

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4916

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

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 8, 1994

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

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## A BILL

To amend the Comprehensive Environmental Response, Com-  
pensation, and Liability Act of 1980, and for other pur-  
poses.

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

#### TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH

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

#### TITLE II—STATE ROLES

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

#### TITLE III—VOLUNTARY RESPONSE

- Sec. 301. Voluntary response program.

#### TITLE IV—LIABILITY AND ALLOCATION

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

#### TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS

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

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

#### TITLE VI—MISCELLANEOUS

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

#### TITLE VII—FUNDING

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

#### TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND

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

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

#### TITLE IX—TAXES

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

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

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

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

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

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

17 “(e) GRANTS FOR TECHNICAL ASSISTANCE.—

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

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

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

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

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

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

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

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

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

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

7 “(8) AUTHORIZED GRANT ACTIVITIES.—

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

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

1 assessment and contamination data gathering  
2 efforts and response activities, (iv) to hire a  
3 community liaison to potentially responsible  
4 parties and government agencies, (v) to hire ex-  
5 perts to file comments with governmental agen-  
6 cies and generate other documents as necessary  
7 to ensure full participation by the grant recipi-  
8 ent, (vi) to hire experts to provide input to the  
9 design of any health studies that a government  
10 agency performs, and (vii) for training funds  
11 for interested affected community members to  
12 enable them to more effectively participate in  
13 the remedy selection process.

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

17 “(9) USE OF EXPERTS.—Technical or other ex-  
18 perts hired by grant recipients under this subsection  
19 shall be hired by such recipients pursuant to guide-  
20 lines developed by the Administrator.

21 “(10) NON-SITE-SPECIFIC GRANTS.—In accord-  
22 ance with the rules promulgated by the Adminis-  
23 trator, the Administrator may make Technical As-  
24 sistance Grant funds available to nonprofit organiza-  
25 tions and citizens groups to enhance their participa-



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

4       “(f) IMPROVING CITIZEN AND COMMUNITY PARTICI-  
5       PATION IN THE SUPERFUND DECISIONMAKING PROC-  
6       ESS.—(1)(A) In order to provide an opportunity for mean-  
7       ingful public participation in every significant phase of re-  
8       sponse activities under this Act, the President shall pro-  
9       vide the opportunity for public meetings and publish a no-  
10      tice of such meetings before or during performance of each  
11      of the following:

12           “(i) The health assessment and the preliminary  
13           assessment and site inspection, as appropriate.  
14           Where the President determines a meeting is not ap-  
15           propriate at the preliminary assessment and site in-  
16           spection stage, the President shall provide adequate  
17           public notice of that decision.

18           “(ii) The Remedial Investigation and Feasibility  
19           Study (RI/FS).

20           “(iii) The announcement of the preferred reme-  
21           dial alternative.

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

24       “(B) Public meetings shall be designed to obtain in-  
25      formation from the community and disseminate informa-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(g) COMMUNITY WORKING GROUPS.—

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

1           “(A) the President determines such a  
2           group will be helpful; or

3           “(B) 50 citizens, or at least 20 percent of  
4           the population of a locality in which the Na-  
5           tional Priorities List facility is located, petition  
6           for a Community Working Group to be estab-  
7           lished.

8           “(2) DUTIES.—Each Community Working  
9           Group shall provide information and views to the  
10          President, and, as appropriate, any or all of the fol-  
11          lowing: the Agency for Toxic Substances and Dis-  
12          ease Registry, State regulatory agencies, Federal  
13          and State natural resource trustees, and potentially  
14          responsible parties conducting response actions. The  
15          information and views reported shall include the var-  
16          ious subjects related to facility remediation, includ-  
17          ing facility health studies, potential remedial alter-  
18          natives, and selection and implementation of reme-  
19          dial and removal actions. The Community Working  
20          Group shall attempt to achieve consensus among its  
21          members before reporting positions to agencies or  
22          potentially responsible parties. In cases in which  
23          consensus cannot be reached, the Community Work-  
24          ing Group shall allow the presentation of divergent  
25          views.

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

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

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

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



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

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

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

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

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

1           “(E) Local representatives of citizen, envi-  
2           ronmental, or public interest groups with mem-  
3           bers residing in the community.

4           “(F) Local government which may include  
5           pertinent city or county governments, or both,  
6           and any other governmental unit which regu-  
7           lates land use in the vicinity of the facility.

8           “(G) Workers at the facility who will be in-  
9           volved in actual response operations.

10          “(H) Workers employed at the facility dur-  
11          ing facility operation.

12          “(I) Facility owners and local representa-  
13          tives of the significant Potentially Responsible  
14          Parties (PRPs), who represent, wherever prac-  
15          ticable, a balance of PRP interests.

16          “(J) Members of the local business com-  
17          munity.

18          “(6) TECHNICAL AND ADMINISTRATIVE SUP-  
19          PORT FOR COMMUNITY WORKING GROUPS.—The  
20          President shall provide administrative services and  
21          meeting facilities for Community Working Groups.  
22          The Administrator of Environmental Protection  
23          Agency, the Administrator of the Agency for Toxic  
24          Substances and Disease Registry and the State, as  
25          appropriate, shall participate in Community Work-

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

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

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

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

1           “(2) PRIMARY FUNCTIONS.—Each Citizen In-  
2           formation and Access Office shall have the following  
3           primary functions:

4                   “(A) The Citizen Information and Access  
5           Office shall inform citizens and elected officials  
6           at all levels of government of the existence of  
7           State Registry and National Priorities List fa-  
8           cilities in the State.

9                   “(B) The Citizen Information and Access  
10          Office shall provide citizens with a description  
11          of the identification and response process under  
12          this Act and citizens’ legal rights within that  
13          process. It may include identification of re-  
14          sources, including Technical Assistance Grants,  
15          that are available to assist affected citizens in  
16          participating effectively in the Superfund proc-  
17          ess. Information shall be disseminated in a  
18          manner that is easily understood by the com-  
19          munity, considering any unique cultural needs  
20          of the community, including presentation of in-  
21          formation orally and distribution of information  
22          in languages other than English as appropriate.  
23          Other information that the CIAO shall provide  
24          to the public may include the following:

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

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

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

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

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

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

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

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

1           “(iv) to the extent available, the haz-  
2           ardous substances or pollutants or con-  
3           taminants present at each facility in the  
4           State, including the volume of the hazard-  
5           ous substances or pollutants or contami-  
6           nants;

7           “(v) the exposure pathways, current  
8           exposure (if any), potential future expo-  
9           sure, and risks to human health or the en-  
10          vironment, after seeking to resolve any dis-  
11          crepancies as provided in subparagraph  
12          (B)(iii);

13          “(vi) protective concentration levels  
14          established for the facility;

15          “(vii) the biennial Environmental Jus-  
16          tice Report prepared pursuant to this sec-  
17          tion; and

18          “(viii) any report generated during  
19          the review conducted in accordance with  
20          section 121(c).

21          “(D) The Citizen Information and Access  
22          Office shall assist the Administrator in the Ad-  
23          ministrators’ efforts to disseminate information,  
24          notify citizens of public meetings, notify poten-

1            tial Community Working Group members, and  
2            other tasks, as appropriate.

3            “(E) The Citizen Information and Access  
4            Office shall collect available information from  
5            the Administrator or other Federal or State  
6            agencies regarding the continued effectiveness  
7            of removal and remedial actions taken in the  
8            State.

9            “(F) The Citizen Information and Access  
10           Office shall conduct outreach activities and pro-  
11           vide information to small disadvantaged busi-  
12           nesses about Federal and State contracting and  
13           (to the extent available) subcontracting oppor-  
14           tunities at facilities in the State.

15           “(3) FUNDING.—Funding for all Citizen Infor-  
16           mation and Access Offices, collectively, shall not ex-  
17           ceed \$50,000,000 per year. The Administrator shall  
18           publish guidelines establishing a formula for deter-  
19           mining the actual amount of funding for each Citi-  
20           zen Information and Access Office and procedures  
21           for awarding grants to any CIAO. The formula shall  
22           include factors such as the number and complexity  
23           of State Registry and National Priorities List facili-  
24           ties in the State. The funding shall be available di-  
25           rectly to each Citizen Information and Access Office



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

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

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

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

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

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

1           “(iii) MEMBERS QUALIFICATIONS.—

2           Where possible, the Governor shall ensure  
3           that one-half of the appointees reside in  
4           communities affected by a variety of Na-  
5           tional Priorities List facilities in the State,  
6           and the other half reside in communities  
7           affected by a variety of non-NPL State  
8           Registry facilities in the State. Board  
9           members shall have a demonstrated com-  
10          mitment to the needs of the citizens in  
11          these communities, and shall reasonably  
12          reflect the racial and ethnic composition of  
13          these communities. Special efforts shall be  
14          made to nominate citizens who are or his-  
15          torically have been disproportionately ad-  
16          versely affected by facility contamination.

17          “(iv) EXPERIENCE.—Where possible,  
18          Board members should have a background  
19          in a field of study related to the scientific  
20          and technical issues common to Superfund  
21          facilities, or have practical experience relat-  
22          ed to the Superfund program.

