

107TH CONGRESS
1ST SESSION

H. R. 2869

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2001

Mr. GILLMOR (for himself, Mr. PALLONE, Mr. TAUZIN, Mr. DINGELL, Mr. SHIMKUS, Mr. TOWNS, Mr. BOEHLERT, and Mr. GREEN of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, 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

A BILL

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **TITLE I—SMALL BUSINESS**
5 **LIABILITY PROTECTION**

6 **SEC. 101. SHORT TITLE.**

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

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

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

14 “(o) **DE MICROMIS EXEMPTION.**—

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

22 “(A) the total amount of the material con-
23 taining hazardous substances that the person
24 arranged for disposal or treatment of, arranged
25 with a transporter for transport for disposal or
26 treatment of, or accepted for transport for dis-

1 disposal or treatment, at the facility was less than
2 110 gallons of liquid materials or less than 200
3 pounds of solid materials (or such greater or
4 lesser amounts as the Administrator may deter-
5 mine by regulation); and

6 “(B) all or part of the disposal, treatment,
7 or transport concerned occurred before April 1,
8 2001.

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

11 “(A) the President determines that—

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

19 “(ii) the person has failed to comply
20 with an information request or administra-
21 tive subpoena issued by the President
22 under this Act or has impeded or is imped-
23 ing, through action or inaction, the per-
24 formance of a response action or natural

1 resource restoration with respect to the fa-
2 cility; or

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

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

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

19 “(p) MUNICIPAL SOLID WASTE EXEMPTION.—

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

1 paragraph (5) of this subsection, can demonstrate
2 that the person is—

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

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

19 or

20 “(C) an organization described in section
21 501(c)(3) of the Internal Revenue Code of 1986
22 and exempt from tax under section 501(a) of
23 such Code that, during its taxable year pre-
24 ceding the date of transmittal of written notifi-
25 cation from the President of its potential liabil-

1 ity under this section, employed not more than
2 100 paid individuals at the location from which
3 was generated all of the municipal solid waste
4 attributable to the organization with respect to
5 the facility.

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

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

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

21 “(B) the person has failed to comply with
22 an information request or administrative sub-
23 poena issued by the President under this Act;
24 or

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

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

8 “(4) DEFINITION OF MUNICIPAL SOLID
9 WASTE.—

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

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

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

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

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

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

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

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

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

20 “(ii) waste material from manufac-
21 turing or processing operations (including
22 pollution control operations) that is not es-
23 sentially the same as waste normally gen-
24 erated by households.

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

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

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

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

21 “(7) COSTS AND FEES.—A nongovernmental
22 entity that commences, after the date of the enact-
23 ment of this subsection, a contribution action under
24 this Act shall be liable to the defendant for all rea-
25 sonable costs of defending the action, including all

1 reasonable attorney’s fees and expert witness fees, if
2 the defendant is not liable for contribution based on
3 an exemption under this subsection or subsection
4 (o).”.

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

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

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

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

24 “(C) INFORMATION.—A person requesting
25 settlement under this paragraph shall promptly

1 provide the President with all relevant informa-
2 tion needed to determine the ability of the per-
3 son to pay response costs.

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

10 “(8) ADDITIONAL CONDITIONS FOR EXPEDITED
11 SETTLEMENTS.—

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

22 “(B) FAILURE TO COMPLY.—The Presi-
23 dent may decline to offer a settlement to a po-
24 tentially responsible party under this subsection
25 if the President determines that the potentially

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

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

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

21 “(10) NOTIFICATION.—As soon as practicable
22 after receipt of sufficient information to make a de-
23 termination, the President shall notify any person
24 that the President determines is eligible under para-

1 graph (1) of the person’s eligibility for an expedited
2 settlement.

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

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

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

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

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

22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Brownfields Revital-
24 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 128 to an eli-
13 gible entity at a site included in clause (i), (iv),
14 (v), (vi), (viii), or (ix) of subparagraph (B) if
15 the President finds that financial assistance will
16 protect human health and the environment, and
17 either promote economic development or enable
18 the creation of, preservation of, or addition to
19 parks, greenways, undeveloped property, other
20 recreational property, or other property used
21 for nonprofit purposes.

22 “(D) ADDITIONAL AREAS.—For the pur-
23 poses of section 128, the term ‘brownfield site’
24 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 Title I of the Comprehensive Environmental Response,

6 Compensation, and Liability Act of 1980 (42 U.S.C. 9601

7 et seq.) is amended by adding at the end the following:

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

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

11 “(1) a general purpose unit of local govern-
12 ment;

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

17 “(3) a government entity created by a State
18 legislature;

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

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

23 “(6) a State; or

24 “(7) an Indian Tribe, which, in the case of
25 Alaska, shall mean only an Indian Tribe with juris-

1 diction over land or an Alaska Native Regional Cor-
2 poration as that term is defined in section 3 of the
3 Alaska Native Claims Settlement Act (43 U.S.C.
4 1602(g)).

5 “(b) BROWNFIELD SITE CHARACTERIZATION AND
6 ASSESSMENT GRANT PROGRAM.—

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

9 “(A) provide grants to inventory, charac-
10 terize, assess, and conduct planning related to
11 brownfield sites under paragraph (2); and

12 “(B) perform targeted site assessments at
13 brownfield sites.

