121(b)(3)(B) which are currently or would  
13                be highly exposed or highly susceptible (aa)  
14                to contamination from the site based on  
15                current and reasonably anticipated uses of  
16                land, water, and other resources at or  
17                around the site, or (bb) to risks arising  
18                from implementation of a remedial option,  
19                and

20               “(IV) a statement of the nature and  
21                magnitude of the scientific uncertainties  
22                associated with such estimates;

23           “(iii) include the size of the population po-  
24           tentially at risk from releases from the facility  
25           (based on the current or reasonably anticipated

1 future uses of the land, water, or other re-  
2 sources), the exposure scenario used for each  
3 estimate, and the likelihood that such potential  
4 exposures will occur; and

5 “(iv) compare risks with estimates of  
6 greater, lesser, and substantially equivalent  
7 risks that are familiar to and routinely encoun-  
8 tered by the general public as well as other  
9 risks, and, where appropriate and meaningful,  
10 comparison of those risks with other similar  
11 risks regulated by Federal agencies resulting  
12 from comparable activities and exposure path-  
13 ways.

14 Comparisons under clause (iv) should consider rel-  
15 evant distinctions among risks, such as the vol-  
16 untary or involuntary nature of risks.

17 “(B) To the maximum extent practicable, docu-  
18 ments made available to the general public which  
19 purport to describe the degree of risk to human  
20 health shall, at a minimum, provide information  
21 specified in subparagraph (A) or a meaningful ref-  
22 erence to such information in another document rea-  
23 sonably available to the public.

24 “(9) REQUIREMENTS.—

1           “(A) LENGTHY REMOVAL ACTIONS.—Not-  
2           withstanding any other provision of this sub-  
3           section, in the case of a removal action taken  
4           in accordance with section 104 that is expected  
5           to require more than 180 days to complete, and  
6           in any case in which implementation of a re-  
7           moval action is expected to obviate or that in  
8           fact obviates the need to conduct a long-term  
9           remedial action, the Administrator shall, to the  
10          maximum extent practicable, allow for public  
11          participation consistent with paragraph (1).

12          “(B) OTHER REMOVAL ACTIONS.—In the  
13          case of all other removal actions, the Adminis-  
14          trator may provide the community with notice  
15          of the anticipated removal action and a public  
16          comment period, as appropriate.

17          “(10) CITIZEN SUITS.—Any person may com-  
18          mence a civil action on his own behalf pursuant to  
19          section 310 alleging a failure on the part of the  
20          President or any other officer of the United States  
21          to comply with provisions of this section. Relief shall  
22          be limited to an injunction requiring compliance with  
23          this subsection.”.

1 **SEC. 702. COMMUNITY ASSISTANCE GROUPS.**

2 Section 117 (42 U.S.C. 9617) is further amended by  
3 adding at the end the following new subsection:

4 “(f) **COMMUNITY ASSISTANCE GROUP.**—

5 “(1) **ESTABLISHMENT.**—The Governor of the  
6 state where a facility is located shall create a com-  
7 munity assistance group for a facility that is listed  
8 or proposed for listing on the National Priorities  
9 List—

10 “(A) if the Governor determines that a  
11 representative public forum will be helpful in  
12 promoting direct, regular, and meaningful con-  
13 sultation among persons interested in response  
14 action at the facility; or

15 “(B) at the request of—

16 “(i) 50 individuals residing in, or at  
17 least 20 percent of the population of, the  
18 area in which the facility is located;

19 “(ii) a representative group of the po-  
20 tentially responsible parties; or

21 “(iii) any local governmental entity  
22 with jurisdiction over the facility.

23 “(2) **RESPONSIBILITIES.**—A community assist-  
24 ance group shall—

25 “(A) solicit the views of the local commu-  
26 nity on various issues affecting the development

1 and implementation of remedial actions at the  
2 facility;

3 “(B) serve as a conduit of information to  
4 and from the community to appropriate Fed-  
5 eral, State, and local agencies and potentially  
6 responsible parties;

7 “(C) serve as a representative of the local  
8 community during the response action planning  
9 and implementation process; and

10 “(D) provide reasonable notice of and op-  
11 portunities to participate in the meetings and  
12 other activities of the community assistance  
13 group.

14 “(3) ACCESS TO DOCUMENTS.—The Adminis-  
15 trator shall provide a community assistance group  
16 access to documents in possession of the Federal  
17 Government regarding response actions at the facil-  
18 ity that do not relate to liability and are not pro-  
19 tected from disclosure as confidential business infor-  
20 mation.

21 “(4) COMMUNITY ASSISTANCE GROUP INPUT.—

22 “(A) CONSULTATION.—The Administrator  
23 (or if the remedial action plan is being prepared  
24 or implemented by a party other than the Ad-  
25 ministrator, the other party) shall—

1           “(i) consult with the community as-  
2           sistance group in developing and imple-  
3           menting the remedial action plan; and

4           “(ii) keep the community assistance  
5           group informed of progress in the develop-  
6           ment and implementation of the remedial  
7           action plan.

8           “(B) TIMELY SUBMISSION OF COM-  
9           MENTS.—The community assistance group shall  
10          provide its comments, information, and rec-  
11          ommendations in a timely manner to the Ad-  
12          ministrator (and other party).

13          “(C) CONSENSUS.—The community assist-  
14          ance group shall attempt to achieve consensus  
15          among its members before providing comments  
16          and recommendations to the Administrator  
17          (and other party), but if consensus cannot be  
18          reached, the community assistance group shall  
19          report or allow presentation of divergent views.

20          “(5) TECHNICAL ASSISTANCE GRANTS.—

21          “(A) PREFERRED RECIPIENT.—If a com-  
22          munity assistance group exists for a facility, the  
23          community assistance group shall be the pre-  
24          ferred recipient of a technical assistance grant  
25          under subsection (g).

1           “(B) PRIOR AWARD.—If a technical assist-  
2           ance grant concerning a facility has been  
3           awarded prior to establishment of a community  
4           assistance group—

5                   “(i) the recipient of the grant shall co-  
6                   ordinate its activities and share informa-  
7                   tion and technical expertise with the com-  
8                   munity assistance group; and

9                   “(ii) one person representing the  
10                  grant recipient shall serve on the commu-  
11                  nity assistance group.

12          “(6) MEMBERSHIP.—

13                  “(A) NUMBER.—The Governor shall select  
14                  not less than 15 nor more than 20 persons to  
15                  serve on a community assistance group.