23          “(v) TERMS.—Board members shall  
24          serve for limited, staggered terms.

1           “(5) CITIZEN INFORMATION AND ACCESS OF-  
2           FICE STAFF.—Each Citizen Information and Access  
3           Office shall have a permanent staff to assist in car-  
4           rying out its functions. Staff shall have dem-  
5           onstrated qualifications for working with citizens in  
6           communities located near State Registry or National  
7           Priorities List facilities, and shall also meet other  
8           criteria established by the President in consultation  
9           with the Citizen Information and Access Office Citi-  
10          zen Governing Board. An Executive Director or  
11          President, selected by the full Governing Board,  
12          shall be responsible for all Citizen Information and  
13          Access Office staffing decisions.

14           “(6) FEDERAL OVERSIGHT OF CITIZEN INFOR-  
15          MATION AND ACCESS OFFICE.—

16           “(A) REPORT.—The Citizens Information  
17           and Access Office shall report annually to the  
18           Administrator regarding performance of its du-  
19           ties and shall provide a detailed accounting of  
20           its use of funds under this section.

21           “(B) VERIFICATION BY INSPECTOR GEN-  
22           ERAL.—The Inspector General of the Environ-  
23           mental Protection Agency shall periodically re-  
24           view the programs and reports made under this  
25           section.

1           “(C) CONSEQUENCES OF FAILURE.—The  
2           Administrator may withhold any funding au-  
3           thorized under this section if the Administrator  
4           determines, after notice to the affected CIAO,  
5           that the CIAO has expended funds in a manner  
6           inconsistent with this section.

7           “(7) CITIZEN INFORMATION AND ACCESS OF-  
8           FICES AND COMMUNITY WORKING GROUPS FOR  
9           TRIBAL PEOPLES.—Members of Indian tribes af-  
10          fected by a facility on the National Priorities List  
11          may petition the Administrator to form a body that  
12          is the equivalent of a State Citizen Information and  
13          Access Office. Notwithstanding the creation of a  
14          tribal Citizen Information and Access Office, the  
15          State Citizen Information and Access Office shall be  
16          responsible for providing information and expertise  
17          to tribal members as well as other citizens in the  
18          State. Tribal members may establish Community  
19          Working Groups under subsection (g) regardless of  
20          whether there exists a tribal Citizen Information and  
21          Access Office or other tribal program relating to this  
22          Act.

23          “(i) ENVIRONMENTAL JUSTICE STUDY.—

24                 “(1) REPORT BY THE ADMINISTRATOR.—The  
25          Administrator shall prepare and submit to Congress

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

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

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

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

1 **SEC. 103. HAZARD RANKING SYSTEM AND REVISION OF NA-**  
2 **TIONAL CONTINGENCY PLAN.**

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

5 (1) By inserting after subsection (g) the follow-  
6 ing new subsections:

7 “(h) HAZARD RANKING SYSTEM.—In setting prior-  
8 ities under subsection (a)(8), the President—

9 “(1) shall group facilities together, even if they  
10 are not adjacent or geographically juxtaposed, and  
11 score them as a single facility where more than one  
12 facility listed on the State Registry results in haz-  
13 ardous substances exposures to the same population;

14 “(2) may take into account to the maximum ex-  
15 tent technically feasible any history of exposure to  
16 hazardous substances in the community regardless  
17 of the source of exposure, in placing facilities on the  
18 National Priorities List;

19 “(3) shall take into account the use of land or  
20 waterways for subsistence, religious, spiritual, or cul-  
21 tural practices where such use results in additional  
22 exposures, in placing facilities on the National Prior-  
23 ities List;

24 “(4) shall conduct interviews with persons af-  
25 fected by the facility and living in the community

1 and solicit their input and information in the hazard  
2 ranking system evaluation; and

3 “(5) shall place highest priority on facilities  
4 with releases of hazardous substances which result  
5 in actual ongoing human exposures at levels result-  
6 ing in demonstrated adverse health effects as identi-  
7 fied in a health assessment conducted by the Agency  
8 for Toxic Substances and Disease Registry.

9 “(i) ENVIRONMENTAL JUSTICE FACILITY SCOR-  
10 ING.—The Administrator shall evaluate major urban areas  
11 and any other areas where environmental justice concerns  
12 may warrant special attention (such as tribal lands or poor  
13 rural communities) and identify 5 facilities in each region  
14 of the Environmental Protection Agency that are, or that  
15 should be, on the State Registry and that are likely to  
16 warrant inclusion on the National Priorities List. These  
17 facilities shall be accorded a priority in evaluation for  
18 NPL listing and scoring, and shall be evaluated for listing  
19 within 2 years after the date of enactment of the  
20 Superfund Reform Act of 1994.”.

21 (2) By striking the period at the end of para-  
22 graph (10) of subsection (a) and inserting a semi-  
23 colon and by adding the following new paragraphs  
24 after such paragraph (10):

1 “(11) a process and procedure for reviewing pe-  
2 titions to reevaluate a facility not on the National  
3 Priorities List for inclusion on the National Prior-  
4 ities List where paragraphs (1), (2), and (3) of sub-  
5 section (h) are relevant.”.

6 (3) By inserting “(1)” after “PLAN.—” in sub-  
7 section (b) and by adding at the end of that sub-  
8 section the following new paragraph:

9 “(2) The Administrator shall undertake an effort to  
10 review new procedures for conducting remedial investiga-  
11 tions and feasibility studies in an efficient, cost-effective  
12 and timely manner. Such review shall take into consider-  
13 ation a results-oriented approach in order to minimize the  
14 time required to conduct such investigations and studies.  
15 The Administrator shall, as part of the next proposed revi-  
16 sion of the National Contingency Plan after the enactment  
17 of this paragraph, propose, as appropriate, to incorporate  
18 the new procedures for conducting the remedial investiga-  
19 tions and feasibility studies.

20 **SEC. 104. DISEASE REGISTRY AND MEDICAL CARE PROVID-**  
21 **ERS.**

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

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



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

5           (2) In subparagraph (E), by striking “admis-  
6           sion to hospitals and other facilities and services op-  
7           erated or provided by the Public Health Service”  
8           and inserting “referral to accredited medical care  
9           providers”.

10 **SEC. 105. SUBSTANCE PROFILES.**

11           Section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended  
12 as follows:

13           (1) By inserting “(A)” after “(3)”.

14           (2) By redesignating subparagraphs (A), (B),  
15 and (C) as clauses (i), (ii), and (iii), respectively.

16           (3) By striking out the matter beginning with  
17 “Any toxicological profile or revision thereof” and all  
18 that follows through the end of such paragraph and  
19 inserting in lieu thereof the following:

20           “(B) Any toxicological profile or revision thereof shall  
21 reflect the Administrator of ATSDR’s assessment of all  
22 relevant toxicological testing which has been peer re-  
23 viewed. The profiles prepared under this paragraph shall  
24 be for those substances highest on the list of priorities  
25 under paragraph (2) for which profiles have not previously

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           “(II) The Administrator of ATSDR shall design  
2 health assessments that take into account the needs  
3 and conditions of the affected community. Commu-  
4 nity-based research models, building links to local  
5 expertise and local health resources should be used.  
6 Each Community Working Group (or affected com-  
7 munity where no Community Working Group exists)  
8 shall be permitted to play an active and early role  
9 in reviewing health assessment designs. In preparing  
10 such designs, emphasis shall be placed on collection  
11 of actual exposure data and sources of multiple ex-  
12 posure shall be considered.”.

13           (3) In subparagraph (H), by striking “health  
14 assessment” each place it appears and inserting  
15 “public health assessment”.

16 **SEC. 108. HEALTH STUDIES.**

17           Subparagraph (A) of section 104(i)(7) (42 U.S.C.  
18 9604(i)(7)) is amended to read as follows: “(A) Whenever  
19 in the judgment of the Administrator of ATSDR it is ap-  
20 propriate on the basis of the results of a public health  
21 assessment or on the basis of other appropriate informa-  
22 tion, the Administrator of ATSDR shall conduct a human  
23 health study of exposure or other health effects for se-  
24 lected groups or individuals in order to determine the de-

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that may be affected by the release or threatened release  
2 of hazardous substances in the environment.

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

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

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

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

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

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

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



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

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

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

18 **SEC. 114. TRANSITION.**

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

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

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

## 4 **TITLE II—STATE ROLES**

### 5 **SEC. 201. CONTRACTS OR COOPERATIVE AGREEMENTS** 6 **WITH STATES.**

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

### 9 **“SEC. 127. CONTRACTS OR COOPERATIVE AGREEMENTS** 10 **WITH STATES.**

11 “(a) IN GENERAL.—

12 “(1) APPLICATION FOR AUTHORITY TO TAKE  
13 PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A  
14 State may apply to the Administrator to take or re-  
15 quire preremedial actions (including removal actions)  
16 under a contract or cooperative agreement as pro-  
17 vided in this section at any non-federally owned or  
18 operated facility within the boundaries of the State  
19 that is not listed on the National Priorities List  
20 (NPL).