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

16 “(A) IN GENERAL.—On approval of an ap-
17 plication made by an eligible entity, the Admin-
18 istrator may make a grant to the eligible entity
19 to be used for programs to inventory, charac-
20 terize, assess, and conduct planning related to
21 1 or more brownfield sites.

22 “(B) SITE CHARACTERIZATION AND AS-
23 SESSMENT.—A site characterization and assess-
24 ment carried out with the use of a grant under

1 subparagraph (A) shall be performed in accord-
2 ance with section 101(35)(B).

3 “(c) GRANTS AND LOANS FOR BROWNFIELD REME-
4 DIATION.—

5 “(1) GRANTS PROVIDED BY THE PRESIDENT.—

6 Subject to subsections (d) and (e), the President
7 shall establish a program to provide grants to—

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

10 “(B) eligible entities or nonprofit organiza-
11 tions, where warranted, as determined by the
12 President based on considerations under para-
13 graph (3), to be used directly for remediation of
14 1 or more brownfield sites owned by the entity
15 or organization that receives the grant and in
16 amounts not to exceed \$200,000 for each site
17 to be remediated.

18 “(2) LOANS AND GRANTS PROVIDED BY ELIGI-
19 BLE ENTITIES.—An eligible entity that receives a
20 grant under paragraph (1)(A) shall use the grant
21 funds to provide assistance for the remediation of
22 brownfield sites in the form of—

23 “(A) 1 or more loans to an eligible entity,
24 a site owner, a site developer, or another per-
25 son; or

1 “(B) 1 or more grants to an eligible entity
2 or other nonprofit organization, where war-
3 ranted, as determined by the eligible entity that
4 is providing the assistance, based on consider-
5 ations under paragraph (3), to remediate sites
6 owned by the eligible entity or nonprofit organi-
7 zation that receives the grant.

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

12 “(A) the extent to which a grant will facili-
13 tate the creation of, preservation of, or addition
14 to a park, a greenway, undeveloped property,
15 recreational property, or other property used
16 for nonprofit purposes;

17 “(B) the extent to which a grant will meet
18 the needs of a community that has an inability
19 to draw on other sources of funding for environ-
20 mental remediation and subsequent redevelop-
21 ment of the area in which a brownfield site is
22 located because of the small population or low
23 income of the community;

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

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

4 “(E) such other similar factors as the Ad-
5 ministrator considers appropriate to consider
6 for the purposes of this section.

7 “(4) TRANSITION.—Revolving loan funds that
8 have been established before the date of enactment
9 of this section may be used in accordance with this
10 subsection.

11 “(d) GENERAL PROVISIONS.—

12 “(1) MAXIMUM GRANT AMOUNT.—

13 “(A) BROWNFIELD SITE CHARACTERIZA-
14 TION AND ASSESSMENT.—

15 “(i) IN GENERAL.—A grant under
16 subsection (b)—

17 “(I) may be awarded to an eligi-
18 ble entity on a community-wide or
19 site-by-site basis; and

20 “(II) shall not exceed, for any in-
21 dividual brownfield site covered by the
22 grant, \$200,000.

23 “(ii) WAIVER.—The Administrator
24 may waive the \$200,000 limitation under
25 clause (i)(II) to permit the brownfield site

1 to receive a grant of not to exceed
2 \$350,000, based on the anticipated level of
3 contamination, size, or status of ownership
4 of the site.

5 “(B) BROWNFIELD REMEDIATION.—

6 “(i) GRANT AMOUNT.—A grant under
7 subsection (c)(1)(A) may be awarded to an
8 eligible entity on a community-wide or site-
9 by-site basis, not to exceed \$1,000,000 per
10 eligible entity.

11 “(ii) ADDITIONAL GRANT AMOUNT.—

12 The Administrator may make an additional
13 grant to an eligible entity described in
14 clause (i) for any year after the year for
15 which the initial grant is made, taking into
16 consideration—

17 “(I) the number of sites and
18 number of communities that are ad-
19 dressed by the revolving loan fund;

20 “(II) the demand for funding by
21 eligible entities that have not pre-
22 viously received a grant under this
23 section;

24 “(III) the demonstrated ability of
25 the eligible entity to use the revolving

1 loan fund to enhance remediation and
2 provide funds on a continuing basis;
3 and

4 “(IV) such other similar factors
5 as the Administrator considers appro-
6 priate to carry out this section.

7 “(2) PROHIBITION.—

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

11 “(i) a penalty or fine;

12 “(ii) a Federal cost-share require-
13 ment;

14 “(iii) an administrative cost;

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

19 “(v) a cost of compliance with any
20 Federal law (including a Federal law speci-
21 fied in section 101(39)(B)), excluding the
22 cost of compliance with laws applicable to
23 the cleanup.

1 “(B) EXCLUSIONS.—For the purposes of
2 subparagraph (A)(iii), the term ‘administrative
3 cost’ does not include the cost of—

4 “(i) investigation and identification of
5 the extent of contamination;

6 “(ii) design and performance of a re-
7 sponse action; or

8 “(iii) monitoring of a natural re-
9 source.

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

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

19 “(B) monitoring and enforcement of any
20 institutional control used to prevent human ex-
21 posure to any hazardous substance from a
22 brownfield site.