16                  “(B) NOTICE.—Before selecting members  
17                  of the community assistance group, the Gov-  
18                  ernor shall provide a notice of intent to estab-  
19                  lish a community assistance group to persons  
20                  who reside in the local community.

21                  “(C) REPRESENTED GROUPS.—(i) The Ad-  
22                  ministrators shall, to the extent practicable, ap-  
23                  point members to the community assistance  
24                  group from each of the following groups of per-  
25                  sons:

1           “(I) Persons who reside or own resi-  
2           dential property near the facility.

3           “(II) Persons who, although they may  
4           not reside or own property near the facil-  
5           ity, may be adversely affected by a release  
6           from the facility.

7           “(III) Persons who are members of  
8           the local public health or medical commu-  
9           nity and are practicing in the community.

10          “(IV) Representatives of Indian tribes  
11          or Indian communities that reside or own  
12          property near the facility or that may be  
13          adversely affected by a release from the fa-  
14          cility.

15          “(V) Local representatives of citizen,  
16          environmental, or public interest groups  
17          with members residing in the community.

18          “(VI) Representatives of local govern-  
19          ments, such as city or county governments,  
20          or both, and any other governmental unit  
21          that regulates land use or land use plan-  
22          ning in the vicinity of the facility.

23          “(VII) Members of the local business  
24          community, which do not have liability at  
25          the facility.

1           “(ii) The Governor shall provide particular  
2           opportunity to participate to representatives of  
3           persons who are or historically have been dis-  
4           proportionately affected by contamination in  
5           their community. Each community assistance  
6           group shall, to the extent practicable, reflect the  
7           composition of the community near the facility  
8           and its diversity of interests. The local technical  
9           assistance grant recipient shall be represented  
10          on the community assistance group. Residents  
11          of the affected community shall comprise no  
12          less than 50 percent of the total membership of  
13          the community assistance group.

14           “(D) PAY.—Members of a community as-  
15          sistance group shall serve without pay.

16          “(7) PARTICIPATION BY GOVERNMENT REP-  
17          RESENTATIVES.—Representatives of the Adminis-  
18          trator, the Administrator of the Agency for Toxic  
19          Substances and Disease Registry, other Federal  
20          agencies, and the State, as appropriate, shall partici-  
21          pate as requested by the community assistance  
22          group in community assistance group meetings to  
23          provide information and technical expertise, but  
24          shall not be members of the community assistance  
25          group.

1           “(8) ADMINISTRATIVE SUPPORT.—The Admin-  
2           istrator, to the extent practicable, shall provide ad-  
3           ministrative services and meeting facilities for com-  
4           munity assistance groups.

5           “(9) FACA.—The Federal Advisory Committee  
6           Act (5 U.S.C. App.) shall not apply to a community  
7           assistance group.

8           “(10) PARTICIPATION BY POTENTIALLY RE-  
9           SPONSIBLE PARTIES.—Potentially responsible par-  
10          ties or their representatives, as appropriate, may  
11          participate in community assistance group meetings  
12          to provide information and technical expertise, but  
13          shall not be members of the community assistance  
14          group.”.

15 **SEC. 703. TECHNICAL ASSISTANCE GRANTS.**

16          Section 117 (42 U.S.C. 9617) is further amended by  
17          adding at the end the following new subsection:

18          “(g) TECHNICAL ASSISTANCE GRANTS.—

19                  “(1) DEFINITIONS.—In this subsection:

20                          “(A) AFFECTED CITIZEN GROUP.—The  
21                          term ‘affected citizen group’ means a group of  
22                          2 or more individuals who may be affected by  
23                          the release or threatened release of a hazardous  
24                          substance, pollutant, or contaminant at any fa-  
25                          cility on the National Priorities List.

1           “(B) TECHNICAL ASSISTANCE GRANT.—

2           The term ‘technical assistance grant’ means a  
3           grant made under paragraph (2).

4           “(2) AUTHORITY.—

5           “(A) IN GENERAL.—In accordance with a  
6           regulation issued by the Administrator, the Ad-  
7           ministrator may make grants available to af-  
8           fected citizen groups.

9           “(B) AVAILABILITY OF APPLICATION  
10          PROCESS.—To ensure that the application proc-  
11          ess for a technical assistance grant is available  
12          to all affected citizen groups, the Administrator  
13          shall periodically review the process and, based  
14          on the review, implement appropriate changes  
15          to improve availability.

16          “(3) AVAILABILITY IN ADVANCE.—The Admin-  
17          istrator shall make all or a portion (but not less  
18          than \$5,000 or 10 percent of the grant amount,  
19          whichever is greater) of the grant amount available  
20          to a grant recipient in advance of the total expendi-  
21          tures to be covered by the grant.

22          “(4) LIMIT PER FACILITY.—Not more than 1  
23          technical assistance grant may be made with respect  
24          to a single facility, but the grant may be renewed to

1 facilitate public participation at all stages of re-  
2 sponse action.

3 “(5) FUNDING AMOUNT.—

4 “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), the amount of a technical  
6 assistance grant may not exceed \$50,000 for a  
7 single grant recipient.

8 “(B) INCREASE.—The Administrator may  
9 increase the amount of a technical assistance  
10 grant, or renew a previous technical assistance  
11 grant, up to a total grant amount not exceeding  
12 \$100,000, to reflect the complexity of the re-  
13 sponse action, the nature and extent of con-  
14 tamination at the facility, the level of facility  
15 activity, projected total needs as requested by  
16 the grant recipient, the size and diversity of the  
17 affected population, and the ability of the grant  
18 recipient to identify and raise funds from other  
19 non-Federal sources.

20 “(6) USE OF TECHNICAL ASSISTANCE  
21 GRANTS.—

22 “(A) PERMITTED USE.—A technical assist-  
23 ance grant may be used to obtain technical as-  
24 sistance in interpreting information with regard  
25 to—

1                   “(i) the nature of the hazardous sub-  
2                   stances locate at a facility;

3                   “(ii) the work plan;

4                   “(iii) the facility evaluation;

5                   “(iv) a proposed remedial action plan,  
6                   a remedial action plan, and a final reme-  
7                   dial design for a facility;

8                   “(v) response actions carried out at  
9                   the facility; and

10                  “(vi) operation and maintenance ac-  
11                  tivities at the facility.

12                  “(B) PROHIBITED USE.—A technical as-  
13                  sistance grant may not be used for the purpose  
14                  of collecting field sampling data.

