

107TH CONGRESS
1ST SESSION

H. R. 2869

AN ACT

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Liabil-
5 ity Relief and Brownfields Revitalization Act”.

6 **TITLE I—SMALL BUSINESS**
7 **LIABILITY PROTECTION**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Small Business Liabil-
10 ity Protection Act”.

11 **SEC. 102. SMALL BUSINESS LIABILITY RELIEF.**

12 (a) EXEMPTIONS.—Section 107 of the Comprehen-
13 sive Environmental Response, Compensation, and Liabil-
14 ity Act of 1980 (42 U.S.C. 9607) is amended by adding
15 at the end the following new subsections:

16 “(o) DE MICROMIS EXEMPTION.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), a person shall not be liable, with respect
19 to response costs at a facility on the National Prior-
20 ities List, under this Act if liability is based solely
21 on paragraph (3) or (4) of subsection (a), and the
22 person, except as provided in paragraph (4) of this
23 subsection, can demonstrate that—

24 “(A) the total amount of the material con-
25 taining hazardous substances that the person

1 arranged for disposal or treatment of, arranged
2 with a transporter for transport for disposal or
3 treatment of, or accepted for transport for dis-
4 posal or treatment, at the facility was less than
5 110 gallons of liquid materials or less than 200
6 pounds of solid materials (or such greater or
7 lesser amounts as the Administrator may deter-
8 mine by regulation); and

9 “(B) all or part of the disposal, treatment,
10 or transport concerned occurred before April 1,
11 2001.

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

14 “(A) the President determines that—

15 “(i) the materials containing haz-
16 arduous substances referred to in paragraph
17 (1) have contributed significantly or could
18 contribute significantly, either individually
19 or in the aggregate, to the cost of the re-
20 sponse action or natural resource restora-
21 tion with respect to the facility; or

22 “(ii) the person has failed to comply
23 with an information request or administra-
24 tive subpoena issued by the President
25 under this Act or has impeded or is imped-

1 ing, through action or inaction, the per-
2 formance of a response action or natural
3 resource restoration with respect to the fa-
4 cility; or

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

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

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

21 “(p) MUNICIPAL SOLID WASTE EXEMPTION.—

22 “(1) IN GENERAL.—Except as provided in para-
23 graph (2) of this subsection, a person shall not be
24 liable, with respect to response costs at a facility on
25 the National Priorities List, under paragraph (3) of

1 subsection (a) for municipal solid waste disposed of
2 at a facility if the person, except as provided in
3 paragraph (5) of this subsection, can demonstrate
4 that the person is—

5 “(A) an owner, operator, or lessee of resi-
6 dential property from which all of the person’s
7 municipal solid waste was generated with re-
8 spect to the facility;

9 “(B) a business entity (including a parent,
10 subsidiary, or affiliate of the entity) that, dur-
11 ing its 3 taxable years preceding the date of
12 transmittal of written notification from the
13 President of its potential liability under this
14 section, employed on average not more than
15 100 full-time individuals, or the equivalent
16 thereof, and that is a small business concern
17 (within the meaning of the Small Business Act
18 (15 U.S.C. 631 et seq.)) from which was gen-
19 erated all of the municipal solid waste attrib-
20 utable to the entity with respect to the facility;
21 or

22 “(C) an organization described in section
23 501(c)(3) of the Internal Revenue Code of 1986
24 and exempt from tax under section 501(a) of
25 such Code that, during its taxable year pre-

1 ceding the date of transmittal of written notifi-
2 cation from the President of its potential liabil-
3 ity under this section, employed not more than
4 100 paid individuals at the location from which
5 was generated all of the municipal solid waste
6 attributable to the organization with respect to
7 the facility.

8 For purposes of this subsection, the term ‘affiliate’
9 has the meaning of that term provided in the defini-
10 tion of ‘small business concern’ in regulations pro-
11 mulgated by the Small Business Administration in
12 accordance with the Small Business Act (15 U.S.C.
13 631 et seq.).

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

17 “(A) the municipal solid waste referred to
18 in paragraph (1) has contributed significantly
19 or could contribute significantly, either individ-
20 ually or in the aggregate, to the cost of the re-
21 sponse action or natural resource restoration
22 with respect to the facility;

23 “(B) the person has failed to comply with
24 an information request or administrative sub-

1 poena issued by the President under this Act;
2 or

3 “(C) the person has impeded or is imped-
4 ing, through action or inaction, the performance
5 of a response action or natural resource res-
6 toration with respect to the facility.

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

10 “(4) DEFINITION OF MUNICIPAL SOLID
11 WASTE.—

12 “(A) IN GENERAL.—For purposes of this
13 subsection, the term ‘municipal solid waste’
14 means waste material—

15 “(i) generated by a household (includ-
16 ing a single or multifamily residence); and

17 “(ii) generated by a commercial, in-
18 dustrial, or institutional entity, to the ex-
19 tent that the waste material—

20 “(I) is essentially the same as
21 waste normally generated by a house-
22 hold;

23 “(II) is collected and disposed of
24 with other municipal solid waste as

1 part of normal municipal solid waste
2 collection services; and

3 “(III) contains a relative quan-
4 tity of hazardous substances no great-
5 er than the relative quantity of haz-
6 ardous substances contained in waste
7 material generated by a typical single-
8 family household.