21 “(2) APPLICATION FOR AUTHORITY TO TAKE  
22 RESPONSE ACTION AT NPL FACILITIES.—A State  
23 may apply to the Administrator to take or require  
24 response actions, including selection and enforce-  
25 ment of remedial actions and use of allocation proce-

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

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

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

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

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

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

6 “(c) QUALIFICATION REQUIREMENTS WITH RE-  
7 SPECT TO SELECTION OF REMEDIAL ACTION AND USE  
8 OF ALLOCATION PROCEDURES.—For purposes of sub-  
9 section (a)(3)(B), with respect to a contract or cooperative  
10 agreement under this section for authority to select reme-  
11 dial action or to use the allocation procedures under sec-  
12 tion 130, the Administrator also shall make each of the  
13 following determinations:

14 “(1) The State has the capability to select re-  
15 medial actions or to use the allocation procedures  
16 under section 130, including adequate legal author-  
17 ity, financial and personnel resources, organization,  
18 and expertise.

19 “(2) The State meets any other qualifications  
20 set forth in the regulations promulgated under sub-  
21 section (b) for selecting remedial actions or using  
22 the allocation procedures.

23 “(3) The State demonstrates a historical record  
24 of performing similar response actions.

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

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

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

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

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

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

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

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

1           “(i) The State has completed a potentially  
2 responsible party search substantially consistent  
3 with subsection (c) of section 130 and will make  
4 the results of that search available to the allo-  
5 cator and the parties.

6           “(ii) The State has notified Federal, State,  
7 and tribal natural resource trustees of the com-  
8 mencement of the allocation process and, pursu-  
9 ant to section 104(b)(2), of potential damages  
10 to natural resources.

11           “(iii) The facility would be subject to man-  
12 datory allocation under section 130(a)(1) if the  
13 President were conducting the response action.

14           “(B) After the State has made a certification  
15 under subparagraph (A), the Administrator shall ini-  
16 tiate an allocation in accordance with the terms of  
17 section 130. The Administrator may assign to the  
18 State, by cooperative agreement or otherwise, any  
19 responsibilities to conduct the allocation, except that  
20 the Administrator and Attorney General shall retain  
21 their authority relating to orphan share funding as  
22 provided by this paragraph and in section 130, in-  
23 cluding the timing and terms of payment.

24           “(C) The State may accept or reject the alloca-  
25 tion report on the same basis as provided in section

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

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

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

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

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

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



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

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

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

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

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

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

19                 “(i) the covenant purports to address natu-  
20                 ral resource damages; or

21                 “(ii) the President or the State has not  
22                 been provided notice of, and an opportunity to  
23                 participate in, the settlement concerning the re-  
24                 sponse action; or

1           “(iii) the President or the State objects to  
2           the settlement within 120 days of the date of  
3           signature for the record of decision or receipt of  
4           notice of the settlement, whichever is later.

5           “(B) The covenants described by this para-  
6           graph may be conferred by either the Administrator  
7           or the State with respect to a facility owned or oper-  
8           ated by any department, agency, or instrumentality  
9           of the United States (including the executive, legisla-  
10          tive, and judicial branches of government). The Ad-  
11          ministrator may confer a covenant in an administra-  
12          tive order, consent decree, or an interagency agree-  
13          ment. The State may confer a covenant in an ad-  
14          ministrative order or a consent decree.

15          “(g) TERMS AND CONDITIONS; ENFORCEMENT.—

16                 “(1) IN GENERAL.—A contract or cooperative  
17                 agreement under this section shall be subject to such  
18                 terms and conditions as the Administrator may pre-  
19                 scribe. If a State fails to comply with a requirement  
20                 of a contract or cooperative agreement, the Adminis-  
21                 trator, after 90 days notice to the affected State,  
22                 may seek in the appropriate United States district  
23                 court to ensure performance of the response action,  
24                 or to recover any funds advanced or any costs in-  
25                 curred because of the breach.

1           “(2) SPECIFIC TERMS.—A contract or coopera-  
2           tive agreement under this section shall include the  
3           following requirements:

4                   “(A) A requirement that the State shall  
5                   exercise any authority conferred by this section  
6                   or the contract or cooperative agreement on be-  
7                   half of the State, and not on behalf of or in the  
8                   name of the Administrator, the President, or  
9                   the United States.

10                   “(B) A requirement that the State have  
11                   and maintain sufficient legal authority under  
12                   applicable State law to enter into the contract  
13                   or cooperative agreement.

14                   “(C) A requirement that the Administrator  
15                   retain authority to terminate and recoup fund-  
16                   ing, and to terminate the contract or coopera-  
17                   tive agreement, if the State fails to perform the  
18                   contract or cooperative agreement in a manner  
19                   consistent with this Act. At least 90 days before  
20                   terminating any contract or cooperative agree-  
21                   ment with a State, the Administrator shall pro-  
22                   vide to the State a written explanation of the  
23                   reasons for the proposed termination and afford  
24                   an opportunity to the State to discuss the ter-

1           mination and to propose actions to correct any  
2           deficiencies.

3           “(D) A requirement imposing a non-  
4           discretionary duty on the Administrator to per-  
5           form or compel expeditious performance of re-  
6           sponse actions under the contract or cooperative  
7           agreement if the State fails to comply with the  
8           terms of the contract or cooperative agreement.

9           “(h) SAVINGS CLAUSE.—Nothing in this section shall  
10          affect the exercise by a State of any other authorities that  
11          may be applicable to facilities in such State.”.

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

13          Section 104(c) is amended by adding at the end the  
14          following new paragraphs:

15          “(10) EXISTING CONTRACTS AND COOPERATIVE  
16          AGREEMENTS.—The requirements of paragraphs (3), (6),  
17          and (7) of this subsection shall apply only to contracts  
18          and cooperative agreements pursuant to section 104(d)  
19          entered into prior to the enactment of the Superfund Re-  
20          form Act of 1994.

21          “(11) STATE COST SHARE.—After the date of enact-  
22          ment of the Superfund Reform Act of 1994, the Adminis-  
23          trator shall not provide any funding under this subsection  
24          or section 127, or any response action pursuant to this  
25          section, except for emergency removal actions, unless the

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

5           “(A) the State will pay or assure payment of 15  
6           percent of the cost of such response action or fund-  
7           ing, including 15 percent of orphan share funding  
8           and operation and maintenance costs; and

9           “(B) the State will assure oversight of any op-  
10          eration and maintenance of funded response ac-  
11          tions.”.

12 **SEC. 203. SITING.**

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

14          “(9) SITING.—Effective 1 year after the date of en-  
15          actment of the Superfund Reform Act of 1994, the Presi-  
16          dent shall not provide any remedial actions pursuant to  
17          this section or section 127 unless the State in which the  
18          release occurs submits a report describing its plans for  
19          adequate treatment, storage, and disposal capacity of haz-  
20          ardous wastes generated within the State, in accordance  
21          with guidelines issued by the Administrator.”.

22 **SEC. 204. THE STATE REGISTRY.**

23          Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8))  
24          is amended by adding after subparagraph (B) the follow-  
25          ing new subparagraph:

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

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

12           (a) TRANSFER OF SECTION 121(e)(2).—(1) Section  
13 121(e) is amended—

14                 (A) by striking out paragraph (2); and

15                 (B) by striking out “PERMITS AND ENFORCE-  
16 MENT.—(1)” and inserting “PERMITS.—”.

17           (2) Section 121(f) is amended by adding at the end  
18 the following new paragraphs:

19                 “(4) A State may enforce any Federal or State stand-  
20 ard, requirement, criteria, or limitation to which the reme-  
21 dial action is required to conform under this Act in the  
22 United States district court for the district in which the  
23 facility is located.

24                 “(5) The President shall provide to any State within  
25 a 50-mile radius of a remedial action at a Federal facility

1 a reasonable opportunity to review and comment on each  
2 of the following:

3 “(A) The remedial investigation and feasibility  
4 study and all data and technical documents leading  
5 to its issuance.

6 “(B) The planned remedial action identified in  
7 the remedial investigation and feasibility study.

8 “(C) The engineering design following selection  
9 of the final remedial action.

10 “(D) Other technical data and reports relating  
11 to implementation of the remedy.

12 “(E) Any proposed finding or decision by the  
13 President to exercise the authority of subsection  
14 (d)(7)(e).”.

15 (b) SECTION 126(a).—Section 126(a) is amended by  
16 adding after “section 104(i) (regarding health authori-  
17 ties)” the following: “, section 127 (regarding contracts  
18 and cooperative agreements), section 128 (regarding vol-  
19 untary response actions), subsection (f) of section 121 (re-  
20 lating to cleanup standards), section 122(d)(1)(D) (relat-  
21 ing to compliance with consent decrees),”.

22 (c) SECTION 310(a).—Section 310(a) is amended by  
23 inserting “(including any State)” after “person”.