15                  “(7) GRANT GUIDELINES.—

16                         “(A) IN GENERAL.—Not later than 90  
17                         days after the date of enactment of this para-  
18                         graph, the Administrator shall develop and pub-  
19                         lish guidelines concerning the management of  
20                         technical assistance grants by grant recipients.

21                         “(B) HIRING OF EXPERTS.—A recipient of  
22                         a technical assistance grant that hires technical  
23                         experts shall act in accordance with the guide-  
24                         lines under subparagraph (A).

25                         “(C) SPECIAL RULES.—

1           “(i) The President shall not approve  
2           any TAG application unless the applicant  
3           agrees to fully participate in the commu-  
4           nity assistance group for the site to which  
5           the grant relates and to present questions,  
6           concerns, and suggestions to the organiza-  
7           tion whenever possible. The President shall  
8           make no further payments to any TAG re-  
9           cipient that does not make a good faith ef-  
10          fort to fulfill such agreement.

11           “(ii) EARLY AWARD OF GRANTS.—The  
12          President shall award technical assistance  
13          grants at the earliest appropriate time.”.

## 14       **TITLE VIII—MISCELLANEOUS**

### 15       **SEC. 801. DEFINITIONS.**

16          Section 101 (42 U.S.C. 9601) is amended as follows:

17           (1) Paragraph (10)(H) is amended by striking  
18          “subject to” and inserting “in compliance with”.

19           (2) Paragraph (11) is amended by striking out  
20          “Response Fund established by section 221 of this  
21          Act” and all that follows through the end of the  
22          paragraph and inserting in lieu thereof “Superfund  
23          established by section 9507 of the Internal Revenue  
24          Code of 1986.”.

1           (3) Paragraph (14) is amended by adding at  
2 the end the following: “Such term does not include  
3 any naturally occurring radioactive materials.”.

4           (4) Paragraph (20) is amended as follows:

5           (A) In subparagraph (A), by inserting “the  
6 United States or” after “similar means to”.

7           (B) In subparagraph (D)—

8           (i) in the first sentence by inserting  
9 “the United States or” after “does not in-  
10 clude”;

11           (ii) in the second sentence, by insert-  
12 ing “any department, agency, or instru-  
13 mentality of the United States or” before  
14 “any State”; and

15           (iii) in the second sentence, by strik-  
16 ing “a” after “such” and inserting “de-  
17 partment, agency, or instrumentality of the  
18 United States or”.

19           (C) by adding after subparagraph (D) the  
20 following new subparagraph:

21           “(E) The term ‘owner or operator’ shall not in-  
22 clude the United States or any department, agency,  
23 or instrumentality of the United States or a con-  
24 servator or receiver appointed by a department,  
25 agency, or instrumentality of the United States if

1 the United States or the conservator or receiver  
2 meets both of the following conditions:

3 “(i) The United States, conservator, or re-  
4 ceiver acquired ownership or control of a vessel  
5 or facility (or any right or interest therein)—

6 “(I) in connection with the exercise of  
7 receivership or conservatorship authority  
8 or the liquidation or winding up of the af-  
9 fairs of any entity subject to a receivership  
10 or conservatorship, including any subsidi-  
11 ary thereof; and

12 “(II) in connection with the exercise  
13 of any seizure or forfeiture authority.

14 “(ii) The United States, conservator, or re-  
15 ceiver does not participate in the management  
16 of the vessel or facility operations that result in  
17 a release or threat of release of hazardous sub-  
18 stances and complies with such other require-  
19 ments as the Administrator may set forth by  
20 regulation.”.

21 (5) Paragraph (23) (relating to the terms “re-  
22 move” and “removal”) is amended—

23 (A) in the first sentence—

24 (i) by striking “terms” and inserting  
25 “term”;

1 (ii) by striking “necessary” the first  
2 place it appears and inserting “nec-  
3 essarily”; and

4 (iii) by inserting after “environment,  
5 such actions” the phrase “or combination  
6 of such actions”;

7 (B) in the second sentence by striking  
8 “term includes” and inserting “terms include”;  
9 and

10 (C) by adding at the end the following:  
11 “The term ‘remove’ or ‘removal’ is not limited  
12 to emergency situations and includes actions to  
13 address future or potential exposures.”.

14 (6) Paragraph (25) (relating to the terms “re-  
15 spond” and “response”) is amended—

16 (A) by striking “terms” and inserting  
17 “term”;

18 (B) by striking the comma after “remedial  
19 action;”; and

20 (C) by striking “related thereto” and in-  
21 sserting “(including attorneys’ fees and expert  
22 witness fees) and oversight activities related  
23 thereto when such activities are undertaken by  
24 the President, a State or Indian Tribe”.

1           (7) Paragraph (29) (relating to the terms “dis-  
2       posal”, “hazardous waste”, and “treatment”) is  
3       amended by inserting before the period the follow-  
4       ing: “, except that the term ‘hazardous substance’  
5       shall be substituted for the term ‘hazardous waste’  
6       in the definitions of ‘disposal’ and ‘treatment’”.

7           (8) Paragraph (33) (relating to the term “pol-  
8       lutant or contaminant”) is amended by striking  
9       “; except that the” and inserting “. The” and by  
10      adding the following at the end thereof: “Such term  
11      does not include any naturally occurring radioactive  
12      materials.”.

13          (9) The following new paragraphs are added at  
14      the end:

15          “(39) MUNICIPAL SOLID WASTE.—The term  
16      ‘municipal solid waste’ means all waste materials  
17      generated by households, including single and multi-  
18      family residences, and hotels and motels. The term  
19      also includes waste materials generated by commer-  
20      cial, institutional, and industrial sources, to the ex-  
21      tent such wastes (A) are essentially the same as  
22      waste normally generated by households, or (B) are  
23      collected and disposed of with other municipal solid  
24      waste or sewage sludge as part of normal municipal  
25      solid waste collection services, and, regardless of

1 when generated, would be considered conditionally  
2 exempt small quantity generator waste under regula-  
3 tion issued pursuant to section 3001(d) of the Solid  
4 Waste Disposal Act (42 U.S.C. 6921(d)). Examples  
5 of municipal solid waste include food and yard  
6 waste, paper, clothing, appliances, consumer product  
7 packaging, disposable diapers, office supplies, cos-  
8 metics, glass and metal food containers, elementary  
9 or secondary school science laboratory waste, and  
10 household hazardous waste. The term does not in-  
11 clude combustion ash generated by resource recovery  
12 facilities or municipal incinerators, or waste from  
13 manufacturing or processing (including pollution  
14 control) operations not essentially the same as waste  
15 normally generated by households.