9 “(B) EXAMPLES.—Examples of municipal
10 solid waste under subparagraph (A) include
11 food and yard waste, paper, clothing, appli-
12 ances, consumer product packaging, disposable
13 diapers, office supplies, cosmetics, glass and
14 metal food containers, elementary or secondary
15 school science laboratory waste, and household
16 hazardous waste.

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

19 “(i) combustion ash generated by re-
20 source recovery facilities or municipal in-
21 cinerators; or

22 “(ii) waste material from manufac-
23 turing or processing operations (including
24 pollution control operations) that is not es-

1 sentially the same as waste normally gen-
2 erated by households.

3 “(5) BURDEN OF PROOF.—In the case of an ac-
4 tion, with respect to response costs at a facility on
5 the National Priorities List, brought under section
6 107 or 113 by—

7 “(A) a party, other than a Federal, State,
8 or local government, with respect to municipal
9 solid waste disposed of on or after April 1,
10 2001; or

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

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

23 “(7) COSTS AND FEES.—A nongovernmental
24 entity that commences, after the date of the enact-
25 ment of this subsection, a contribution action under

1 this Act shall be liable to the defendant for all rea-
2 sonable costs of defending the action, including all
3 reasonable attorney’s fees and expert witness fees, if
4 the defendant is not liable for contribution based on
5 an exemption under this subsection or subsection
6 (o).”.

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

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

12 “(A) IN GENERAL.—The condition for set-
13 tlement under this paragraph is that the poten-
14 tially responsible party is a person who dem-
15 onstrates to the President an inability or a lim-
16 ited ability to pay response costs.

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

1 “(C) INFORMATION.—A person requesting
2 settlement under this paragraph shall promptly
3 provide the President with all relevant informa-
4 tion needed to determine the ability of the per-
5 son to pay response costs.

6 “(D) ALTERNATIVE PAYMENT METH-
7 ODS.—If the President determines that a per-
8 son is unable to pay its total settlement amount
9 at the time of settlement, the President shall
10 consider such alternative payment methods as
11 may be necessary or appropriate.

12 “(8) ADDITIONAL CONDITIONS FOR EXPEDITED
13 SETTLEMENTS.—

14 “(A) WAIVER OF CLAIMS.—The President
15 shall require, as a condition for settlement
16 under this subsection, that a potentially respon-
17 sible party waive all of the claims (including a
18 claim for contribution under this Act) that the
19 party may have against other potentially re-
20 sponsible parties for response costs incurred
21 with respect to the facility, unless the President
22 determines that requiring a waiver would be un-
23 just.

24 “(B) FAILURE TO COMPLY.—The Presi-
25 dent may decline to offer a settlement to a po-

1 tentially responsible party under this subsection
2 if the President determines that the potentially
3 responsible party has failed to comply with any
4 request for access or information or an adminis-
5 trative subpoena issued by the President under
6 this Act or has impeded or is impeding, through
7 action or inaction, the performance of a re-
8 sponse action with respect to the facility.

9 “(C) RESPONSIBILITY TO PROVIDE INFOR-
10 MATION AND ACCESS.—A potentially responsible
11 party that enters into a settlement under this
12 subsection shall not be relieved of the responsi-
13 bility to provide any information or access re-
14 quested in accordance with subsection (e)(3)(B)
15 or section 104(e).

16 “(9) BASIS OF DETERMINATION.—If the Presi-
17 dent determines that a potentially responsible party
18 is not eligible for settlement under this subsection,
19 the President shall provide the reasons for the deter-
20 mination in writing to the potentially responsible
21 party that requested a settlement under this sub-
22 section.

23 “(10) NOTIFICATION.—As soon as practicable
24 after receipt of sufficient information to make a de-
25 termination, the President shall notify any person

1 that the President determines is eligible under para-
2 graph (1) of the person’s eligibility for an expedited
3 settlement.

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

7 “(12) NOTICE OF SETTLEMENT.—After a set-
8 tlement under this subsection becomes final with re-
9 spect to a facility, the President shall promptly no-
10 tify potentially responsible parties at the facility that
11 have not resolved their liability to the United States
12 of the settlement.”.

13 **SEC. 103. EFFECT ON CONCLUDED ACTIONS.**

14 The amendments made by this title shall not apply
15 to or in any way affect any settlement lodged in, or judg-
16 ment issued by, a United States District Court, or any
17 administrative settlement or order entered into or issued
18 by the United States or any State, before the date of the
19 enactment of this Act.