1 (d) TRANSITION.—Subsection (d) of section 104 is  
2 amended by adding at the end the following new para-  
3 graph:

4 “(5) TERMINATION.—This subsection shall cease to  
5 be in effect on the effective date of regulations promul-  
6 gated to implement section 127, as added by the  
7 Superfund Reform Act of 1994.”.

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

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

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

17 Subsection (g) of section 120 is amended to read as  
18 follows:

19 “(g) TRANSFER OF AUTHORITIES.—

20 “(1) STATE APPLICATION FOR TRANSFER OF  
21 AUTHORITIES.—A State may apply to the Adminis-  
22 trator to exercise the authorities vested in the Ad-  
23 ministrator under subsections (e) and (h)(other than  
24 (h)(2)) of this section at any or all facilities owned  
25 or operated by any department, agency, or instru-

1       mentality of the United States (including the execu-  
2       tive, legislative, and judicial branches of govern-  
3       ment), including the authority—

4               “(A) to publish a timetable and deadlines  
5       for completion of any remedial investigation  
6       and feasibility study;

7               “(B) to review and approve all documents  
8       prepared in connection with any such investiga-  
9       tion and study;

10              “(C) to review and select remedies pursu-  
11       ant to subsection (e)(4)(A); and

12              “(D) to enter into agreements with depart-  
13       ments, agencies, and instrumentalities of the  
14       United States in accordance with subsection  
15       (e)(2), and to enter into consent decrees with  
16       other potentially responsible parties in accord-  
17       ance with subsection (e)(6).

18              “(2) TRANSFER OF AUTHORITIES.—The Ad-  
19       ministrator shall enter into a contract or cooperative  
20       agreement to transfer the authorities described in  
21       paragraph (1) if the Administrator determines the  
22       following:

23              “(A) The State has the ability to exercise  
24       such authorities in accordance with this Act, in-  
25       cluding adequate legal authority, financial and

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

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

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

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

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

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

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

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

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

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

1 inconsistent with the requirements of this Act;  
2 or

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

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

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

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

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

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

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

1 under this section shall require the consent of all  
2 parties to such agreement, and absent such consent  
3 the agreement shall remain unchanged. Nothing in this  
4 subsection shall affect the exercise by a State of any  
5 other authorities that may be applicable to facilities  
6 in such State.”.

## 7 **TITLE III—VOLUNTARY** 8 **RESPONSE**

### 9 **SEC. 301. VOLUNTARY RESPONSE PROGRAM.**

10 Title I is amended by adding the following new sec-  
11 tion after section 127:

### 12 **“SEC. 128. VOLUNTARY RESPONSE PROGRAM.**

13 “(a) **PURPOSES AND OBJECTIVES.**—The purposes  
14 and objectives of this section are to—

15 “(1) significantly increase the pace of response  
16 activities at contaminated sites by promoting and  
17 encouraging the creation, development, and expan-  
18 sion of State voluntary response programs; and

19 “(2) benefit the public health, welfare, and the  
20 environment by returning contaminated sites to eco-  
21 nomically productive or other beneficial uses.

22 “(b) **ESTABLISHMENT OF PROGRAM.**—The Adminis-  
23 trator shall establish a program to provide technical, fi-  
24 nancial, and other assistance, including grants, to States  
25 to establish and expand voluntary response programs.



1       “(c) EPA ASSISTANCE TO STATES FOR STATE VOL-  
2       UNTARY RESPONSE PROGRAMS.—The Administrator shall  
3       assist States in the establishment and administration of  
4       State voluntary response programs that—

5               “(1) provide opportunities for technical assist-  
6               ance for voluntary response actions;

7               “(2) provide adequate opportunities for public  
8               participation in selecting response actions, including  
9               prior notice and opportunity for comment in appro-  
10              prium circumstances;

11              “(3) provide streamlined procedures to ensure  
12              expeditious voluntary response actions;

13              “(4) provide adequate oversight and enforce-  
14              ment authorities to ensure that voluntary response  
15              actions are protective of human health and the envi-  
16              ronment, are conducted in accordance with an ap-  
17              propriate response action plan and ensure comple-  
18              tion of response actions if the person conducting the  
19              response action fails or refuses to complete the nec-  
20              essary response activities, including operation and  
21              maintenance or long-term monitoring activities;

22              “(5) provide mechanisms for the approval of a  
23              response action plan; and

24              “(6) provide for a certification or similar docu-  
25              mentation from the State to the person conducting

1 the response action indicating that the response is  
2 complete.

3 “(d) EPA REVIEW OF STATE PROGRAMS.—At any  
4 time after the enactment of this Act, a State may submit,  
5 for review by the Administrator, documents the State  
6 deems appropriate to describe a State voluntary response  
7 program, together with a certification that the program  
8 is consistent with the elements set forth in subsection (c).

9 “(e) QUALIFICATION OF STATE PROGRAM.—

10 “(1) APPROVAL OR DISAPPROVAL.—A State vol-  
11 untary response program submitted under sub-  
12 section (d) shall be a qualified program under this  
13 Act beginning on the date 120 days after the sub-  
14 mittal of the certification under subsection (d) un-  
15 less the Administrator determines before that date  
16 that the State’s submittal is not consistent with the  
17 elements set forth in subsection (c). The Adminis-  
18 trator shall seek public comment on the submittal of  
19 a State voluntary response program under this sec-  
20 tion and shall publish in the Federal Register the  
21 reasons for the approval or disapproval of any such  
22 program.

23 “(2) WITHDRAWAL OF APPROVAL.—Whenever  
24 the Administrator determines after public hearing  
25 that a State is not administering and enforcing a

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

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

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

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

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

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

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

3 “(j) ANNUAL REPORTING.—

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

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

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

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

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

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

## 16 **TITLE IV—LIABILITY AND** 17 **ALLOCATION**

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

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

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

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

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

1           “(D) The identity of any persons engaged  
2 in, responsible for, controlling, or having the  
3 ability to control activities or operations at a  
4 vessel or facility giving rise to liability under  
5 this Act.

6           “(E) The potential liability or responsibil-  
7 ity of any person to perform or pay for a re-  
8 sponse action.

9           “(F) For a person conducting a response  
10 action, an accounting of direct and indirect  
11 costs the person has incurred in conducting  
12 such response action.

13           “(G) Information that is otherwise relevant  
14 to enforce the provisions of this Act.”.

15       (b) CERTIFICATIONS.—Section 104(e) (42 U.S.C.  
16 9604(e)) is amended—

17           (1) by redesignating paragraphs (3), (4), (5),  
18           (6), and (7) as paragraphs (4), (5), (6), (7), and  
19           (8), respectively; and

20           (2) by inserting after paragraph (2) the follow-  
21 ing:

22           “(3) CERTIFICATION.—The President may re-  
23 quire respondents to requests made pursuant to this  
24 subsection to certify that—

1           “(A) the responses are true, accurate, and  
2 complete to the best of the respondent’s knowl-  
3 edge;

4           “(B) the responses are based on a diligent,  
5 good faith search of records in the possession or  
6 control of the person to whom the request was  
7 directed;

8           “(C) the responses are based on a reason-  
9 able inquiry of the current and former officers,  
10 directors, employees, and agents of the person  
11 to whom the request was directed;

12           “(D) the responses accurately and com-  
13 pletely reflect information obtained in the  
14 course of conducting such search and inquiry;

15           “(E) the respondent understands that  
16 there is a continuing obligation to supplement  
17 the response if any additional, new, or different  
18 information relevant to the matters addressed  
19 in the request or the response thereto becomes  
20 known or available to the respondent; and

21           “(F) the respondent understands that  
22 there are significant penalties for knowingly  
23 and willfully submitting false information, in-  
24 cluding the possibility of fine and imprison-  
25 ment.”.



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

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

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

1           “(A) Any records, reports, documents, or infor-  
2           mation obtained from any person under this section  
3           (including records, reports, documents, or informa-  
4           tion obtained by representatives of the President (or  
5           the State as the case may be) and records, reports,  
6           documents, or information obtained pursuant to a  
7           contract, grant, or other agreement to perform work  
8           pursuant to this section) shall be available to the  
9           public not later than 45 days after the records, re-  
10          ports, or information is obtained, except as follows:

11                   “(i) Upon a showing satisfactory to the  
12                   President (or the State, as the case may be) by  
13                   any person that records, reports, documents, or  
14                   information, or any particular part thereof  
15                   (other than health or safety effects data), to  
16                   which the President (or the State, as the case  
17                   may be) or any officer, employee, or representa-  
18                   tive has access under this section if made public  
19                   would divulge information entitled to protection  
20                   under section 1905 of title 18, United States  
21                   Code, such information or particular portion  
22                   thereof shall be considered confidential in ac-  
23                   cordance with the purposes of that section, ex-  
24                   cept as otherwise provided in this clause. Any  
25                   such record, report, document, or information

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

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

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

1 nated by subsection (b)) is amended by adding at the end  
2 the following new subparagraph:

3           “(G)(i) No person described in clause (ii) may  
4 disclose any record, report, document, or other infor-  
5 mation referred to in subparagraph (A)(i) without  
6 the permission of the President (or the State, as the  
7 case may be).