16 “(40) MUNICIPALITY.—The term ‘municipality’  
17 means a political subdivision of a State, including a  
18 city, county, village, town, township, borough, par-  
19 ish, school district, sanitation district, water district,  
20 or other public entity performing local governmental  
21 functions. The term also includes a natural person  
22 acting in the capacity of an official, employee, or  
23 agent of any entity referred to in the preceding sen-  
24 tence in the performance of governmental functions.

1 (b) DEFINITIONS.—Section 101 (42 U.S.C. 9607) is  
2 further amended by adding at the end thereof the follow-  
3 ing:

4 “(42) MUNICIPALITY.—The term ‘municipal-  
5 ity’—

6 “(A) means a political subdivision of a  
7 State (including a city, county, village, town,  
8 township, borough, parish, school district, sani-  
9 tation district, water district, or other public  
10 entity performing local governmental functions);  
11 and

12 “(B) includes a natural person acting in  
13 the capacity of an official or employee of any  
14 entity described in subparagraph (A) in the per-  
15 formance of a governmental function.

16 “(43)(A) LARGE MUNICIPALITY.—The term  
17 ‘large municipality’ means a municipality with a  
18 population of 100,000 or more according to the  
19 1990 census.

20 “(B) SMALL MUNICIPALITY.—The term ‘small  
21 municipality’ means a municipality with a population  
22 of less than 100,000 according to the 1990 census.

23 “(44) ARRANGER SITE.—The term ‘arranger  
24 site’ means a facility where the majority of hazard-  
25 ous substances disposed of at the site were delivered

1 to the site from other locations by parties unaffili-  
2 ated with the owners and operators of a site.

3 “(45) QUALIFIED HOUSEHOLD HAZARDOUS  
4 WASTE COLLECTION PROGRAM.—The term ‘qualified  
5 household hazardous waste collection program’  
6 means a program established by an entity of the  
7 Federal Government, a State, a municipality, or an  
8 Indian tribe that provides, at a minimum, for semi-  
9 annual collection of household hazardous wastes at  
10 accessible, well-publicized collection points within the  
11 relevant jurisdiction.

12 “(46) SEWAGE SLUDGE.—The term ‘sewage  
13 sludge’ means solid, semisolid, or liquid residue re-  
14 moved during the treatment of municipal waste  
15 water, domestic sewage, or other waste water at or  
16 by publicly owned or federally owned treatment  
17 works.

18 “(47) SMALL BUSINESS.—The term ‘small busi-  
19 ness’ refers to any business entity that employs no  
20 more than 100 individuals and is a ‘small business  
21 concern’ as defined under the Small Business Act  
22 (15 U.S.C. 631 et seq.).

23 “(48) SMALL NONPROFIT ORGANIZATION.—The  
24 term ‘small nonprofit organization’ means any orga-  
25 nization that does not distribute any part of its in-

1       come or profit to its members, directors, or officers,  
2       employs no more than 100 paid individuals at the  
3       involved chapter, office, or department, and was rec-  
4       ognized as a non-profit organization under section  
5       501(c)(3) of the Internal Revenue Code of 1986.

6               “(49) CONSTRUCTION CONTRACTOR.—The term  
7       ‘construction contractor’ means a person who—

8               “(A) is not—

9                       “(i) taking or required to take any re-  
10                      sponse action under this Act or any other  
11                      Federal or State law at the facility con-  
12                      cerned,

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

17                     “(iii) otherwise responding to a re-  
18                     lease or threatened release of a hazardous  
19                     substance, pollutant, or contaminant at the  
20                     facility concerned;

21               “(B) did not know or have reason to know  
22       of the presence of hazardous substances at the  
23       facility concerned before beginning construction  
24       activities;

1           “(C) provided all legally required notices  
2           with respect to the discovery or release of any  
3           hazardous substances at the facility; and

4           “(D) exercised due care with respect to the  
5           hazardous substances discovered in the course  
6           of performing the construction activity, includ-  
7           ing precautions against foreseeable acts of third  
8           parties, taking into consideration the character-  
9           istics of such hazardous substance, in light of  
10          all relevant facts and circumstances.

11          “(50) NATURALLY OCCURRING RADIOACTIVE  
12          MATERIALS.—The term ‘naturally occurring radio-  
13          active materials’ means materials which are or con-  
14          tain naturally occurring radionuclides and their re-  
15          spective decay products unless such materials are  
16          derived from substances processed exclusively for  
17          their radionuclide content. Such term does not in-  
18          clude source, special nuclear, or by-product material  
19          regulated under the Atomic Energy Act of 1954 (42  
20          U.S.C. 2011 and following).”.

21 **SEC. 802. RESPONSE CLAIMS PROCEDURES.**

22          Section 112(a) (42 U.S.C. 9612(a)(2)) is amended—

23                 (1) in the first sentence, by adding after “un-  
24          less such claim is” the following: “(1) accompanied

1 by an audit prepared by an independent, certified  
2 public accountant, and (2)”; and

3 (2) by inserting after the first sentence the fol-  
4 lowing: “The Administrator reserves the right to re-  
5 view such audits to determine that the costs for  
6 which the claimant is seeking reimbursement are  
7 consistent with section 111 and, where necessary,  
8 withhold claims or a portion thereof which are incon-  
9 sistent with section 111(a).”.

10 **SEC. 803. SMALL BUSINESS OMBUDSMAN.**

11 The Administrator of the Environmental Protection  
12 Agency shall establish a small business Superfund assist-  
13 ance section within the small business ombudsman office  
14 at the Environmental Protection Agency. Such section  
15 shall carry out the following functions:

16 (1) Act as a clearinghouse of information for  
17 small businesses regarding the Comprehensive Envi-  
18 ronmental Response, Compensation, and Liability  
19 Act of 1980. Such information shall be comprehen-  
20 sible to a lay person and shall include information  
21 regarding the allocation process under section 130 of  
22 such Act, requirements and procedures for expedited  
23 settlements pursuant to section 122(g) of such Act,  
24 de minimis and de micromis status, and ability-to-  
25 pay procedures.

1           (2) Provide general advice and assistance to  
2           small businesses as to their questions and problems  
3           concerning the allocation and settlement processes,  
4           except that such advice and assistance shall not in-  
5           clude any legal advice as to liability or any other  
6           legal representation. The ombudsman shall not par-  
7           ticipate in the allocation process.