23 “(4) INSURANCE.—A recipient of a grant or
24 loan awarded under subsection (b) or (c) that per-
25 forms a characterization, assessment, or remediation

1 of a brownfield site may use a portion of the grant
2 or loan to purchase insurance for the characteriza-
3 tion, assessment, or remediation of that site.

4 “(e) GRANT APPLICATIONS.—

5 “(1) SUBMISSION.—

6 “(A) IN GENERAL.—

7 “(i) APPLICATION.—An eligible entity
8 may submit to the Administrator, through
9 a regional office of the Environmental Pro-
10 tection Agency and in such form as the
11 Administrator may require, an application
12 for a grant under this section for 1 or
13 more brownfield sites (including informa-
14 tion on the criteria used by the Adminis-
15 trator to rank applications under para-
16 graph (3), to the extent that the informa-
17 tion is available).

18 “(ii) NCP REQUIREMENTS.—The Ad-
19 ministrator may include in any require-
20 ment for submission of an application
21 under clause (i) a requirement of the Na-
22 tional Contingency Plan only to the extent
23 that the requirement is relevant and appro-
24 priate to the program under this section.

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

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

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

9 “(A) at least annually, complete a review
10 of applications for grants that are received from
11 eligible entities under this section; and

12 “(B) award grants under this section to el-
13 igible entities that the Administrator deter-
14 mines have the highest rankings under the
15 ranking criteria established under paragraph
16 (3).

17 “(3) RANKING CRITERIA.—The Administrator
18 shall establish a system for ranking grant applica-
19 tions received under this subsection that includes the
20 following criteria:

21 “(A) The extent to which a grant will stim-
22 ulate the availability of other funds for environ-
23 mental assessment or remediation, and subse-
24 quent reuse, of an area in which 1 or more
25 brownfield sites are located.

1 “(B) The potential of the proposed project
2 or the development plan for an area in which 1
3 or more brownfield sites are located to stimu-
4 late economic development of the area on com-
5 pletion of the cleanup.

6 “(C) The extent to which a grant would
7 address or facilitate the identification and re-
8 duction of threats to human health and the en-
9 vironment, including threats in areas in which
10 there is a greater-than-normal incidence of dis-
11 eases or conditions (including cancer, asthma,
12 or birth defects) that may be associated with
13 exposure to hazardous substances, pollutants,
14 or contaminants.

15 “(D) The extent to which a grant would
16 facilitate the use or reuse of existing infrastruc-
17 ture.

18 “(E) The extent to which a grant would
19 facilitate the creation of, preservation of, or ad-
20 dition to a park, a greenway, undeveloped prop-
21 erty, recreational property, or other property
22 used for nonprofit purposes.

23 “(F) The extent to which a grant would
24 meet the needs of a community that has an in-
25 ability to draw on other sources of funding for

1 environmental remediation and subsequent re-
2 development of the area in which a brownfield
3 site is located because of the small population
4 or low income of the community.

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

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

10 “(I) The extent to which the grant pro-
11 vides for involvement of the local community in
12 the process of making decisions relating to
13 cleanup and future use of a brownfield site.

14 “(J) The extent to which a grant would
15 address or facilitate the identification and re-
16 duction of threats to the health or welfare of
17 children, pregnant women, minority or low-in-
18 come communities, or other sensitive popu-
19 lations.

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

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

1 organizations, as appropriate, to facilitate the inven-
2 tory of brownfield sites, site assessments, remedi-
3 ation of brownfield sites, community involvement, or
4 site preparation.

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

10 “(g) AUDITS.—

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

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

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

25 “(A) terminate the grant or loan;

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

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

5 “(4) REPORT TO CONGRESS.—Not later than 3
6 years after the date of enactment of this section, the
7 Inspector General of the Environmental Protection
8 Agency shall submit to Congress a report that pro-
9 vides a description of the management of the pro-
10 gram (including a description of the allocation of
11 funds under this section).

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

18 “(i) AGREEMENTS.—Each grant or loan made under
19 this section shall—

20 “(1) include a requirement of the National Con-
21 tingency Plan only to the extent that the require-
22 ment is relevant and appropriate to the program
23 under this section, as determined by the Adminis-
24 trator; and

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

1 “(A) requires the recipient to—

2 “(i) comply with all applicable Federal
3 and State laws; and

4 “(ii) ensure that the cleanup protects
5 human health and the environment;

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

9 “(C) in the case of an application by an el-
10 igible entity under subsection (c)(1), requires
11 the eligible entity to pay a matching share
12 (which may be in the form of a contribution of
13 labor, material, or services) of at least 20 per-
14 cent, from non-Federal sources of funding, un-
15 less the Administrator determines that the
16 matching share would place an undue hardship
17 on the eligible entity; and

18 “(D) contains such other terms and condi-
19 tions as the Administrator determines to be
20 necessary to carry out this section.

21 “(j) FACILITY OTHER THAN BROWNFIELD SITE.—

22 The fact that a facility may not be a brownfield site within
23 the meaning of section 101(39)(A) has no effect on the
24 eligibility of the facility for assistance under any other pro-
25 vision of Federal law.