8           “(ii) A person described in this clause is any  
9 person—

10                   “(I) who is not an employee of the United  
11 States Government; and

12                   “(II) who, by virtue of the person’s duties  
13 under a contract or cooperative agreement with  
14 the United States under this section to perform  
15 work for the United States Government or im-  
16 plement the requirements of this Act, has re-  
17 ceived information obtained under this section  
18 (or any record, report, or document containing  
19 such information) which, if requested from the  
20 United States Government pursuant to section  
21 552 of title 5, United States Code, would be ex-  
22 empt from disclosure by reason of subsection  
23 (b) of such section.”.

1 (f) AVAILABILITY OF INFORMATION TO CONGRESS.—  
2 Subsection 104(e) is further amended by adding after  
3 paragraph (9) the following new paragraph:

4 “(10) AVAILABILITY OF INFORMATION TO CON-  
5 GRESS.—Nothing in this subsection shall be con-  
6 strued to authorize any person, including any allo-  
7 cator appointed pursuant to section 130, to withhold  
8 any documents or information from Congress, or any  
9 duly authorized Committee thereof, or limit in any  
10 manner the right of Congress, or any duly author-  
11 ized Committee thereof, to obtain such documents or  
12 information.”.

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

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

1           (b) REQUIREMENT TO PROVIDE PRPS EVIDENCE OF  
2 LIABILITY.—Section 106(a) (42 U.S.C. 9606(a)) is fur-  
3 ther amended by adding at the end the following: “In any  
4 case in which the President issues an order to a person  
5 under this subsection, the President shall provide informa-  
6 tion concerning the evidence that indicates that each ele-  
7 ment of liability contained in section 107(a) is present.”.

8           (c) SUFFICIENT CAUSE.—Section 106(b)(1) (42  
9 U.S.C. 9606(b)(1)) is amended—

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

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

12           (3) by inserting before the period “, or be re-  
13 quired to comply with such order, or both, even if  
14 another person has complied, or is complying, with  
15 the terms of the same order or another order per-  
16 taining to the same facility and release or threatened  
17 release”; and

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

19           “(B) For purposes of this subsection, a ‘sufficient  
20 cause’ requires—

21           “(i) an objectively reasonable belief by the per-  
22 son to whom the order is issued that the person is  
23 not liable for any response costs under section 107;  
24 or

1           “(ii) that the action to be performed pursuant  
2           to the order is inconsistent with the national contin-  
3           gency plan.

4           “(C) The existence or results of an allocation process  
5           pursuant to section 130 shall not affect or constitute a  
6           basis for a determination of ‘sufficient cause’ under this  
7           paragraph or under section 107(c)(3).”.

8           (d) REIMBURSEMENT.—Subsection (b) of section 106  
9           (42 U.S.C. 9606(b)) is further amended in the first sen-  
10           tence of paragraph (2)(A) by striking “completion of” and  
11           inserting “the President determines that such person has  
12           completed”.

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

15           (a) LIMITATIONS ON LIABILITY.—Section 107(a) (42  
16           U.S.C. 9607(a)) is amended as follows:

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

19           (2) In paragraph (3), by striking “person,” and  
20           inserting “person or”.

21           (3) In paragraph (4)(A), by inserting “, includ-  
22           ing the costs of overseeing response actions con-  
23           ducted by potentially responsible parties,” before  
24           “incurred by the United States”.

25           (4) In paragraph (4)(B)—

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

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

7 (5) In paragraph (4), by striking “by such per-  
8 son,” and all that follows through “shall be liable  
9 for—” and inserting in lieu thereof the following:  
10 “by such person—  
11 from which there is a release, or a threatened release, that  
12 causes the incurrence of response costs, of a hazardous  
13 substance, shall be liable for—”.

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

18 (7) By adding the following new paragraphs  
19 after paragraph (5):

20 “(6) Notwithstanding paragraphs (1) through  
21 (4) of this subsection, a person who does not impede  
22 the performance of a response action or natural re-  
23 source restoration at a facility shall not be liable:

24 “(A)(i) To the extent liability at such facil-  
25 ity is based solely on paragraph (3) or (4) of



1 this subsection, and the person arranged for  
2 disposal, treatment, or transport for disposal or  
3 treatment, or accepted for transport for dis-  
4 posal or treatment of only municipal solid waste  
5 or sewage sludge owned or possessed by such  
6 person, and the person is—

7 “(I) the owner, operator, or lessee of  
8 residential property;

9 “(II) a small business; or

10 “(III) a small non-profit organization.

11 “(ii) This subparagraph shall have no ef-  
12 fect on the liability of any other person.

13 “(B) To the extent liability at such facility  
14 is based solely on paragraph (3) or (4) of this  
15 subsection, and the person can demonstrate  
16 that it arranged for disposal or treatment, or  
17 transport for disposal or treatment or accepted  
18 for transport for disposal or treatment, 55 gal-  
19 lons or less of liquid materials containing haz-  
20 ardous substances or pollutants or contami-  
21 nants or less, 100 pounds or less of solid mate-  
22 rials containing hazardous substances or pollut-  
23 ants or contaminants, or such greater or lesser  
24 amount as the Administrator may determine by  
25 regulation, except where—

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

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

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

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

1           “(i) acquired the real property on  
2           which the facility concerned is located after  
3           disposal or placement of the hazardous  
4           substance took place;

5           “(ii) did not cause or contribute to the  
6           release or threat of release; and

7           “(iii) exercised due care with respect  
8           to the hazardous substance concerned, in-  
9           cluding precautions against foreseeable  
10          acts of third parties, taking into consider-  
11          ation the characteristics of such hazardous  
12          substance, in light of all relevant facts and  
13          circumstances.

14          “(E) To the extent the liability of a Fed-  
15          eral or State governmental entity or municipal-  
16          ity at such facility is based solely on its—

17                 “(i) ownership of a road, street, or  
18                 other right of way or public transportation  
19                 route (other than railroad rights of way  
20                 and railroad property) over which hazard-  
21                 ous substances are transported; or

22                 “(ii) granting of a license or permit to  
23                 conduct business.

24          “(F) To the extent the liability of a de-  
25          partment, agency, or instrumentality of the

1 United States at such facility is based on ac-  
2 tions of such department, agency, or instrumen-  
3 tality taken in response to a natural disaster  
4 pursuant to the Act of August 18, 1941 (33  
5 U.S.C. 701n) or The Robert T. Stafford Disas-  
6 ter Relief and Emergency Act (42 U.S.C. 5121  
7 and following).

8 “(7) Notwithstanding paragraphs (1) through  
9 (4), a person shall not be liable for more than 10  
10 percent of total response costs at a facility, in aggre-  
11 gate, to the extent the person is liable solely under  
12 paragraph (3) or (4) of this subsection, and the ar-  
13 rangement for disposal, treatment, or transport for  
14 disposal or treatment, or the acceptance for trans-  
15 port for disposal or treatment, involved only municipi-  
16 pal solid waste or sewage sludge. In any case in  
17 which more than one person at a facility comes with-  
18 in the coverage of this paragraph, the 10 percent  
19 limitation on liability shall apply to the aggregate li-  
20 ability of all such persons. Such limitation on liabil-  
21 ity shall apply only if either the acts or omissions  
22 giving rise to liability occurred before the date occur-  
23 ring 36 months after enactment of this paragraph,  
24 or the person asserting the limitation institutes or  
25 participates in a qualified household hazardous

1 waste collection program within the meaning of sec-  
2 tion 101(43).

3 “(8)(A) Notwithstanding paragraphs (1)  
4 through (4) of this subsection, the liability of a per-  
5 son who does not impede the performance of re-  
6 sponse actions or natural resource restoration with  
7 respect to a release or threatened release from a ves-  
8 sel or facility shall be limited to the lesser of the fair  
9 market value of the vessel or facility or the actual  
10 proceeds of the sale of the vessel or facility received  
11 by the person, to the extent such liability is based  
12 solely on the person’s status under paragraph (1) as  
13 owner of the vessel or facility if the person—

14 “(i) holding title, either outright or in  
15 trust, to the vessel or facility is an organization  
16 described in section 501(c)(3) of the Internal  
17 Revenue Code of 1986 and exempt from tax  
18 under section 501(a) of such Code and holds  
19 such title as a result of a charitable donation  
20 that qualifies under sections 170, 2055, or  
21 2522 of such Code;

22 “(ii) exercised due care with respect to the  
23 hazardous substance concerned, including pre-  
24 cautions against foreseeable acts of third par-  
25 ties, taking into consideration the characteris-

1           tics of such hazardous substance, in light of all  
2           relevant facts and circumstances;

3           “(iii) did not cause or contribute to the re-  
4           lease or threat of release; and

5           “(iv) acquired the real property on which  
6           the facility concerned is located, or acquired the  
7           vessel, after disposal or placement of the haz-  
8           ardous substance took place.

9           “(B) At any facility to which the provisions of  
10          this paragraph apply, the owner or operator of the  
11          vessel or facility within the meaning of paragraph  
12          (1) shall include any person who owned or operated  
13          the facility immediately prior to the person described  
14          in subparagraph (A).