8           (3) Develop proposals and make recommenda-  
9           tions for changes in policies and activities of the En-  
10          vironmental Protection Agency which would better  
11          fulfill the goals of title II of the Superfund Reform  
12          Act in ensuring equitable, simplified, and expedited  
13          allocations and settlements for small businesses.

14 **SEC. 804. CONSIDERATION OF LOCAL GOVERNMENT**  
15 **CLEANUP PRIORITIES.**

16          Section 104(c)(2) is amended—

17               (1) by inserting “(A)” after “(2)”; and

18               (2) by adding at the end the following new sub-  
19          paragraph:

20          “(B) In setting priorities for scheduling work and al-  
21          locating oversight resources for a remedial action at a fa-  
22          cility at which a potentially responsible party that is a  
23          State or local government proposes to carry out the reme-  
24          dial action (or a portion thereof), the President should  
25          give higher priority to such remedial action (or portion

1 thereof) if the State or local government demonstrates  
2 that the remedial action—

3           “(i) will have a public benefit; and

4           “(ii) will result in the property on or adjacent  
5       to the facility being returned to productive use.

6 A private potentially responsible party may request similar  
7 consideration, in the President’s discretion.”.

8 **SEC. 805. SAVINGS CLAUSE.**

9       Nothing in this Act or any amendment made by this  
10 Act shall affect the application of the Atomic Energy Act  
11 of 1954 to any facility licensed by the Nuclear Regulatory  
12 Commission.

13 **SEC. 806. REPORT AND OVERSIGHT REQUIREMENTS.**

14       (a) **SUBMISSION TO STATE GOVERNORS.**—Section  
15 301(h)(1) (42 U.S.C. 9651(h)(1)) is amended in the mat-  
16 ter preceding subparagraph (A) by striking “to Congress  
17 of such Agency” and inserting “of such Agency to Con-  
18 gress and the Governor of each State”.

19       (b) **PROGRESS REPORT.**—Section 301(h)(1)(A) is  
20 amended to read as follows:

21           “(A) A progress report of accomplishments  
22           and expenditures on a State-by-State basis, in-  
23           cluding—

24                   “(i) a statement of the number of  
25                   completed record of decisions, removal ac-

1 tions, remedial actions, and enforcement  
2 actions; and

3 “(ii) a statement of—

4 “(I) the aggregate amount ex-  
5 pended in each State;

6 “(II) the amount expended in  
7 each State for site investigation and  
8 cleanup activities;

9 “(III) the amount expended in  
10 each State for non site-specific costs;  
11 and

12 “(IV) the amount expended for  
13 enforcement actions and cost recovery  
14 activities.”.

15 (c) OTHER REPORT CONTENTS.—Section 301(h)(1)  
16 is amended—

17 (1) in subparagraph (B) by striking the period  
18 at the end and inserting “and removal or remedial  
19 action.”; and

20 (2) in subparagraph (C) by inserting “, removal  
21 action, and remedial action” after “study”.

22 (d) RESPONSE TO STATE COMMENTS BY EPA.—Sec-  
23 tion 301(h) is amended by adding at the end the following:

24 “(4) RESPONSE TO STATE COMMENTS BY  
25 EPA.—The Administrator of the Environmental Pro-

1       tection Agency shall respond in writing to any com-  
2       ments submitted to the Administrator by a State re-  
3       garding reports developed under this subsection.”.

4   **SEC. 807. RESPONSE AUTHORITIES.**

5       (a) DISPOSAL AUTHORITY.—Section 104(j) (42  
6 U.S.C. 9604(j)) is amended as follows:

7           (1) In paragraph (1), by striking “remedial” in  
8       the first sentence and inserting “response”.

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

11           “(2) DISPOSAL AUTHORITY.—The President is  
12      authorized to dispose of any interest in real property  
13      acquired for use by the President under this sub-  
14      section by sale, exchange, donation, or otherwise and  
15      any such interest in real property shall not be sub-  
16      ject to any of the provisions of section 120 except  
17      the notice provisions of section 120(h)(1). Any mon-  
18      eys received by the President pursuant to this para-  
19      graph shall be deposited in the Fund.”.

20           (3) In paragraph (3) by striking “estate” and  
21      inserting “property”.

22   **SEC. 808. PRIORITIZATION.**

23       Section 105 (42 U.S.C. 9605) is amended by adding  
24      at the end the following:

1       “(h) SPENDING ACCORDING TO ESTABLISHED PRI-  
2 ORITIES.—To the extent practicable, the President shall  
3 establish spending priorities for remedial actions based  
4 upon the following criteria:

5           “(1) The criteria in subsection (a)(8).

6           “(2) Most risk reduction for funds spent.

7       “(i) PROPOSED EXPENDITURE BUDGET.—

8           “(1) PUBLICATION OF PROPOSED BUDGET.—

9       The President shall develop and publish a proposed  
10 budget for expenditures for a fiscal year for remedial  
11 actions based on the spending priorities established  
12 under subsection (h).

13           “(2) REVIEW AND COMMENT.—The President

14 shall make available the proposed expenditure budg-  
15 et required under paragraph (1) for public review  
16 and comment. In carrying out this paragraph, the  
17 President shall seek comments from affected citizens  
18 and businesses, local and State governments (includ-  
19 ing public health officials), Indian tribes, and envi-  
20 ronmental groups on whether the remedial priorities  
21 in the proposed expenditure budget are in accord-  
22 ance with the criteria referred to in subsection (h).

23           “(3) FINAL BUDGET.—The budget of the Presi-  
24 dent for a fiscal year submitted to Congress under  
25 section 1105 of title 31, United States Code, shall

1 include a budget for expenditures for remedial ac-  
2 tions based on the proposed budget developed under  
3 this subsection, taking into consideration any com-  
4 ments received under paragraph (2).

5 “(j) ADVISORY COMMITTEES.—

6 “(1) ESTABLISHMENT.—The President shall es-  
7 tablish an advisory committee to be known as the  
8 ‘National Remediation Advisory Committee’ to make  
9 recommendations to the President on the proposed  
10 expenditure budget developed under subsection (i)  
11 and to review public comments received on such  
12 budget. The President also may establish advisory  
13 committees located in the regions of the Environ-  
14 mental Protection Agency, to be known as regional  
15 remediation advisory committees, to review public  
16 comments from each region before the comments are  
17 considered by the National Remediation Advisory  
18 Committee and to provide recommendations to such  
19 Advisory Committee. The recommendations of an  
20 advisory committee established under this subsection  
21 shall reflect its review of public comments received  
22 under subsection (i) and its consideration of the pri-  
23 orities established by the President under subsection  
24 (h).