20 **TITLE II—BROWNFIELDS REVI-**
21 **TALIZATION AND ENVIRON-**
22 **MENTAL RESTORATION**

23 **SEC. 201. SHORT TITLE.**

24 This title may be cited as the “Brownfields Revital-
25 ization and Environmental Restoration Act of 2001”.

1 **Subtitle A—Brownfields** 2 **Revitalization Funding**

3 **SEC. 211. BROWNFIELDS REVITALIZATION FUNDING.**

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

8 “(39) **BROWNFIELD SITE.**—

9 “(A) **IN GENERAL.**—The term ‘brownfield
10 site’ means real property, the expansion, rede-
11 velopment, or reuse of which may be com-
12 plicated by the presence or potential presence of
13 a hazardous substance, pollutant, or contami-
14 nant.

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

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

20 “(ii) a facility that is listed on the Na-
21 tional Priorities List or is proposed for
22 listing;

23 “(iii) a facility that is the subject of
24 a unilateral administrative order, a court
25 order, an administrative order on consent

1 or judicial consent decree that has been
2 issued to or entered into by the parties
3 under this Act;

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

18 “(v) a facility that—

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

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

1 modified to require the implementa-
2 tion of corrective measures;

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

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

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

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

17 “(viii) a portion of a facility—

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

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

1 “(ix) a portion of a facility, for which
2 portion, assistance for response activity
3 has been obtained under subtitle I of the
4 Solid Waste Disposal Act (42 U.S.C. 6991
5 et seq.) from the Leaking Underground
6 Storage Tank Trust Fund established
7 under section 9508 of the Internal Rev-
8 enue Code of 1986.

9 “(C) SITE-BY-SITE DETERMINATIONS.—

10 Notwithstanding subparagraph (B) and on a
11 site-by-site basis, the President may authorize
12 financial assistance under section 104(k) to an
13 eligible entity at a site included in clause (i),
14 (iv), (v), (vi), (viii), or (ix) of subparagraph (B)
15 if the President finds that financial assistance
16 will protect human health and the environment,
17 and either promote economic development or
18 enable the creation of, preservation of, or addi-
19 tion to parks, greenways, undeveloped property,
20 other recreational property, or other property
21 used for nonprofit purposes.

22 “(D) ADDITIONAL AREAS.—For the pur-
23 poses of section 104(k), the term ‘brownfield
24 site’ includes a site that—

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

4 “(ii)(I) is contaminated by a con-
5 trolled substance (as defined in section 102
6 of the Controlled Substances Act (21
7 U.S.C. 802));

8 “(II)(aa) is contaminated by petro-
9 leum or a petroleum product excluded from
10 the definition of ‘hazardous substance’
11 under section 101; and

12 “(bb) is a site determined by the Ad-
13 ministrator or the State, as appropriate, to
14 be—

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

18 “(BB) a site for which there is
19 no viable responsible party and which
20 will be assessed, investigated, or
21 cleaned up by a person that is not po-
22 tentially liable for cleaning up the
23 site; and

24 “(cc) is not subject to any order
25 issued under section 9003(h) of the Solid

1 Waste Disposal Act (42 U.S.C. 6991b(h));

2 or

3 “(III) is mine-scarred land.”.

4 (b) BROWNFIELDS REVITALIZATION FUNDING.—

5 Section 104 of the Comprehensive Environmental Re-

6 sponse, Compensation, and Liability Act of 1980 (42

7 U.S.C. 9604) is amended by adding at the end the fol-

8 lowing:

9 “(k) BROWNFIELDS REVITALIZATION FUNDING.—

10 “(1) DEFINITION OF ELIGIBLE ENTITY.—In

11 this subsection, the term ‘eligible entity’ means—

12 “(A) a general purpose unit of local gov-
13 ernment;

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

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

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

22 “(E) a redevelopment agency that is char-
23 tered or otherwise sanctioned by a State;

24 “(F) a State;

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

3 “(H) an Alaska Native Regional Corpora-
4 tion and an Alaska Native Village Corporation
5 as those terms are defined in the Alaska Native
6 Claims Settlement Act (43 U.S.C. 1601 and
7 following) and the Metlakatla Indian commu-
8 nity.

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

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

13 “(i) provide grants to inventory, char-
14 acterize, assess, and conduct planning re-
15 lated to brownfield sites under subpara-
16 graph (B); and

17 “(ii) perform targeted site assess-
18 ments at brownfield sites.

19 “(B) ASSISTANCE FOR SITE CHARACTER-
20 IZATION AND ASSESSMENT.—

21 “(i) IN GENERAL.—On approval of an
22 application made by an eligible entity, the
23 Administrator may make a grant to the el-
24 igible entity to be used for programs to in-
25 ventory, characterize, assess, and conduct

1 planning related to 1 or more brownfield
2 sites.

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

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

10 “(A) GRANTS PROVIDED BY THE PRESI-
11 DENT.—Subject to paragraphs (4) and (5), the
12 President shall establish a program to provide
13 grants to—

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

16 “(ii) eligible entities or nonprofit orga-
17 nizations, where warranted, as determined
18 by the President based on considerations
19 under subparagraph (C), to be used di-
20 rectly for remediation of 1 or more
21 brownfield sites owned by the entity or or-
22 ganization that receives the grant and in
23 amounts not to exceed \$200,000 for each
24 site to be remediated.