15          “(9) A person who owns or operates real prop-  
16          erty that is contiguous to or otherwise situated with  
17          respect to real property on which there has been a  
18          release of a hazardous substance and that is or may  
19          be contaminated by the release shall not be consid-  
20          ered an owner or operator of a facility under para-  
21          graph (1)(A) solely by reason of such contamination  
22          if such person establishes by a preponderance of the  
23          evidence that—

24                  “(A) such person exercised due care with  
25                  respect to the hazardous substance, taking into

1 consideration the characteristics of such haz-  
2 arduous substance, in light of all relevant facts  
3 and circumstances;

4 “(B) such person took precautions against  
5 foreseeable acts or omissions that resulted in  
6 the release and the consequences that could  
7 foreseeably result from such acts or omissions;

8 “(C) such person did not cause or contrib-  
9 ute to the release; and

10 “(D) such person provides full cooperation,  
11 assistance, and facility access to persons au-  
12 thorized to conduct response actions at the fa-  
13 cility, including the cooperation and access nec-  
14 essary for the installation, integrity, operation,  
15 and maintenance of any complete or partial re-  
16 sponse action at the facility.

17 The President may issue assurances of no enforce-  
18 ment action under this Act to such person and may  
19 grant such person protection against cost recovery  
20 and contribution actions pursuant to section  
21 113(f).”.

22 (b) PROSPECTIVE PURCHASER AND WINDFALL  
23 LIEN.—Section 107 is amended by inserting after sub-  
24 section (m) the following new subsection:

1       “(n) PROSPECTIVE PURCHASER AND WINDFALL  
2 LIEN.—(1) In any case in which there are unrecovered  
3 response costs at a facility for which an owner of the facil-  
4 ity is not liable by reason of subsection (a)(6)(C), and the  
5 conditions described in paragraph (2) are met, the United  
6 States shall have a lien upon such facility for such unre-  
7 covered costs. Such lien—

8           “(A) shall not exceed the increase in fair mar-  
9 ket value of the property attributable to the response  
10 action at the time of a subsequent sale or other dis-  
11 position of property;

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

15           “(C) shall be subject to the requirements for  
16 notice and validity established in paragraph (3) of  
17 subsection (l); and

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

21       “(2) The conditions referred to in paragraph (1) are  
22 the following:

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



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

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

14          **SEC. 404. LIABILITY.**

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

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

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

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

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

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

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

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

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

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

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

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

1 this section based solely on a person’s construction activi-  
2 ties at a facility if such person can demonstrate by a pre-  
3 ponderance of evidence that—

4 “(1) such construction activities were specifi-  
5 cally directed by and carried out in accordance with  
6 a contract with an owner or operator of the facility;  
7 and

8 “(2) the person is a small business construction  
9 contractor as defined by section 101(49).”.

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

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

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

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

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

22 “(2) ACTIONS FOR RECOVERY OF COSTS.—(A)  
23 Except as provided in subparagraph (C), an initial  
24 action for recovery of costs referred to in section  
25 107 must be commenced—

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

11           “(ii) for a remedial action, within 6 years  
12          after initiation of physical on-site construction  
13          of the remedial action.

14          “(B) In any such action described in this para-  
15          graph, the court shall enter a declaratory judgment  
16          on liability for response costs or damages that will  
17          be binding in such action or in any subsequent ac-  
18          tion or actions to recover further response costs or  
19          damages. A subsequent action or actions under sec-  
20          tion 107 for further response costs at the vessel or  
21          facility may be maintained at any time during the  
22          response action, but must be commenced no later  
23          than 3 years after the date of completion of all re-  
24          sponse action. Except as otherwise provided in this  
25          paragraph, an action may be commenced under sec-

1       tion 107 for recovery of costs at any time after such  
2       costs have been incurred.

3           “(C) An action by any potentially responsible  
4       party against another potentially responsible party  
5       for recovery of any response costs or damages must  
6       be commenced within the later of—

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

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

12           “(I) the date of judgment in any ac-  
13       tion under this Act for recovery of such  
14       costs or damages, or

15           “(II) the date of any administrative  
16       order or judicial settlement for recovery of  
17       the costs or damages paid or incurred pur-  
18       suant to such a settlement.

19           “(3) CLAIMS BY THE UNITED STATES OR  
20       STATES.—Claims by the United States under section  
21       106 and claims by the United States or a State  
22       under section 107(a) shall not be deemed compul-  
23       sory counterclaims in an action against the United  
24       States or a State seeking response costs, contribu-

1       tion, damages, or any other claim by any person  
2       under this Act.”.

3       (c) JUDICIAL REVIEW.—Section 113(j)(1) (42 U.S.C.  
4 9613(j)(1)) is amended by striking “or ordered by the  
5 President” and inserting “or selected by the President  
6 pursuant to this Act, or ordered or sought by the Presi-  
7 dent,”.

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

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

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

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

16                       (B) By striking “, during or following any  
17                       civil action under section 106 or under section  
18                       107(a).” and inserting “in a claim asserted  
19                       under section 107(a).”.

20                       (C) In the second sentence, by striking  
21                       “this section” and inserting “section 107(a),  
22                       this section,”.

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

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

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



1 settling party for recovery of response costs or dam-  
2 ages incurred or paid by another person, if such  
3 costs or damages are addressed in the settlement,  
4 but shall not include protection against claims based  
5 on contractual indemnification or other express con-  
6 tractual agreements to pay such costs or damages.”.

7 (3) By adding at the end the following new  
8 paragraph:

9 “(4) LIMITATIONS ON CONTRIBUTION AC-  
10 TIONS.—(A) There shall be no right of contribution  
11 under this subsection in any of the following cir-  
12 cumstances:

13 “(i) The person asserting the right of con-  
14 tribution has waived the right in a settlement  
15 pursuant to this Act.

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

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

22 “(B) Any person who commences an action for  
23 contribution shall be liable to the person against  
24 whom the claim of contribution is brought for all  
25 reasonable costs of defending against the claim, in-

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

3 “(i) the action is barred by subparagraph  
4 (A);

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

9 “(iii) the action is brought during the mor-  
10 atorium pursuant to section 130.”.

11 **SEC. 407. SCOPE OF RULEMAKING AUTHORITY.**

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

14 **“SEC. 115. PRESIDENTIAL DELEGATION AND ASSIGNMENT**  
15 **OF DUTIES OR POWERS AND PROMULGATION**  
16 **OF REGULATIONS.**

17 “The President (or the Administrator where applica-  
18 ble) is authorized to promulgate such regulations as the  
19 President (or the Administrator where applicable) deems  
20 necessary to carry out the provisions of this Act, and to  
21 delegate and assign any duties or powers imposed upon  
22 or assigned to him by this Act, including the authority  
23 to promulgate regulations. The preceding sentence in-  
24 cludes authority to clarify or interpret all terms and to  
25 implement any provision of this Act.”.

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

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

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

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

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

1 amended by inserting after paragraph (4) the following  
2 new paragraph:

3 “(5) LIABILITY.—Any liability of a person  
4 under this Act as a response action contractor arising  
5 solely from the performance by such person of  
6 a response action contract at any facility shall be determined  
7 solely in accordance with this section with  
8 respect to such facility.”.

9 (b) IMPLEMENTATION OF ALTERNATIVE OR INNOVATIVE  
10 TECHNOLOGIES.—Section 119(a) (42 U.S.C.  
11 9619(a)) is further amended by adding at the end the following:  
12

13 “(6) IMPLEMENTATION OF ALTERNATIVE OR  
14 INNOVATIVE TECHNOLOGIES.—No response action  
15 contractor shall be liable under this Act solely as a  
16 result of such contractor’s testing or implementation  
17 of alternative or innovative treatment technologies  
18 (as defined in section 311(b)) or alternative or innovative  
19 containment technologies with respect to a response  
20 action if use of the technology in connection  
21 with the response action has been approved by the  
22 authorized Federal regulatory agency or State regulatory  
23 agency acting under a contract or cooperative  
24 agreement with the Administrator pursuant to section  
25 127. This paragraph shall not apply in the case

1 of negligence, gross negligence, or intentional mis-  
2 conduct by such contractor in implementing the ap-  
3 proved technology, including any noncompliance with  
4 the approved process for implementing the tech-  
5 nology.”.

6 (c) INDEMNIFICATION CLARIFICATION.—Section  
7 119(c)(1) (42 U.S.C. 9619(c)(1)) is amended by inserting  
8 “under Federal, State, or common law” after “any liabil-  
9 ity”.

10 (d) INDEMNIFICATION FOR THREATENED RE-  
11 LEASES.—Section 119(c)(5)(A) (42 U.S.C.  
12 9619(c)(5)(A)) is amended by inserting “or threatened re-  
13 lease” after “release” each place it appears.