1           “(2) MEMBERS.—The National Remediation  
2       Advisory Committee and any regional remediation  
3       advisory committee may consist of up to 20 mem-  
4       bers (none of whom may be Environmental Protec-  
5       tion Agency or Department of Justice officers or  
6       employees) with expertise in science or health fields  
7       related to remediation, including representatives of  
8       communities affected by hazardous substances; State  
9       and local governments; environmental organizations;  
10      and representatives of large and small businesses  
11      (including remediation companies). Members shall  
12      serve staggered 3-year terms, and be appropriately  
13      compensated.

14           “(3) STAFF SUPPORT.—The President shall  
15      provide personnel to assist the National Remediation  
16      Advisory Committee and any regional remediation  
17      advisory committee to carry out their duties. To the  
18      extent practicable, such personnel shall be employees  
19      from other Federal departments and agencies.

20           “(4) FUNDING.—The costs of the advisory com-  
21      mittees established under this subsection shall be in-  
22      cluded in the proposed budget required under sub-  
23      section (i).”.

1 **SEC. 809. RESPONSE MANAGEMENT AND WORKER PROTEC-**  
2 **TION STANDARDS.**

3 Section 126 of the Superfund Amendments and Re-  
4 authorization Act of 1986 (29 U.S.C. 655 note) is amend-  
5 ed—

6 (1) by amending the section heading to read as  
7 follows:

8 **“SEC. 126. RESPONSE MANAGEMENT AND WORKER PRO-**  
9 **TECTION STANDARDS.”; and**

10 (2) by adding at the end the following new sub-  
11 section:

12 **“(h) RESPONSE MANAGEMENT AND TRAINING.—**

13 **“(1) AUTHORITY OF REMEDIAL PROJECT MAN-**  
14 **AGERS.—**The President is encouraged to give great-  
15 er decision making authority to remedial project  
16 managers in order to increase the pace of cleanups,  
17 reduce paperwork and administrative costs, and re-  
18 duce delays in making response action decisions.

19 **“(2) TRAINING.—(A)** To ensure that response  
20 action decisions continue to be given appropriate re-  
21 view to protect human health and the environment  
22 and serve the other purposes of this Act, the Presi-  
23 dent shall require that remedial project managers re-  
24 ceive adequate training in environmental manage-  
25 ment. Such training should include an undergradu-  
26 ate or graduate degree that includes course work to

1 develop skills in project planning or management,  
2 sciences relevant to response actions, and financial  
3 management. In determining the training that shall  
4 be required, the President shall consider the amount  
5 of training required under this section for workers,  
6 onsite managers and supervisors under subsection  
7 (d), and any additional responsibilities of remedial  
8 project managers.

9 “(B) In determining whether a remedial project  
10 manager has received adequate training, the Presi-  
11 dent may take into account experience in managing  
12 environmental response projects, considering the size  
13 and complexity of such projects.

14 “(3) REVIEW OF TRAINING FACILITIES.—The  
15 President shall conduct a review of existing training  
16 facilities to determine whether a national environ-  
17 mental training center should be established to pro-  
18 vide training for remedial project managers, on-  
19 scene coordinators, and other response personnel.”.

20 **SEC. 810. ACTIONS RELATING TO SOURCE, BYPRODUCT,**  
21 **AND SPECIAL NUCLEAR MATERIAL.**

22 (a) MATERIAL SUBJECT TO DECONTAMINATION  
23 REGULATIONS FOR LICENSE TERMINATION.—Title III is  
24 amended by adding at the end the following new section:

1 **“SEC. 313. ACTIONS RELATING TO SOURCE, BYPRODUCT,**  
2 **AND SPECIAL NUCLEAR MATERIAL.**

3 “No authority of this Act may be used to commence  
4 an administrative or judicial action with respect to source,  
5 special nuclear, or byproduct material that is subject to  
6 decontamination regulations issued by the Nuclear Regu-  
7 latory Commission for license termination under the  
8 Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or  
9 by a State that has entered into an agreement pursuant  
10 to section 274b. of that Act, unless such action is re-  
11 quested—

12 “(1) by the Nuclear Regulatory Commission; or

13 “(2) in the case of such material under the ju-  
14 risdiction of a State that has entered into an agree-  
15 ment pursuant to section 274b. of that Act, the Gov-  
16 ernor of the State.”.

17 (b) MATERIAL RELEASED AFTER LICENSE TERMI-  
18 NATION.—Section 101(10) is amended by inserting before  
19 the period at the end of subparagraph (K) the following:  
20 “, or any release of such material in accordance with regu-  
21 lations of the Nuclear Regulatory Commission following  
22 termination of a license issued by the Commission pursu-  
23 ant to the Atomic Energy Act of 1954 (42 U.S.C. 2011  
24 et seq.) or by a State acting under an agreement entered  
25 into pursuant to section 274b. of that Act”.

1                   **TITLE IX—FUNDING**  
2   **Subtitle A—Expenditures From the**  
3   **Hazardous Substance Superfund**

4   **SEC. 901. EXPENDITURES FROM THE HAZARDOUS SUB-**  
5                   **STANCE SUPERFUND.**

6           (a) EXPENDITURES.—Section 111 (42 U.S.C. 9611)  
7 is amended by striking out subsections (a), (b), (c), (d),  
8 and (e) and inserting in lieu thereof the following:

9           “(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE  
10 SUPERFUND.—

11           “(1) SUBSECTION (b) EXPENDITURES.—  
12 Amounts appropriated to the Hazardous Substance  
13 Superfund after January 1, 1998, pursuant to sec-  
14 tion 9507(b)(1) of the Internal Revenue Code of  
15 1986 and amounts credited under section 9602(b) of  
16 such Code with respect to those appropriated  
17 amounts are available, may be used only for the pur-  
18 poses specified in subsection (b) of this section, and  
19 shall remain available until expended.

20           “(2) SUBSECTIONS (b) AND (c) EXPENDI-  
21 TURES.—Amounts appropriated to the Hazardous  
22 Substance Superfund pursuant to paragraph (2),  
23 (3), (4), (5), or (6) of section 9507(b) of the Inter-  
24 nal Revenue Code of 1986 and amounts credited  
25 under section 9602(b) of such Code with respect to

1 those appropriated amounts shall be available as  
2 provided in appropriations Acts and may be used for  
3 the purposes specified in subsections (b) and (c) of  
4 this section.