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

4 “(1) this Act (including the last sentence of sec-
5 tion 101(14));

6 “(2) the Solid Waste Disposal Act (42 U.S.C.
7 6901 et seq.);

8 “(3) the Federal Water Pollution Control Act
9 (33 U.S.C. 1251 et seq.);

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

12 “(5) the Safe Drinking Water Act (42 U.S.C.
13 300f et seq.).

14 “(l) FUNDING.—

15 “(1) AUTHORIZATION OF APPROPRIATIONS.—

16 There is authorized to be appropriated to carry out
17 this section \$200,000,000 for each of fiscal years
18 2002 through 2006.

19 “(2) USE OF CERTAIN FUNDS.—Of the amount
20 made available under paragraph (1), \$50,000,000,
21 or, if the amount made available is less than
22 \$200,000,000, 25 percent of the amount made avail-
23 able, shall be used for site characterization, assess-
24 ment, and remediation of facilities described in sec-
25 tion 101(39)(D)(ii)(II).”.

1 **Subtitle B—Brownfields Liability**
2 **Clarifications**

3 **SEC. 221. CONTIGUOUS PROPERTIES.**

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

8 “(q) CONTIGUOUS PROPERTIES.—

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

11 “(A) IN GENERAL.—A person that owns
12 real property that is contiguous to or otherwise
13 similarly situated with respect to, and that is or
14 may be contaminated by a release or threatened
15 release of a hazardous substance from, real
16 property that is not owned by that person shall
17 not be considered to be an owner or operator of
18 a vessel or facility under paragraph (1) or (2)
19 of subsection (a) solely by reason of the con-
20 tamination if—

21 “(i) the person did not cause, con-
22 tribute, or consent to the release or threat-
23 ened release;

24 “(ii) the person is not—

1 “(I) potentially liable, or affili-
2 ated with any other person that is po-
3 tentially liable, for response costs at a
4 facility through any direct or indirect
5 familial relationship or any contrac-
6 tual, corporate, or financial relation-
7 ship (other than a contractual, cor-
8 porate, or financial relationship that
9 is created by a contract for the sale of
10 goods or services); or

11 “(II) the result of a reorganiza-
12 tion of a business entity that was po-
13 tentially liable;

14 “(iii) the person takes reasonable
15 steps to—

16 “(I) stop any continuing release;

17 “(II) prevent any threatened fu-
18 ture release; and

19 “(III) prevent or limit human,
20 environmental, or natural resource ex-
21 posure to any hazardous substance re-
22 leased on or from property owned by
23 that person;

24 “(iv) the person provides full coopera-
25 tion, assistance, and access to persons that

1 are authorized to conduct response actions
2 or natural resource restoration at the vessel
3 or facility from which there has been a re-
4 lease or threatened release (including the
5 cooperation and access necessary for the in-
6 stallation, integrity, operation, and mainte-
7 nance of any complete or partial response
8 action or natural resource restoration at the
9 vessel or facility);

10 “(v) the person—

11 “(I) is in compliance with any
12 land use restrictions established or re-
13 lied on in connection with the re-
14 sponse action at the facility; and

15 “(II) does not impede the effec-
16 tiveness or integrity of any institu-
17 tional control employed in connection
18 with a response action;

19 “(vi) the person is in compliance with
20 any request for information or administra-
21 tive subpoena issued by the President
22 under this Act;

23 “(vii) the person provides all legally
24 required notices with respect to the dis-

1 covery or release of any hazardous sub-
2 stances at the facility; and

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

5 “(I) conducted all appropriate in-
6 quiry within the meaning of section
7 101(35)(B) with respect to the prop-
8 erty; and

9 “(II) did not know or have rea-
10 son to know that the property was or
11 could be contaminated by a release or
12 threatened release of 1 or more haz-
13 ardous substances from other real
14 property not owned or operated by the
15 person.

16 “(B) DEMONSTRATION.—To qualify as a
17 person described in subparagraph (A), a person
18 must establish by a preponderance of the evi-
19 dence that the conditions in clauses (i) through
20 (viii) of subparagraph (A) have been met.

21 “(C) BONA FIDE PROSPECTIVE PUR-
22 CHASER.—Any person that does not qualify as
23 a person described in this paragraph because
24 the person had, or had reason to have, knowl-
25 edge specified in subparagraph (A)(viii) at the

1 time of acquisition of the real property may
2 qualify as a bona fide prospective purchaser
3 under section 101(40) if the person is otherwise
4 described in that section.

5 “(D) GROUND WATER.—With respect to a
6 hazardous substance from 1 or more sources
7 that are not on the property of a person that
8 is a contiguous property owner that enters
9 ground water beneath the property of the per-
10 son solely as a result of subsurface migration in
11 an aquifer, subparagraph (A)(iii) shall not re-
12 quire the person to conduct ground water inves-
13 tigation or to install ground water remediation
14 systems, except in accordance with the policy of
15 the Environmental Protection Agency con-
16 cerning owners of property containing contami-
17 nated aquifers, dated May 24, 1995.

18 “(2) EFFECT OF LAW.—With respect to a per-
19 son described in this subsection, nothing in this sub-
20 section—

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

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

1 “(3) ASSURANCES.—The Administrator may—
 2 “(A) issue an assurance that no enforce-
 3 ment action under this Act will be initiated
 4 against a person described in paragraph (1);
 5 and
 6 “(B) grant a person described in para-
 7 graph (1) protection against a cost recovery or
 8 contribution action under section 113(f).”.