1 “(B) LOANS AND GRANTS PROVIDED BY
2 ELIGIBLE ENTITIES.—An eligible entity that re-
3 ceives a grant under subparagraph (A)(i) shall
4 use the grant funds to provide assistance for
5 the remediation of brownfield sites in the form
6 of—

7 “(i) 1 or more loans to an eligible en-
8 tity, a site owner, a site developer, or an-
9 other person; or

10 “(ii) 1 or more grants to an eligible
11 entity or other nonprofit organization,
12 where warranted, as determined by the eli-
13 gible entity that is providing the assist-
14 ance, based on considerations under sub-
15 paragraph (C), to remediate sites owned by
16 the eligible entity or nonprofit organization
17 that receives the grant.

18 “(C) CONSIDERATIONS.—In determining
19 whether a grant under subparagraph (A)(ii) or
20 (B)(ii) is warranted, the President or the eligi-
21 ble entity, as the case may be, shall take into
22 consideration—

23 “(i) the extent to which a grant will
24 facilitate the creation of, preservation of,
25 or addition to a park, a greenway, undevel-

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

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

11 “(iii) the extent to which a grant will
12 facilitate the use or reuse of existing infra-
13 structure;

14 “(iv) the benefit of promoting the
15 long-term availability of funds from a re-
16 volving loan fund for brownfield remedi-
17 ation; and

18 “(v) such other similar factors as the
19 Administrator considers appropriate to
20 consider for the purposes of this sub-
21 section.

22 “(D) TRANSITION.—Revolving loan funds
23 that have been established before the date of
24 enactment of this subsection may be used in ac-
25 cordance with this paragraph.

1 “(4) GENERAL PROVISIONS.—

2 “(A) MAXIMUM GRANT AMOUNT.—

3 “(i) BROWNFIELD SITE CHARACTER-
4 IZATION AND ASSESSMENT.—

5 “(I) IN GENERAL.—A grant
6 under paragraph (2) may be awarded
7 to an eligible entity on a community-
8 wide or site-by-site basis, and shall
9 not exceed, for any individual
10 brownfield site covered by the grant,
11 \$200,000.

12 “(II) WAIVER.—The Adminis-
13 trator may waive the \$200,000 limita-
14 tion under subclause (I) to permit the
15 brownfield site to receive a grant of
16 not to exceed \$350,000, based on the
17 anticipated level of contamination,
18 size, or status of ownership of the
19 site.

20 “(ii) BROWNFIELD REMEDIATION.—A
21 grant under paragraph (3)(A)(i) may be
22 awarded to an eligible entity on a commu-
23 nity-wide or site-by-site basis, not to ex-
24 ceed \$1,000,000 per eligible entity. The
25 Administrator may make an additional

1 grant to an eligible entity described in the
2 previous sentence for any year after the
3 year for which the initial grant is made,
4 taking into consideration—

5 “(I) the number of sites and
6 number of communities that are ad-
7 dressed by the revolving loan fund;

8 “(II) the demand for funding by
9 eligible entities that have not pre-
10 viously received a grant under this
11 subsection;

12 “(III) the demonstrated ability of
13 the eligible entity to use the revolving
14 loan fund to enhance remediation and
15 provide funds on a continuing basis;
16 and

17 “(IV) such other similar factors
18 as the Administrator considers appro-
19 priate to carry out this subsection.

20 “(B) PROHIBITION.—

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

24 “(I) a penalty or fine;

1 “(II) a Federal cost-share re-
2 quirement;

3 “(III) an administrative cost;

4 “(IV) a response cost at a
5 brownfield site for which the recipient
6 of the grant or loan is potentially lia-
7 ble under section 107; or

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

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

16 “(I) investigation and identifica-
17 tion of the extent of contamination;

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

20 “(III) monitoring of a natural re-
21 source.

22 “(C) ASSISTANCE FOR DEVELOPMENT OF
23 LOCAL GOVERNMENT SITE REMEDIATION PRO-
24 GRAMS.—A local government that receives a
25 grant under this subsection may use not to ex-

1 ceed 10 percent of the grant funds to develop
2 and implement a brownfields program that may
3 include—

4 “(i) monitoring the health of popu-
5 lations exposed to 1 or more hazardous
6 substances from a brownfield site; and

7 “(ii) monitoring and enforcement of
8 any institutional control used to prevent
9 human exposure to any hazardous sub-
10 stance from a brownfield site.

11 “(D) INSURANCE.—A recipient of a grant
12 or loan awarded under paragraph (2) or (3)
13 that performs a characterization, assessment, or
14 remediation of a brownfield site may use a por-
15 tion of the grant or loan to purchase insurance
16 for the characterization, assessment, or remedi-
17 ation of that site.