5 “(b) RESPONSE, REMOVAL, AND REMEDIATION.—  
6 The President shall use amounts in the Fund as made  
7 available by paragraphs (1) and (2) of subsection (a) for  
8 costs of response, removal, and remediation (and adminis-  
9 trative costs directly related to such costs), including the  
10 following:

11 “(1) GOVERNMENT RESPONSE COSTS.—Pay-  
12 ment of governmental response costs incurred pursu-  
13 ant to section 104 of this title, including costs in-  
14 curred pursuant to the Intervention on the High  
15 Seas Act.

16 “(2) PRIVATE RESPONSE COST CLAIMS.—Pay-  
17 ment of any claim for necessary response costs in-  
18 curred by any other person as a result of carrying  
19 out the national contingency plan established under  
20 section 105 of this title, if such costs are approved  
21 under such plan, are reasonable in amount based on  
22 open and free competition or fair market value for  
23 similar available goods and services, and are cer-  
24 tified by the responsible Federal official.

1           “(3) ACQUISITION COSTS UNDER SECTION  
2           104(j).—The costs incurred by the President in ac-  
3           quiring real estate or interests in real estate under  
4           section 104(j) (relating to acquisition of property).

5           “(4) STATE AND LOCAL GOVERNMENT REIM-  
6           BURSEMENT.—Reimbursement to State and local  
7           governments under section 123, except that during  
8           any fiscal year not more than 0.1 percent of the  
9           total amount made available for purposes of this sec-  
10          tion may be used for reimbursements to local gov-  
11          ernments and no State may receive reimbursement  
12          of more than \$2,000,000 in any fiscal year.

13          “(5) FUNDS FOR STATES WITH DELEGATED  
14          AUTHORITY.—Payment of any funds to a State pur-  
15          suant to section 153 (relating to State delegation).

16          “(6) CONTRACTS AND COOPERATIVE AGREE-  
17          MENTS.—Payment for the implementation of any  
18          contract or cooperative agreement under section  
19          104(d).

20          “(7) PAYMENTS RELATED TO CERTAIN REDUC-  
21          TIONS, LIMITATIONS, AND EXEMPTIONS.—Payment  
22          of costs and reimbursement in accordance with the  
23          following:

24                  “(A) Section 128(n) (relating to post-allo-  
25                  cation performance).

1           “(B) Section 130(a) (relating to certain  
2           non-liable parties).

3           No payment or reimbursement under this paragraph  
4           shall include payment of, or reimbursement for, any  
5           portion of attorneys’ fees that do not constitute nec-  
6           essary costs of response within the meaning of sec-  
7           tion 107(a)(4)(B).

8           “(8) Payment for the implementation of any  
9           contract or cooperative agreement under section  
10          104(d).

11          “(c) ADMINISTRATION, OVERSIGHT, RESEARCH, AND  
12          OTHER COSTS.—The President shall use amounts in the  
13          Fund as made available pursuant to subsection (a)(2) for  
14          the following costs (and administrative costs directly relat-  
15          ed to such costs):

16                 “(1) INVESTIGATION AND ENFORCEMENT.—The  
17                 costs of identifying, investigating, and taking en-  
18                 forcement action against releases of hazardous sub-  
19                 stances.

20                 “(2) OVERHEAD.—(A) The costs of providing  
21                 services, equipment, and other overhead related to  
22                 the purposes of this Act and needed to supplement  
23                 equipment and services available through contractors  
24                 and other non-Federal entities.

1           “(B) The costs of establishing and maintaining  
2 damage assessment capability for any Federal agen-  
3 cy involved in strike forces, emergency task forces,  
4 or other response teams under the National Contingency Plan.  
5

6           “(3) EMPLOYEE SAFETY PROGRAMS.—The cost  
7 of maintaining programs otherwise authorized by  
8 this Act to protect the health and safety of employ-  
9 ees involved in response to hazardous substance re-  
10 leases.

11           “(4) GRANTS FOR TECHNICAL ASSISTANCE.—  
12 The cost of grants under section 117(g) (relating to  
13 public participation grants for technical assistance).

14           “(5) WORKER TRAINING AND EDUCATION  
15 GRANTS.—The cost of grants under section 126(g)  
16 of the Superfund Amendments and Reauthorization  
17 Act of 1986 for training and education of workers.

18           “(6) ATSDR ACTIVITIES.— Any costs incurred  
19 in accordance with subsection (m) of this section (re-  
20 lating to ATSDR) and section 104(i), including the  
21 costs of epidemiologic and laboratory studies, health  
22 assessments, and other activities authorized by sec-  
23 tion 104(i).

24           “(7) EVALUATION COSTS UNDER PETITION  
25 PROVISIONS OF SECTION 105(d).—Costs incurred by

1 the President in evaluation facilities pursuant to pe-  
2 titions under section 105(d) (relating to petitions for  
3 assessment of release).

4 “(8) CONTRACT COSTS UNDER SECTION  
5 104(a)(1).—The costs of contracts or arrangements  
6 entered into under section 104(a)(1) to oversee and  
7 review the conduct of remedial investigations and  
8 feasibility studies undertaken by persons other than  
9 the President and the costs of appropriate Federal  
10 and State oversight of remedial activities at National  
11 Priorities List sites resulting from consent orders or  
12 settlement agreements.

13 “(9) RESEARCH, DEVELOPMENT, AND DEM-  
14 ONSTRATION COSTS UNDER SECTION 311.—The cost  
15 of carrying out section 311 (relating to research, de-  
16 velopment, and demonstration).

17 “(10) AWARDS UNDER SECTION 109.—The costs  
18 of any awards granted under section 109(d) (relat-  
19 ing to providing information concerning violations).

20 “(d) LIMITATIONS ON NATURAL RESOURCES  
21 CLAIMS.—No money in the Fund may be used for the pay-  
22 ment of any claim under subsection (b)(7) or (b)(8) of  
23 this section where such expenses are associated with injury  
24 or loss resulting from long-term exposure to ambient con-

1 concentrations of air pollutants from multiple or diffuse  
2 sources.