14 (e) CONSIDERATIONS.—Section 119(c) (42 U.S.C.  
15 9619(c)) is amended by redesignating paragraphs (5), (6),  
16 (7), and (8) as paragraphs (6), (7), (8), and (9), respec-  
17 tively, and by inserting after paragraph (4) the following  
18 new paragraph:

19 “(5) CONSIDERATIONS.—In exercising the  
20 President’s discretion under this subsection whether  
21 to provide an indemnification agreement, the Presi-  
22 dent should consider the adequacy of competition in  
23 response to solicitations, the availability of adequate  
24 insurance at a fair and reasonable price (including  
25 consideration of premium, policy terms, deductibles,

1 policy coverage, limits, and renewal terms), applica-  
2 ble statutes of limitation that may apply to actions  
3 against response action contractors, and any other  
4 factors the President considers relevant.”.

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

7 (1) in subsection (e)(2)(C) by striking “1996”  
8 and inserting “2000”; and

9 (2) in subsection (g)(5) by striking “1995” and  
10 inserting “1999”.

11 **SEC. 409. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

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

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

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

17 “(D) COMPLIANCE.—Any consent decree  
18 shall require the parties to attempt expedi-  
19 tiously to resolve disagreements concerning im-  
20 plementation of the remedial action informally  
21 with the appropriate Federal and State agen-  
22 cies. Where the parties agree, the consent de-  
23 cree may provide for administrative enforce-  
24 ment. Each consent decree shall also contain  
25 stipulated penalties for violations of the decree

1 in an amount not to exceed \$25,000 per day,  
2 which may be enforced by either the President  
3 or the State. Such stipulated penalties shall not  
4 be construed to impair or affect the authority  
5 of the court to order compliance with the spe-  
6 cific terms of any such decree.”.

7 (3) By amending subsection (e)—

8 (A) By inserting after paragraph (1)(C)  
9 the following:

10 “(D) For each potentially responsible  
11 party, the evidence that indicates that each ele-  
12 ment of liability contained in section 107(a) is  
13 present.”.

14 (B) By striking paragraph (3).

15 (C) By redesignating paragraphs (4) and  
16 (5) as paragraphs (3) and (4), respectively.

17 (4) By adding at the end of subsection (g)(1)  
18 the following: “The President may waive any condi-  
19 tion or requirement of subparagraph (B), for a per-  
20 son liable as an owner under section 107(a)(1), if  
21 not more than a de minimus amount of any hazard-  
22 ous substance was released as a result of the genera-  
23 tion, transportation, storage, treatment, or disposal  
24 of hazardous substances at the facility by the owner  
25 and persons affiliated with the owner after the

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

4 Section 122(f) is amended as follows:

5 (1) By amending paragraph (1) to read as fol-  
6 lows:

7 “(1) FINAL COVENANTS.—The President shall  
8 offer potentially responsible parties who enter into  
9 settlement agreements that are in the public interest  
10 a final covenant not to sue concerning any liability  
11 to the United States under this Act, including a cov-  
12 enant with respect to future liability, for response  
13 actions or response costs addressed in the settle-  
14 ment, if all of the following conditions are met:

15 “(A) The settling party agrees to perform,  
16 or there are other adequate assurances of the  
17 performance of, a final remedial action author-  
18 ized by the Administrator for the release or  
19 threat of release that is the subject of the set-  
20 tlement.

21 “(B) The remedial action does not provide  
22 that any hazardous substances will remain at  
23 the facility at concentrations above the protec-  
24 tive concentration levels established pursuant to

1 section 121(d) after the final remedial action is  
2 completed.

3 “(C) The settlement agreement has been  
4 reached prior to the commencement of litigation  
5 against the settling party under section 106 or  
6 107 of this Act with respect to this facility.

7 “(D) The settling party waives all con-  
8 tribution rights against other potentially re-  
9 sponsible parties at the facility.

10 “(E) The settling party pays a premium  
11 that compensates for the risks of remedy fail-  
12 ure; future liability resulting from unknown  
13 conditions; unanticipated increases in the cost  
14 of any uncompleted response action, unless the  
15 settling party is performing the response action;  
16 and, where applicable, the United States litiga-  
17 tion risk as provided in section 130 with respect  
18 to persons who have not resolved their liability  
19 to the United States under this Act, unless all  
20 parties have settled their liability to the United  
21 States, or the settlement covers 100 percent of  
22 the United States response costs. The President  
23 shall have sole discretion to determine the ap-  
24 propriate amount of any such premium, and  
25 such determinations are committed to the

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

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

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

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

1 of cost recovery, the reliability of any response ac-  
2 tion or actions to restore, replace, or acquire the  
3 equivalent of injured natural resources, the extent to  
4 which performance standards are included in the  
5 order or decree, the extent to which the technology  
6 used in the response action is demonstrated to be ef-  
7 fective, and any other factors relevant to the protec-  
8 tion of human health and the environment.”.

9 (3) Such subsection (f) is amended by striking  
10 paragraph (4) and redesignating paragraphs (5) and  
11 (6) as paragraphs (4) and (5), respectively.

12 (4) Paragraph (2) is amended by striking “re-  
13 medial” each place it appears and inserting “re-  
14 sponse”.

15 (5) Subparagraph (A) of paragraph (5) (as so  
16 redesignated) is amended—

17 (A) by striking “remedial” and inserting  
18 “response”;

19 (B) by striking “paragraph (2)” in the  
20 first sentence and inserting “paragraph (1) or  
21 (2)”;

22 (C) by striking “de minimis settlements”  
23 and inserting “de minimis and other expedited  
24 settlements pursuant to subsection (g) of this  
25 section”; and

1 (D) by striking “the President certifies  
2 under paragraph (3) that remedial action has  
3 been completed at the facility concerned”, and  
4 inserting “that the response action that is the  
5 subject of the settlement agreement is se-  
6 lected”.

7 (6) Subparagraph (B) of paragraph (5) (as so  
8 redesignated) is amended as follows:

9 (i) By striking “In extraordinary cir-  
10 cumstances, the” and inserting “The”.

11 (ii) By striking “those referred to in  
12 paragraph (4) and”.

13 (iii) By striking “if other terms,” and  
14 inserting “, if the agreement containing  
15 the covenant not to sue provides for pay-  
16 ment of a premium to address possible  
17 remedy failure or any releases that may re-  
18 sult from unknown conditions, and if other  
19 terms,”.

20 (iv) By inserting at the end the fol-  
21 lowing: “The President may, in his discre-  
22 tion, waive or reduce the premium pay-  
23 ment for persons who demonstrate an in-  
24 ability to pay such a premium.”.

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

2 Section 122 is amended as follows:

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

7 “(g) EXPEDITED FINAL SETTLEMENT.—

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

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

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



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

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

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

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

1 107(a) for up to 10 percent of the total re-  
2 sponse costs at the facility.

3 “(D)(i) The potentially responsible party is  
4 a natural person, a small business, or a munici-  
5 pality and can demonstrate to the United  
6 States an inability or limited ability to pay re-  
7 sponse costs. A party who enters into a settle-  
8 ment pursuant to this subparagraph shall be  
9 deemed to have resolved its liability under this  
10 Act to the United States for all matters ad-  
11 dressed in the settlement.

12 “(ii) For purposes of this subparagraph,  
13 the following provisions apply:

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

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

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

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

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

3           “(iii) For purposes of this subparagraph,  
4           in the case of a municipal owner or operator of  
5           a facility, the President shall consider, to the  
6           extent that information is provided by the mu-  
7           nicipality, the following factors:

8                   “(I) the municipality’s general obliga-  
9                   tion bond rating and information about the  
10                  most recent bond issue for which the rat-  
11                  ing was prepared;

12                  “(II) the amount of total available  
13                  funds (other than dedicated funds and  
14                  State assistance payments for remediation  
15                  of inactive hazardous waste sites);

16                  “(III) the amount of total operating  
17                  revenues (other than obligated or encum-  
18                  bered revenues);

19                  “(IV) the amount of total expenses;

20                  “(V) the amounts of total debt and  
21                  debt service;

22                  “(VI) per capita income;

23                  “(VII) real property values;

24                  “(VIII) unemployment information;

25                  and

1           “(IX) population information.

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

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

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

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

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

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

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

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

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

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

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

21 (B) by striking paragraph (5).

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

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

1 FINES, CIVIL PENALTIES, PUNITIVE DAMAGES,  
2 AND COST RECOVERY.—”.

3 (B) In paragraph (1)—

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

8 (ii) In the first sentence, by inserting  
9 after “if the claim has not been referred to  
10 the Department of Justice for further ac-  
11 tion.” the following: “The head of any de-  
12 partment or agency with the authority to  
13 seek fines, civil penalties, or punitive dam-  
14 ages under this Act may consider, com-  
15 promise, and settle claims for any such  
16 fines, civil penalties, or punitive damages  
17 which may otherwise be assessed in civil  
18 administrative or judicial proceedings if  
19 the claim has not been referred to the De-  
20 partment of Justice for further action. If  
21 the total claim for fines, civil penalties, or  
22 punitive damages exceeds \$300,000, such  
23 claim may be compromised and settled  
24 only with the prior written approval of the  
25 Attorney General.”.