18 “(5) GRANT APPLICATIONS.—

19 “(A) SUBMISSION.—

20 “(i) IN GENERAL.—

21 “(I) APPLICATION.—An eligible
22 entity may submit to the Adminis-
23 trator, through a regional office of the
24 Environmental Protection Agency and
25 in such form as the Administrator

1 may require, an application for a
2 grant under this subsection for 1 or
3 more brownfield sites (including infor-
4 mation on the criteria used by the Ad-
5 ministrator to rank applications under
6 subparagraph (C), to the extent that
7 the information is available).

8 “(II) NCP REQUIREMENTS.—

9 The Administrator may include in any
10 requirement for submission of an ap-
11 plication under subclause (I) a re-
12 quirement of the National Contingency
13 Plan only to the extent that the
14 requirement is relevant and appro-
15 priate to the program under this sub-
16 section.

17 “(ii) COORDINATION.—The Adminis-

18 trator shall coordinate with other Federal
19 agencies to assist in making eligible enti-
20 ties aware of other available Federal re-
21 sources.

22 “(iii) GUIDANCE.—The Administrator

23 shall publish guidance to assist eligible en-
24 tities in applying for grants under this
25 subsection.

1 “(B) APPROVAL.—The Administrator
2 shall—

3 “(i) at least annually, complete a re-
4 view of applications for grants that are re-
5 ceived from eligible entities under this sub-
6 section; and

7 “(ii) award grants under this sub-
8 section to eligible entities that the Admin-
9 istrator determines have the highest
10 rankings under the ranking criteria estab-
11 lished under subparagraph (C).

12 “(C) RANKING CRITERIA.—The Adminis-
13 trator shall establish a system for ranking
14 grant applications received under this para-
15 graph that includes the following criteria:

16 “(i) The extent to which a grant will
17 stimulate the availability of other funds for
18 environmental assessment or remediation,
19 and subsequent reuse, of an area in which
20 1 or more brownfield sites are located.

21 “(ii) The potential of the proposed
22 project or the development plan for an
23 area in which 1 or more brownfield sites
24 are located to stimulate economic develop-

1 ment of the area on completion of the
2 cleanup.

3 “(iii) The extent to which a grant
4 would address or facilitate the identifica-
5 tion and reduction of threats to human
6 health and the environment, including
7 threats in areas in which there is a great-
8 er-than-normal incidence of diseases or
9 conditions (including cancer, asthma, or
10 birth defects) that may be associated with
11 exposure to hazardous substances, pollut-
12 ants, or contaminants.

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

16 “(v) The extent to which a grant
17 would facilitate the creation of, preserva-
18 tion of, or addition to a park, a greenway,
19 undeveloped property, recreational prop-
20 erty, or other property used for nonprofit
21 purposes.

22 “(vi) The extent to which a grant
23 would meet the needs of a community that
24 has an inability to draw on other sources
25 of funding for environmental remediation

1 and subsequent redevelopment of the area
2 in which a brownfield site is located be-
3 cause of the small population or low in-
4 come of the community.

5 “(vii) The extent to which the appli-
6 cant is eligible for funding from other
7 sources.

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

11 “(ix) The extent to which the grant
12 provides for involvement of the local com-
13 munity in the process of making decisions
14 relating to cleanup and future use of a
15 brownfield site.

16 “(x) The extent to which a grant
17 would address or facilitate the identifica-
18 tion and reduction of threats to the health
19 or welfare of children, pregnant women,
20 minority or low-income communities, or
21 other sensitive populations.

22 “(6) IMPLEMENTATION OF BROWNFIELDS PRO-
23 GRAMS.—

24 “(A) ESTABLISHMENT OF PROGRAM.—The
25 Administrator may provide, or fund eligible en-

1 tities or nonprofit organizations to provide,
2 training, research, and technical assistance to
3 individuals and organizations, as appropriate, to
4 facilitate the inventory of brownfield sites, site
5 assessments, remediation of brownfield sites,
6 community involvement, or site preparation.

7 “(B) FUNDING RESTRICTIONS.—The total
8 Federal funds to be expended by the Adminis-
9 trator under this paragraph shall not exceed 15
10 percent of the total amount appropriated to
11 carry out this subsection in any fiscal year.

12 “(7) AUDITS.—

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

19 “(B) PROCEDURE.—An audit under this
20 subparagraph shall be conducted in accordance
21 with the auditing procedures of the General Ac-
22 counting Office, including chapter 75 of title
23 31, United States Code.

24 “(C) VIOLATIONS.—If the Administrator
25 determines that a person that receives a grant

1 or loan under this subsection has violated or is
2 in violation of a condition of the grant, loan, or
3 applicable Federal law, the Administrator
4 may—

5 “(i) terminate the grant or loan;

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

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

10 “(D) REPORT TO CONGRESS.—Not later
11 than 3 years after the date of enactment of this
12 subsection, the Inspector General of the Envi-
13 ronmental Protection Agency shall submit to
14 Congress a report that provides a description of
15 the management of the program (including a
16 description of the allocation of funds under this
17 subsection).