9 **SEC. 222. PROSPECTIVE PURCHASERS AND WINDFALL**
 10 **LIENS.**

11 (a) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
 12 CHASER.—Section 101 of the Comprehensive Environ-
 13 mental Response, Compensation, and Liability Act of
 14 1980 (42 U.S.C. 9601) (as amended by section 211(a) of
 15 this Act) is amended by adding at the end the following:

16 “(40) BONA FIDE PROSPECTIVE PURCHASER.—
 17 The term ‘bona fide prospective purchaser’ means a
 18 person (or a tenant of a person) that acquires own-
 19 ership of a facility after the date of enactment of
 20 this paragraph and that establishes each of the fol-
 21 lowing by a preponderance of the evidence:

22 “(A) DISPOSAL PRIOR TO ACQUISITION.—
 23 All disposal of hazardous substances at the fa-
 24 cility occurred before the person acquired the
 25 facility.

1 “(B) INQUIRIES.—

2 “(i) IN GENERAL.—The person made
3 all appropriate inquiries into the previous
4 ownership and uses of the facility in ac-
5 cordance with generally accepted good
6 commercial and customary standards and
7 practices in accordance with clauses (ii)
8 and (iii).

9 “(ii) STANDARDS AND PRACTICES.—
10 The standards and practices referred to in
11 clauses (ii) and (iv) of paragraph (35)(B)
12 shall be considered to satisfy the require-
13 ments of this subparagraph.

14 “(iii) RESIDENTIAL USE.—In the case
15 of property in residential or other similar
16 use at the time of purchase by a non-
17 governmental or noncommercial entity, a
18 facility inspection and title search that re-
19 veal no basis for further investigation shall
20 be considered to satisfy the requirements
21 of this subparagraph.

22 “(C) NOTICES.—The person provides all
23 legally required notices with respect to the dis-
24 covery or release of any hazardous substances
25 at the facility.

1 “(D) CARE.—The person exercises appro-
2 priate care with respect to hazardous sub-
3 stances found at the facility by taking reason-
4 able steps to—

5 “(i) stop any continuing release;

6 “(ii) prevent any threatened future re-
7 lease; and

8 “(iii) prevent or limit human, environ-
9 mental, or natural resource exposure to
10 any previously released hazardous sub-
11 stance.

12 “(E) COOPERATION, ASSISTANCE, AND AC-
13 CESS.—The person provides full cooperation,
14 assistance, and access to persons that are au-
15 thorized to conduct response actions or natural
16 resource restoration at a vessel or facility (in-
17 cluding the cooperation and access necessary
18 for the installation, integrity, operation, and
19 maintenance of any complete or partial re-
20 sponse actions or natural resource restoration
21 at the vessel or facility).

22 “(F) INSTITUTIONAL CONTROL.—The per-
23 son—

24 “(i) is in compliance with any land
25 use restrictions established or relied on in

1 connection with the response action at a
2 vessel or facility; and

3 “(ii) does not impede the effectiveness
4 or integrity of any institutional control em-
5 ployed at the vessel or facility in connec-
6 tion with a response action.

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

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

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

17 “(I) any direct or indirect famil-
18 ial relationship; or

19 “(II) any contractual, corporate,
20 or financial relationship (other than a
21 contractual, corporate, or financial re-
22 lationship that is created by the in-
23 struments by which title to the facility
24 is conveyed or financed or by a con-

1 tract for the sale of goods or services);
2 or
3 “(ii) the result of a reorganization of
4 a business entity that was potentially lia-
5 ble.”.

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

11 “(r) PROSPECTIVE PURCHASER AND WINDFALL
12 LIEN.—

13 “(1) LIMITATION ON LIABILITY.—Notwith-
14 standing subsection (a)(1), a bona fide prospective
15 purchaser whose potential liability for a release or
16 threatened release is based solely on the purchaser’s
17 being considered to be an owner or operator of a fa-
18 cility shall not be liable as long as the bona fide pro-
19 spective purchaser does not impede the performance
20 of a response action or natural resource restoration.

21 “(2) LIEN.—If there are unrecovered response
22 costs incurred by the United States at a facility for
23 which an owner of the facility is not liable by reason
24 of paragraph (1), and if each of the conditions de-
25 scribed in paragraph (3) is met, the United States

1 shall have a lien on the facility, or may by agree-
2 ment with the owner, obtain from the owner a lien
3 on any other property or other assurance of payment
4 satisfactory to the Administrator, for the unre-
5 covered response costs.

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

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

11 “(B) FAIR MARKET VALUE.—The response
12 action increases the fair market value of the fa-
13 cility above the fair market value of the facility
14 that existed before the response action was ini-
15 tiated.