3       “(e) OTHER LIMITATIONS.—(1) Claims against or  
4 presented to the Fund shall not be valid or paid in excess  
5 of the total unobligated balance in the Fund at any one  
6 time. Such claims become valid and are payable only when  
7 additional money is collected, appropriated, or otherwise  
8 added to the Fund. Should the total claims outstanding  
9 at any time exceed the current balance of the Fund, the  
10 President shall pay such claims, to the extent authorized  
11 under this section, in full in the order in which they were  
12 finally determined, except that, for any fiscal year, the  
13 President shall ensure that an amount equivalent to the  
14 amount obligated in fiscal year 1997 for response actions  
15 will be available in that fiscal year for obligation for re-  
16 sponse actions prior to paying any claims under section  
17 112(g).

18       “(2) No money in the Fund shall be available for re-  
19 medial action, other than actions specified in subsection  
20 (c) of this section, with respect to federally owned facili-  
21 ties, except that money in the Fund shall be available for  
22 the provision of alternative water supplies (including the  
23 reimbursement of costs incurred by a municipality) in any  
24 case involving ground water contamination outside the  
25 boundaries of a federally owned facility in which the feder-

1 ally owned facility is not the only potentially responsible  
2 party.

3 “(f) LIMITATION ON CERTAIN EXPENDITURES.—

4 From the total sums made available under subsection (a)  
5 of this section for any fiscal year, the aggregate amount  
6 expended in such fiscal year for administration and man-  
7 agement support, oversight, studies, design, investiga-  
8 tions, assessment, and evaluation shall not exceed the fol-  
9 lowing percentages of such total:

10 “(1) Fiscal years 1999, 2000, and 2001: 25  
11 percent.

12 “(2) Fiscal year 2002 and thereafter: 20 per-  
13 cent.

14 The Administrator shall report to the Congress, within 90  
15 days after the enactment of this subsection, any regulatory  
16 or statutory relief that will be required to operate under  
17 the funding limitations specified in this subsection.”

18 (b) ADDITIONAL AMENDMENTS.—(1) Section 111  
19 (42 U.S.C. 9611) is further amended by striking out sub-  
20 sections (j) and (n).

21 (2) Section 107 (42 U.S.C. 9607) is amended by  
22 striking out subsection (k).

1 **SEC. 902. AUTHORIZATION OF APPROPRIATIONS FROM**  
2 **GENERAL REVENUES.**

3 (a) AUTHORIZATION.—Section 111(p)(1) is amended  
4 to read as follows:

5 “(1) IN GENERAL.—The following sums are au-  
6 thORIZED to be appropriated, out of any money in the  
7 Treasury not otherwise appropriated, to the Hazard-  
8 ous Substance Superfund:

9 “(A) For fiscal year 1998, \$250,000,000.

10 “(B) For fiscal year 1999, \$250,000,000.

11 “(C) For fiscal year 2000, \$250,000,000.

12 “(D) For fiscal year 2001, \$250,000,000.

13 “(E) For fiscal year 2002, \$250,000,000.

14 In addition, there is authorized to be appropriated to  
15 the Hazardous Substance Superfund for each fiscal  
16 year an amount equal to so much of the aggregate  
17 amount authorized to be appropriated under this  
18 subsection (and paragraph (2) of section 131(b) of  
19 this title) as has not been appropriated before the  
20 beginning of the fiscal year involved.”.

21 (b) REPEAL OF DUPLICATIVE AUTHORIZATION.—(1)  
22 Subsection (b) of section 517 of the Superfund Amend-  
23 ments and Reauthorization Act (26 U.S.C. 9507 note) is  
24 hereby repealed.

25 (2) Section 9507(a)(2) of the Internal Revenue Code  
26 of 1986 is amended by striking out “section 517(b) of the

1 Superfund Revenue Act of 1986” and inserting in lieu  
2 thereof “section 111(p) of the Comprehensive Environ-  
3 mental Response, Compensation, and Liability Act of  
4 1980 (42 U.S.C. 9611(p))”.

5       **Subtitle B—5-Year Extension of**  
6       **Hazardous Substance Superfund**

7       **SEC. 911. 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE**  
8               **SUPERFUND.**

9               (a) EXTENSION OF TAXES.—

10                       (1) The following provisions of the Internal  
11               Revenue Code of 1986 are each amended by striking  
12               “January 1, 1996” each place it appears and insert-  
13               ing “January 1, 2003”:

14                               (A) Section 59A(e)(1) (relating to applica-  
15               tion of environmental tax).

16                               (B) Paragraphs (1) and (3) of section  
17               4611(e) (relating to application of Hazardous  
18               Substance Superfund financing rate).

19                       (2) Paragraph (2) of section 4611(e) of such  
20               Code is amended—

21                               (A) by striking “1993” and inserting  
22               “2000”,

23                               (B) by striking “1994” each place it ap-  
24               pears and inserting “2001”, and

1 (C) by striking “1995” each place it ap-  
2 pears and inserting “2002”.

3 (b) INCREASE IN AGGREGATE TAX WHICH MAY BE  
4 COLLECTED.—Paragraph (3) of section 4611(e) of such  
5 Code is amended by striking “\$11,970,000,000” each  
6 place it appears and inserting “\$22,000,000,000” and by  
7 striking “December 31, 1995” and inserting “December  
8 31, 2002”.

9 (c) EXTENSION OF REPAYMENT DEADLINE FOR  
10 SUPERFUND BORROWING.—Subparagraph (B) of section  
11 9507(d)(3) of such Code is amended by striking “Decem-  
12 ber 31, 1995” and inserting “December 31, 2002”.

13 (d) TRUST FUND PURPOSES.—Paragraph (1) of sec-  
14 tion 9507(e) of such Code is amended to read as follows:

15 “(1) IN GENERAL.—(A) Amounts appropriated  
16 to the Superfund after January 1, 1998, pursuant  
17 to subsection (b)(1) shall be available only for the  
18 purposes specified in section 111(b) of CERCLA.

19 “(B) Amounts appropriated to the Superfund  
20 pursuant to paragraph (2), (3), (4), (5), or (6) of  
21 subsection (b) shall be available, as provided in ap-  
22 propriations Acts, only for the purposes specified in  
23 section 111.”.

24 (e) COORDINATION WITH OTHER PROVISIONS.—  
25 Paragraph (2) of section 9507(e) of the such Code is

1 amended by striking “CERCLA” and all that follows  
2 through “Acts” and inserting “CERCLA, the Superfund  
3 Amendments and Reauthorization Act of 1986, and the  
4 Superfund Reform Act (or in any amendment made by  
5 any of such Acts)”.

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