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

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

1 “(A) include a requirement of the National
2 Contingency Plan only to the extent that the re-
3 quirement is relevant and appropriate to the
4 program under this subsection, as determined
5 by the Administrator; and

6 “(B) be subject to an agreement that—

7 “(i) requires the recipient to—

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

10 “(II) ensure that the cleanup
11 protects human health and the envi-
12 ronment;

13 “(ii) requires that the recipient use
14 the grant or loan exclusively for purposes
15 specified in paragraph (2) or (3), as appli-
16 cable;

17 “(iii) in the case of an application by
18 an eligible entity under paragraph (3)(A),
19 requires the eligible entity to pay a match-
20 ing share (which may be in the form of a
21 contribution of labor, material, or services)
22 of at least 20 percent, from non-Federal
23 sources of funding, unless the Adminis-
24 trator determines that the matching share

1 would place an undue hardship on the eli-
2 gible entity; and

3 “(iv) contains such other terms and
4 conditions as the Administrator determines
5 to be necessary to carry out this sub-
6 section.

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

13 “(11) EFFECT ON FEDERAL LAWS.—Nothing in
14 this subsection affects any liability or response au-
15 thority under any Federal law, including—

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

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

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

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

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

1 “(12) FUNDING.—

2 “(A) AUTHORIZATION OF APPROPRIA-
3 TIONS.—There is authorized to be appropriated
4 to carry out this subsection \$200,000,000 for
5 each of fiscal years 2002 through 2006.

6 “(B) USE OF CERTAIN FUNDS.—Of the
7 amount made available under subparagraph
8 (A), \$50,000,000, or, if the amount made avail-
9 able is less than \$200,000,000, 25 percent of
10 the amount made available, shall be used for
11 site characterization, assessment, and remedi-
12 ation of facilities described in section
13 101(39)(D)(ii)(II).”.

14 **Subtitle B—Brownfields Liability**
15 **Clarifications**

16 **SEC. 221. CONTIGUOUS PROPERTIES.**

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

21 “(q) CONTIGUOUS PROPERTIES.—

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

24 “(A) IN GENERAL.—A person that owns
25 real property that is contiguous to or otherwise

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

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

12 “(ii) the person is not—

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

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

1 “(iii) the person takes reasonable
2 steps to—
3 “(I) stop any continuing release;
4 “(II) prevent any threatened fu-
5 ture release; and
6 “(III) prevent or limit human,
7 environmental, or natural resource ex-
8 posure to any hazardous substance re-
9 leased on or from property owned by
10 that person;
11 “(iv) the person provides full coopera-
12 tion, assistance, and access to persons that
13 are authorized to conduct response actions
14 or natural resource restoration at the ves-
15 sel or facility from which there has been a
16 release or threatened release (including the
17 cooperation and access necessary for the
18 installation, integrity, operation, and main-
19 tenance of any complete or partial re-
20 sponse action or natural resource restora-
21 tion at the vessel or facility);
22 “(v) the person—
23 “(I) is in compliance with any
24 land use restrictions established or re-

1 lied on in connection with the re-
2 sponse action at the facility; and

3 “(II) does not impede the effec-
4 tiveness or integrity of any institu-
5 tional control employed in connection
6 with a response action;

7 “(vi) the person is in compliance with
8 any request for information or administra-
9 tive subpoena issued by the President
10 under this Act;

11 “(vii) the person provides all legally
12 required notices with respect to the dis-
13 covery or release of any hazardous sub-
14 stances at the facility; and

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

17 “(I) conducted all appropriate in-
18 quiry within the meaning of section
19 101(35)(B) with respect to the prop-
20 erty; and

21 “(II) did not know or have rea-
22 son to know that the property was or
23 could be contaminated by a release or
24 threatened release of 1 or more haz-
25 ardous substances from other real

1 property not owned or operated by the
2 person.

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

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

17 “(D) GROUND WATER.—With respect to a
18 hazardous substance from 1 or more sources
19 that are not on the property of a person that
20 is a contiguous property owner that enters
21 ground water beneath the property of the per-
22 son solely as a result of subsurface migration in
23 an aquifer, subparagraph (A)(iii) shall not re-
24 quire the person to conduct ground water inves-
25 tigations or to install ground water remediation

1 systems, except in accordance with the policy of
2 the Environmental Protection Agency con-
3 cerning owners of property containing contami-
4 nated aquifers, dated May 24, 1995.