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

18 “(A) shall be in an amount not to exceed
19 the increase in fair market value of the prop-
20 erty attributable to the response action at the
21 time of a sale or other disposition of the prop-
22 erty;

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

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

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

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

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

9 **SEC. 223. INNOCENT LANDOWNERS.**

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

13 (1) in subparagraph (A)—

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

17 (B) in the second sentence—

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

20 (ii) by striking the period at the end
21 and inserting “, provides full cooperation,
22 assistance, and facility access to the per-
23 sons that are authorized to conduct re-
24 sponse actions at the facility (including the
25 cooperation and access necessary for the

1 installation, integrity, operation, and main-
2 tenance of any complete or partial re-
3 sponse action at the facility), is in compli-
4 ance with any land use restrictions estab-
5 lished or relied on in connection with the
6 response action at a facility, and does not
7 impede the effectiveness or integrity of any
8 institutional control employed at the facil-
9 ity in connection with a response action.”;
10 and

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

13 “(B) REASON TO KNOW.—

14 “(i) ALL APPROPRIATE INQUIRIES.—

15 To establish that the defendant had no
16 reason to know of the matter described in
17 subparagraph (A)(i), the defendant must
18 demonstrate to a court that—

19 “(I) on or before the date on
20 which the defendant acquired the fa-
21 cility, the defendant carried out all
22 appropriate inquiries, as provided in
23 clauses (ii) and (iv), into the previous
24 ownership and uses of the facility in
25 accordance with generally accepted

1 good commercial and customary
2 standards and practices; and

3 “(II) the defendant took reason-
4 able steps to—

5 “(aa) stop any continuing
6 release;

7 “(bb) prevent any threat-
8 ened future release; and

9 “(cc) prevent or limit any
10 human, environmental, or natural
11 resource exposure to any pre-
12 viously released hazardous sub-
13 stance.

14 “(ii) STANDARDS AND PRACTICES.—
15 Not later than 2 years after the date of en-
16 actment of the Brownfields Revitalization
17 and Environmental Restoration Act of
18 2001, the Administrator shall by regula-
19 tion establish standards and practices for
20 the purpose of satisfying the requirement
21 to carry out all appropriate inquiries under
22 clause (i).

23 “(iii) CRITERIA.—In promulgating
24 regulations that establish the standards
25 and practices referred to in clause (ii), the

1 Administrator shall include each of the fol-
2 lowing:

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

5 “(II) Interviews with past and
6 present owners, operators, and occu-
7 pants of the facility for the purpose of
8 gathering information regarding the
9 potential for contamination at the fa-
10 cility.

11 “(III) Reviews of historical
12 sources, such as chain of title docu-
13 ments, aerial photographs, building
14 department records, and land use
15 records, to determine previous uses
16 and occupancies of the real property
17 since the property was first developed.

18 “(IV) Searches for recorded envi-
19 ronmental cleanup liens against the
20 facility that are filed under Federal,
21 State, or local law.

22 “(V) Reviews of Federal, State,
23 and local government records, waste
24 disposal records, underground storage
25 tank records, and hazardous waste

1 handling, generation, treatment, dis-
2 posal, and spill records, concerning
3 contamination at or near the facility.

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

6 “(VII) Specialized knowledge or
7 experience on the part of the defend-
8 ant.

9 “(VIII) The relationship of the
10 purchase price to the value of the
11 property, if the property was not con-
12 taminated.

13 “(IX) Commonly known or rea-
14 sonably ascertainable information
15 about the property.

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

21 “(iv) INTERIM STANDARDS AND PRAC-
22 TICES.—

23 “(I) PROPERTY PURCHASED BE-
24 FORE MAY 31, 1997.—With respect to
25 property purchased before May 31,

1 1997, in making a determination with
2 respect to a defendant described of
3 clause (i), a court shall take into ac-
4 count—

5 “(aa) any specialized knowl-
6 edge or experience on the part of
7 the defendant;

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

12 “(cc) commonly known or
13 reasonably ascertainable informa-
14 tion about the property;

15 “(dd) the obviousness of the
16 presence or likely presence of
17 contamination at the property;
18 and

19 “(ee) the ability of the de-
20 fendant to detect the contamina-
21 tion by appropriate inspection.

22 “(II) PROPERTY PURCHASED ON
23 OR AFTER MAY 31, 1997.—With re-
24 spect to property purchased on or
25 after May 31, 1997, and until the Ad-

1 administrator promulgates the regula-
2 tions described in clause (ii), the pro-
3 cedures of the American Society for
4 Testing and Materials, including the
5 document known as ‘Standard
6 E1527–97’, entitled ‘Standard Prac-
7 tice for Environmental Site Assess-
8 ment: Phase 1 Environmental Site
9 Assessment Process’, shall satisfy the
10 requirements in clause (i).

11 “(v) SITE INSPECTION AND TITLE
12 SEARCH.—In the case of property for resi-
13 dential use or other similar use purchased
14 by a nongovernmental or noncommercial
15 entity, a facility inspection and title search
16 that reveal no basis for further investiga-
17 tion shall be considered to satisfy the re-
18 quirements of this subparagraph.”.