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

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

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

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

14 “(A) issue an assurance that no enforce-
15 ment action under this Act will be initiated
16 against a person described in paragraph (1);
17 and

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

21 **SEC. 222. PROSPECTIVE PURCHASERS AND WINDFALL**
22 **LIENS.**

23 (a) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
24 CHASER.—Section 101 of the Comprehensive Environ-
25 mental Response, Compensation, and Liability Act of

1 1980 (42 U.S.C. 9601) (as amended by section 211(a) of
2 this Act) is amended by adding at the end the following:

3 “(40) BONA FIDE PROSPECTIVE PURCHASER.—

4 The term ‘bona fide prospective purchaser’ means a
5 person (or a tenant of a person) that acquires own-
6 ership of a facility after the date of enactment of
7 this paragraph and that establishes each of the fol-
8 lowing by a preponderance of the evidence:

9 “(A) DISPOSAL PRIOR TO ACQUISITION.—

10 All disposal of hazardous substances at the fa-
11 cility occurred before the person acquired the
12 facility.

13 “(B) INQUIRIES.—

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

21 “(ii) STANDARDS AND PRACTICES.—

22 The standards and practices referred to in
23 clauses (ii) and (iv) of paragraph (35)(B)
24 shall be considered to satisfy the require-
25 ments of this subparagraph.

1 “(iii) RESIDENTIAL USE.—In the case
2 of property in residential or other similar
3 use at the time of purchase by a non-
4 governmental or noncommercial entity, a
5 facility inspection and title search that re-
6 veal no basis for further investigation shall
7 be considered to satisfy the requirements
8 of this subparagraph.

9 “(C) NOTICES.—The person provides all
10 legally required notices with respect to the dis-
11 covery or release of any hazardous substances
12 at the facility.

13 “(D) CARE.—The person exercises appro-
14 priate care with respect to hazardous sub-
15 stances found at the facility by taking reason-
16 able steps to—

17 “(i) stop any continuing release;

18 “(ii) prevent any threatened future re-
19 lease; and

20 “(iii) prevent or limit human, environ-
21 mental, or natural resource exposure to
22 any previously released hazardous sub-
23 stance.

24 “(E) COOPERATION, ASSISTANCE, AND AC-
25 CESS.—The person provides full cooperation,

1 assistance, and access to persons that are au-
2 thorized to conduct response actions or natural
3 resource restoration at a vessel or facility (in-
4 cluding the cooperation and access necessary
5 for the installation, integrity, operation, and
6 maintenance of any complete or partial re-
7 sponse actions or natural resource restoration
8 at the vessel or facility).

9 “(F) INSTITUTIONAL CONTROL.—The
10 person—

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

15 “(ii) does not impede the effectiveness
16 or integrity of any institutional control em-
17 ployed at the vessel or facility in connec-
18 tion with a response action.

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

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

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

5 “(I) any direct or indirect famil-
6 ial relationship; or

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

15 “(ii) the result of a reorganization of
16 a business entity that was potentially lia-
17 ble.”.

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

23 “(r) PROSPECTIVE PURCHASER AND WINDFALL
24 LIEN.—

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

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

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

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

24 “(B) FAIR MARKET VALUE.—The response
25 action increases the fair market value of the fa-

1 cility above the fair market value of the facility
2 that existed before the response action was ini-
3 tiated.

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

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

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

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

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

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

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

22 **SEC. 223. INNOCENT LANDOWNERS.**

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

1 (1) in subparagraph (A)—

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

5 (B) in the second sentence—

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

8 (ii) by striking the period at the end
9 and inserting “, provides full cooperation,
10 assistance, and facility access to the per-
11 sons that are authorized to conduct re-
12 sponse actions at the facility (including the
13 cooperation and access necessary for the
14 installation, integrity, operation, and main-
15 tenance of any complete or partial re-
16 sponse action at the facility), is in compli-
17 ance with any land use restrictions estab-
18 lished or relied on in connection with the
19 response action at a facility, and does not
20 impede the effectiveness or integrity of any
21 institutional control employed at the facil-
22 ity in connection with a response action.”;
23 and

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

1 “(B) REASON TO KNOW.—

2 “(i) ALL APPROPRIATE INQUIRIES.—

3 To establish that the defendant had no
4 reason to know of the matter described in
5 subparagraph (A)(i), the defendant must
6 demonstrate to a court that—

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

16 “(II) the defendant took reason-
17 able steps to—

18 “(aa) stop any continuing
19 release;

20 “(bb) prevent any threat-
21 ened future release; and

22 “(cc) prevent or limit any
23 human, environmental, or natural
24 resource exposure to any pre-

1 viously released hazardous sub-
2 stance.

3 “(ii) STANDARDS AND PRACTICES.—

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

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

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

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

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

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

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

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

21 “(VII) Specialized knowledge or
22 experience on the part of the defend-
23 ant.

24 “(VIII) The relationship of the
25 purchase price to the value of the

1 property, if the property was not con-
2 taminated.

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

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

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

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

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

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

1 property, if the property was not
2 contaminated;

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

6 “(dd) the obviousness of the
7 presence or likely presence of
8 contamination at the property;
9 and

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

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

1 Assessment Process’, shall satisfy the
2 requirements in clause (i).

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

11 **Subtitle C—State Response** 12 **Programs**

13 **SEC. 231. STATE RESPONSE PROGRAMS.**

14 (a) DEFINITIONS.—Section 101 of the Comprehen-
15 sive Environmental Response, Compensation, and Liabil-
16 ity Act of 1980 (42 U.S.C. 9601) (as amended by this
17 Act) is further amended by adding at the end the fol-
18 lowing:

19 “(41) ELIGIBLE RESPONSE SITE.—

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

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

3 “(i) notwithstanding paragraph
4 (39)(B)(ix), a portion of a facility, for
5 which portion assistance for response activ-
6 ity has been obtained under subtitle I of
7 the Solid Waste Disposal Act (42 U.S.C.
8 6991 et seq.) from the Leaking Under-
9 ground Storage Tank Trust Fund estab-
10 lished under section 9508 of the Internal
11 Revenue Code of 1986; or

12 “(ii) a site for which, notwithstanding
13 the exclusions provided in subparagraph
14 (C) or paragraph (39)(B), the President
15 determines, on a site-by-site basis and
16 after consultation with the State, that limi-
17 tations on enforcement under section 128
18 at sites specified in clause (iv), (v), (vi) or
19 (viii) of paragraph (39)(B) would be ap-
20 propriate and will—

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

23 “(II) promote economic develop-
24 ment or facilitate the creation of,
25 preservation of, or addition to a park,

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

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

6 “(i) a facility for which the
7 President—

8 “(I) conducts or has conducted a
9 preliminary assessment or site inspec-
10 tion; and

11 “(II) after consultation with the
12 State, determines or has determined
13 that the site obtains a preliminary
14 score sufficient for possible listing on
15 the National Priorities List, or that
16 the site otherwise qualifies for listing
17 on the National Priorities List; unless
18 the President has made a determina-
19 tion that no further Federal action
20 will be taken; or

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

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

5 **“SEC. 128. STATE RESPONSE PROGRAMS.**

6 “(a) ASSISTANCE TO STATES.—

7 “(1) IN GENERAL.—

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

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

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

17 “(B) USE OF GRANTS BY STATES.—

18 “(i) IN GENERAL.—A State or Indian
19 tribe may use a grant under this sub-
20 section to establish or enhance the re-
21 sponse program of the State or Indian
22 tribe.

23 “(ii) ADDITIONAL USES.—In addition
24 to the uses under clause (i), a State or In-

1 dian tribe may use a grant under this sub-
2 section to—

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

6 “(II) purchase insurance or de-
7 velop a risk sharing pool, an indem-
8 nity pool, or insurance mechanism to
9 provide financing for response actions
10 under a State response program.

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

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

16 “(B) Oversight and enforcement authori-
17 ties or other mechanisms, and resources, that
18 are adequate to ensure that—

19 “(i) a response action will—

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

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

1 “(ii) if the person conducting the re-
2 sponse action fails to complete the nec-
3 essary response activities, including oper-
4 ation and maintenance or long-term moni-
5 toring activities, the necessary response ac-
6 tivities are completed.

7 “(C) Mechanisms and resources to provide
8 meaningful opportunities for public participa-
9 tion, including—

10 “(i) public access to documents that
11 the State, Indian tribe, or party con-
12 ducting the cleanup is relying on or devel-
13 oping in making cleanup decisions or con-
14 ducting site activities;

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

18 “(iii) a mechanism by which—

19 “(I) a person that is or may be
20 affected by a release or threatened re-
21 lease of a hazardous substance, pollut-
22 ant, or contaminant at a brownfield
23 site located in the community in which
24 the person works or resides may re-

1 quest the conduct of a site assess-
2 ment; and

3 “(II) an appropriate State offi-
4 cial shall consider and appropriately
5 respond to a request under subclause
6 (I).

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

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

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

19 “(1) ENFORCEMENT.—

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

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

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

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

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

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

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

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

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

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

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

3 “(iv) the Administrator, after con-
4 sultation with the State, determines that
5 information, that on the earlier of the date
6 on which cleanup was approved or com-
7 pleted, was not known by the State, as re-
8 corded in documents prepared or relied on
9 in selecting or conducting the cleanup, has
10 been discovered regarding the contamina-
11 tion or conditions at a facility such that
12 the contamination or conditions at the fa-
13 cility present a threat requiring further re-
14 mediation to protect public health or wel-
15 fare or the environment. Consultation with
16 the State shall not limit the ability of the
17 Administrator to make this determination.

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

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

12 “(D) EPA NOTIFICATION.—

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

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

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

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

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

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

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

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

1 termines that 1 or more exceptions under
2 subparagraph (B) are met.

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

12 “(2) SAVINGS PROVISION.—

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

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

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

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

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

11 “(3) EFFECTIVE DATE.—This subsection ap-
12 plies only to response actions conducted after Feb-
13 ruary 15, 2001.

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

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

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

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

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

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

3 **SEC. 232. ADDITIONS TO NATIONAL PRIORITIES LIST.**

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

8 “(h) NPL DEFERRAL.—

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

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

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

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

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

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

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

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

3 “(A) the complexity of the site;

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

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

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

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

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

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

Passed the House of Representatives December 20
(legislative day, December 19), 2001.

Attest:

Clerk.

107TH CONGRESS
1ST SESSION

H. R. 2869

AN ACT

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.