19 **Subtitle C—State Response** 20 **Programs**

21 **SEC. 231. STATE RESPONSE PROGRAMS.**

22 (a) DEFINITIONS.—Section 101 of the Comprehen-
23 sive Environmental Response, Compensation, and Liabil-
24 ity Act of 1980 (42 U.S.C. 9601) (as amended by this

1 Act) is further amended by adding at the end the fol-
2 lowing:

3 “(41) ELIGIBLE RESPONSE SITE.—

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

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

11 “(i) notwithstanding paragraph
12 (39)(B)(ix), a portion of a facility, for
13 which portion assistance for response activ-
14 ity has been obtained under subtitle I of
15 the Solid Waste Disposal Act (42 U.S.C.
16 6991 et seq.) from the Leaking Under-
17 ground Storage Tank Trust Fund estab-
18 lished under section 9508 of the Internal
19 Revenue Code of 1986; or

20 “(ii) a site for which, notwithstanding
21 the exclusions provided in subparagraph
22 (C) or paragraph (39)(B), the President
23 determines, on a site-by-site basis and
24 after consultation with the State, that limi-
25 tations on enforcement under section 129

1 at sites specified in clause (iv), (v), (vi) or
2 (viii) of paragraph (39)(B) would be ap-
3 propriate and will—

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

6 “(II) promote economic develop-
7 ment or facilitate the creation of,
8 preservation of, or addition to a park,
9 a greenway, undeveloped property,
10 recreational property, or other prop-
11 erty used for nonprofit purposes.

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

14 “(i) a facility for which the Presi-
15 dent—

16 “(I) conducts or has conducted a
17 preliminary assessment or site inspec-
18 tion; and

19 “(II) after consultation with the
20 State, determines or has determined
21 that the site obtains a preliminary
22 score sufficient for possible listing on
23 the National Priorities List, or that
24 the site otherwise qualifies for listing
25 on the National Priorities List; unless

1 the President has made a determina-
2 tion that no further Federal action will
3 be taken; or

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

9 (b) STATE RESPONSE PROGRAMS.—Title I of the
10 Comprehensive Environmental Response, Compensation,
11 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as
12 amended by section 211(b) of this Act) is amended by
13 adding at the end the following:

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

15 “(a) ASSISTANCE TO STATES.—

16 “(1) IN GENERAL.—

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

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

23 “(ii) is a party to a memorandum of
24 agreement with the Administrator for vol-
25 untary response programs.

1 “(B) USE OF GRANTS BY STATES.—

2 “ (i) IN GENERAL.—A State or Indian
3 tribe may use a grant under this sub-
4 section to establish or enhance the re-
5 sponse program of the State or Indian
6 tribe.

7 “ (ii) ADDITIONAL USES.—In addition
8 to the uses under clause (i), a State or In-
9 dian tribe may use a grant under this sub-
10 section to—

11 “(I) capitalize a revolving loan
12 fund for brownfield remediation under
13 section 128(c); or

14 “(II) purchase insurance or de-
15 velop a risk sharing pool, an indem-
16 nity pool, or insurance mechanism to
17 provide financing for response actions
18 under a State response program.

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

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

1 “(B) Oversight and enforcement authori-
2 ties or other mechanisms, and resources, that
3 are adequate to ensure that—

4 “(i) a response action will—

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

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

10 “(ii) if the person conducting the re-
11 sponse action fails to complete the nec-
12 essary response activities, including oper-
13 ation and maintenance or long-term moni-
14 toring activities, the necessary response ac-
15 tivities are completed.

16 “(C) Mechanisms and resources to provide
17 meaningful opportunities for public participa-
18 tion, including—

19 “(i) public access to documents that
20 the State, Indian tribe, or party con-
21 ducting the cleanup is relying on or devel-
22 oping in making cleanup decisions or con-
23 ducting site activities;

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

4 “(iii) a mechanism by which—

5 “(I) a person that is or may be
6 affected by a release or threatened re-
7 lease of a hazardous substance, pollut-
8 ant, or contaminant at a brownfield
9 site located in the community in which
10 the person works or resides may re-
11 quest the conduct of a site assess-
12 ment; and

13 “(II) an appropriate State offi-
14 cial shall consider and appropriately
15 respond to a request under subclause
16 (I).

17 “(D) Mechanisms for approval of a clean-
18 up plan, and a requirement for verification by
19 and certification or similar documentation from
20 the State, an Indian tribe, or a licensed site
21 professional to the person conducting a re-
22 sponse action indicating that the response is
23 complete.

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

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

6 “(1) ENFORCEMENT.—

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

11 “(i) there is a release or threatened
12 release of a hazardous substance, pollut-
13 ant, or contaminant; and

14 “(ii) a person is conducting or has
15 completed a response action regarding the
16 specific release that is addressed by the re-
17 sponse action that is in compliance with
18 the State program that specifically governs
19 response actions for the protection of pub-
20 lic health and the environment;

21 the President may not use authority under this
22 Act to take an administrative or judicial en-
23 forcement action under section 106(a) or to
24 take a judicial enforcement action to recover re-
25 sponse costs under section 107(a) against the

1 person regarding the specific release that is ad-
2 dressed by the response action.

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

10 “(i) the State requests that the Presi-
11 dent provide assistance in the performance
12 of a response action;

13 “(ii) the Administrator determines
14 that contamination has migrated or will
15 migrate across a State line, resulting in
16 the need for further response action to
17 protect human health or the environment,
18 or the President determines that contami-
19 nation has migrated or is likely to migrate
20 onto property subject to the jurisdiction,
21 custody, or control of a department, agen-
22 cy, or instrumentality of the United States
23 and may impact the authorized purposes of
24 the Federal property;

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

4 “(I) a release or threatened re-
5 lease may present an imminent and
6 substantial endangerment to public
7 health or welfare or the environment;
8 and

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

13 “(iv) the Administrator, after con-
14 sultation with the State, determines that
15 information, that on the earlier of the date
16 on which cleanup was approved or com-
17 pleted, was not known by the State, as re-
18 corded in documents prepared or relied on
19 in selecting or conducting the cleanup, has
20 been discovered regarding the contamina-
21 tion or conditions at a facility such that
22 the contamination or conditions at the fa-
23 cility present a threat requiring further re-
24 mediation to protect public health or wel-
25 fare or the environment. Consultation with

1 the State shall not limit the ability of the
2 Administrator to make this determination.

3 “(C) PUBLIC RECORD.—The limitations on
4 the authority of the President under subpara-
5 graph (A) apply only at sites in States that
6 maintain, update not less than annually, and
7 make available to the public a record of sites,
8 by name and location, at which response actions
9 have been completed in the previous year and
10 are planned to be addressed under the State
11 program that specifically governs response ac-
12 tions for the protection of public health and the
13 environment in the upcoming year. The public
14 record shall identify whether or not the site, on
15 completion of the response action, will be suit-
16 able for unrestricted use and, if not, shall iden-
17 tify the institutional controls relied on in the
18 remedy. Each State and tribe receiving finan-
19 cial assistance under subsection (a) shall main-
20 tain and make available to the public a record
21 of sites as provided in this paragraph.

22 “(D) EPA NOTIFICATION.—

23 “(i) IN GENERAL.—In the case of an
24 eligible response site at which there is a re-
25 lease or threatened release of a hazardous

1 substance, pollutant, or contaminant and
2 for which the Administrator intends to
3 carry out an action that may be barred
4 under subparagraph (A), the Adminis-
5 trator shall—

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

9 “(II)(aa) wait 48 hours for a
10 reply from the State under clause (ii);
11 or

12 “(bb) if the State fails to reply to
13 the notification or if the Adminis-
14 trator makes a determination under
15 clause (iii), take immediate action
16 under that clause.

17 “(ii) STATE REPLY.—Not later than
18 48 hours after a State receives notice from
19 the Administrator under clause (i), the
20 State shall notify the Administrator if—

21 “(I) the release at the eligible re-
22 sponse site is or has been subject to
23 a cleanup conducted under a State
24 program; and

1 “(II) the State is planning to
2 abate the release or threatened re-
3 lease, any actions that are planned.

4 “(iii) IMMEDIATE FEDERAL ACTION.—
5 The Administrator may take action imme-
6 diately after giving notification under
7 clause (i) without waiting for a State reply
8 under clause (ii) if the Administrator de-
9 termines that 1 or more exceptions under
10 subparagraph (B) are met.

11 “(E) REPORT TO CONGRESS.—Not later
12 than 90 days after the date of initiation of any
13 enforcement action by the President under
14 clause (ii), (iii), or (iv) of subparagraph (B),
15 the President shall submit to Congress a report
16 describing the basis for the enforcement action,
17 including specific references to the facts dem-
18 onstrating that enforcement action is permitted
19 under subparagraph (B).

20 “(2) SAVINGS PROVISION.—

21 “(A) COSTS INCURRED PRIOR TO LIMITA-
22 TIONS.—Nothing in paragraph (1) precludes
23 the President from seeking to recover costs in-
24 curred prior to the date of enactment of this

1 section or during a period in which the limita-
2 tions of paragraph (1)(A) were not applicable.

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

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

14 “(ii) limits the discretionary authority
15 of the President to enter into or modify an
16 agreement with a State, an Indian tribe, or
17 any other person relating to the implemen-
18 tation by the President of statutory au-
19 thorities.

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

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

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

3 “(2) the Solid Waste Disposal Act (42 U.S.C.
4 6901 et seq.);

5 “(3) the Federal Water Pollution Control Act
6 (33 U.S.C. 1251 et seq.);

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

9 “(5) the Safe Drinking Water Act (42 U.S.C.
10 300f et seq.).”.

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

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

16 “(h) NPL DEFERRAL.—

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

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

1 ducting a response action at the eligible re-
2 sponse site—

3 “(i) in compliance with a State pro-
4 gram that specifically governs response ac-
5 tions for the protection of public health
6 and the environment; and

7 “(ii) that will provide long-term pro-
8 tection of human health and the environ-
9 ment; or

10 “(B) the State is actively pursuing an
11 agreement to perform a response action de-
12 scribed in subparagraph (A) at the site with a
13 person that the State has reason to believe is
14 capable of conducting a response action that
15 meets the requirements of subparagraph (A).

16 “(2) PROGRESS TOWARD CLEANUP.—If, after
17 the last day of the 1-year period beginning on the
18 date on which the President proposes to list an eligi-
19 ble response site on the National Priorities List, the
20 President determines that the State or other party
21 is not making reasonable progress toward com-
22 pleting a response action at the eligible response
23 site, the President may list the eligible response site
24 on the National Priorities List.

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

12 “(A) the complexity of the site;

13 “(B) substantial progress made in negotia-
14 tions; and

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

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

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

1 “(B) the criteria under the National Con-
2 tingency Plan for issuance of a health advisory
3 have been met; or

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

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