1 (iii) In the second sentence, by strik-  
2 ing “\$500,000 (excluding interest), any  
3 claim referred to in the preceding sen-  
4 tence” and inserting “\$2,000,000 (exclud-  
5 ing interest), any claim for response costs  
6 referred to in this subsection”.

7 (C) By striking paragraph (4).

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

9 Insert after section 129 the following new section:

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

11 “(a) SCOPE.—

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

20 “(2) PRE-INTRODUCTION RODS.—For each non-  
21 federally owned facility listed on the National Prior-  
22 ities List involving 2 or more potentially responsible  
23 parties, for any remedial action selected by the  
24 President before February 3, 1994, the Adminis-  
25 trator shall initiate the allocation process under this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        sponse action for which an allocation is required  
2        under subsection (a)(1) or (2), or for which the Ad-  
3        ministrator has initiated an allocation under sub-  
4        section (a)(3), until 90 days after issuance of the  
5        allocator’s report under subsection (h) or (m),  
6        whichever is later.

7            “(2) STAY OF EXISTING ACTIONS.—If a claim  
8        for response costs pursuant to section 107 of this  
9        Act or an action seeking recovery of response costs  
10       in connection with a response action for which an al-  
11       location is required under subsection (a)(1) or  
12       (a)(2), or for which the Administrator has initiated  
13       an allocation under subsection (a)(3), is pending—

14            “(A) upon the date of enactment of the  
15            Superfund Reform Act of 1994, or

16            “(B) upon initiation of an allocation,  
17        the action or claim shall be stayed until 90 days  
18        after the issuance of the allocator’s report under  
19        subsection (h) or (m), unless the court determines  
20        that a stay will result in manifest injustice.

21            “(3) STATUTE OF LIMITATIONS.—Any applica-  
22        ble limitations period with respect to a cause of ac-  
23        tion subject to paragraph (1) shall be tolled from the  
24        earlier of the following until 180 days after the issu-

1       ance of the allocator’s report under subsection (h) or  
2       (m):

3               “(A) The date of listing of the facility on  
4               the National Priorities List.

5               “(B) The commencement of the allocation  
6               process pursuant to this section.

7       “(c) COMMENCEMENT OF ALLOCATION.—

8               “(1) RESPONSIBLE PARTY SEARCH.—At all fa-  
9               cilities subject to this section, the Administrator  
10              shall, as soon as practicable, but not later than 60  
11              days after the commencement of the remedial inves-  
12              tigation, initiate a thorough investigation and search  
13              for all potentially responsible parties, using his au-  
14              thorities under section 104. Any person may submit  
15              information to the Administrator concerning any po-  
16              tentially responsible party at the facility, and the  
17              Administrator shall consider such information in  
18              carrying out the responsible party search.

19              “(2) NOTIFICATION OF DE MINIMIS PARTIES.—  
20              As soon as practicable after receipt of sufficient in-  
21              formation, but not more than 12 months after the  
22              commencement of the remedial investigation, the  
23              Administrator shall take each of the following ac-  
24              tions:

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

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

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

1 after commencement of the remedial investigation,  
2 the Administrator shall—

3 “(A) notify any party not previously noti-  
4 fied under paragraph (2) who the Adminis-  
5 trator determines is eligible for an expedited  
6 final settlement in accordance with section  
7 122(g)(1)(A) of its eligibility, based on informa-  
8 tion available to the Administrator at the time  
9 the determination is made;

10 “(B) issue a list of all potentially respon-  
11 sible parties preliminarily identified by the Ad-  
12 ministrator to all such parties;

13 “(C) notify the public, in accordance with  
14 section 117(d), of the list of potentially respon-  
15 sible parties identified pursuant to subpara-  
16 graphs (A) and (B) by the Administrator; and

17 “(D) make available all responses to the  
18 Administrator’s information requests, as well as  
19 other relevant information concerning the facil-  
20 ity and potentially responsible parties, to the  
21 notified parties, to the extent it is available to  
22 the Administrator.

23 The Administrator shall not make available any  
24 privileged or confidential information, except as oth-  
25 erwise authorized by law. The Administrator shall

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

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

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

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

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

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



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

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

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

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

1           “(ii) identify in writing, as to each of the  
2           proposed additional parties, which parties the  
3           Administrator has determined, in the Adminis-  
4           trator’s sole discretion—

5                   “(I) to be eligible for expedited settle-  
6                   ment pursuant to section 122(g),

7                   “(II) not to be eligible for such expe-  
8                   dited settlement, and

9                   “(III) for whom insufficient informa-  
10                  tion exists to determine whether or not the  
11                  party is eligible for such expedited settle-  
12                  ment; and

13           “(iii) identify (in writing supported by  
14           brief explanation) those parties as to which the  
15           Administrator has determined, in the Adminis-  
16           trator’s sole discretion, that there is an inad-  
17           equate basis in law or fact to determine that  
18           the party is liable under this Act.

19           The Administrator shall consider, when making de-  
20           terminations under this subparagraph, all available  
21           information provided pursuant to section  
22           130(c)(5)(B). For each party identified under clause  
23           (iii), the Administrator shall further identify whether  
24           that party, if liable, would be eligible for an expe-  
25           dited settlement.

1           “(B) At the time of issuance of the list of par-  
2           ties provided for in subparagraph (A), the Adminis-  
3           trator shall provide the potentially responsible par-  
4           ties who received notice under this paragraph with  
5           a list of neutral parties who are not employees of the  
6           United States and who the Administrator deter-  
7           mines, in the Administrator’s sole discretion, are  
8           qualified to perform an allocation at the facility.

9           “(C) De minimis parties the Administrator  
10          identifies as potentially liable but eligible for expe-  
11          dited settlement pursuant to this section, shall not  
12          be subject to, or assigned a share in, the allocation  
13          (except to the extent required to determine the or-  
14          phan share pursuant to subsection (h)), unless that  
15          party fails to reach an agreement with the President  
16          on settlement terms within 30 days after the offer.

17          “(D) If the Administrator determines that there  
18          is an inadequate basis in law or fact to conclude that  
19          a party is liable based on the information presented  
20          by the nominating party or otherwise available to  
21          the Administrator, the determination shall have the  
22          following effect:

23                  “(i) With respect to a party that the Ad-  
24                  ministrator has determined to be—

1           “(I) exempt from liability pursuant to  
2           section 107(a)(6)(A) or (B); or

3           “(II) not liable on some other basis  
4           but who, if liable, would be eligible for an  
5           expedited settlement,

6           the Administrator’s determination shall mean  
7           that the party shall not be subject to, and shall  
8           not be assigned a share in, the allocation.

9           “(ii) With respect to all other parties, the  
10          Administrator’s determination shall be accorded  
11          deference by the allocator. For such parties the  
12          allocator shall consider the Administrator’s de-  
13          termination together with the allocation factors  
14          listed in subsection (h)(2).

15          “(E) The Administrator’s determinations for  
16          purposes of this subsection shall not be subject to  
17          judicial review, nor shall any determination or expla-  
18          nation provided for purposes of the allocation be ad-  
19          missible for any purpose in an action commenced by  
20          the United States against the party that is the sub-  
21          ject of the determination or any other party.

22          “(F) The allocator may assign a zero share to  
23          any party the allocator determines should receive  
24          such a share in consideration of the allocation fac-

1       tors including the Administrator’s determinations  
2       under subparagraph (C).

3           “(G) If a party is included in the allocation  
4       pursuant to the nomination of a potentially respon-  
5       sible party pursuant to subsection (c)(5), but as-  
6       signed a zero share by the allocator, that party’s  
7       costs of participating in the allocation (including  
8       reasonable attorneys’ fees) shall be borne by the  
9       party who proposed the addition of the party to the  
10      allocation.

11      “(d) DE MINIMIS SETTLEMENT OFFER.—(1) Within  
12      30 days after the final list of parties is issued pursuant  
13      to paragraph (6) of subsection (c), the Administrator shall  
14      submit a written settlement offer to any party identified  
15      as a potentially responsible party pursuant to this section  
16      who the Administrator has determined to be eligible for  
17      an expedited final settlement in accordance with section  
18      122(g)(1)(A), and who has not entered into a settlement  
19      with the United States regarding the matters being ad-  
20      dressed by the allocation. The Administrator shall, at the  
21      same time, make available to such party upon request any  
22      nonconfidential information related to the party’s settle-  
23      ment.

24      “(2) The President shall not include any premia pur-  
25      suant to section 122(g) in a settlement offer made pursu-

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

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

15 “(e) SELECTION OF ALLOCATOR.—

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

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

1       lowing voting method with each allocation party hav-  
2       ing a single vote:

3               “(A) Each allocation party, with the Ad-  
4               ministrator voting for the identified but insol-  
5               vent or defunct parties, shall numerically rank  
6               the individuals on the final list of proposed  
7               allocators, with a ranking of 1 indicating first  
8               preference, and forward its vote to the Adminis-  
9               trator within 30 days of the issuance of the  
10              final list of allocators pursuant to subsection  
11              (c)(6)(B).

12             “(B) The proposed allocator who receives  
13             the lowest combined numerical score, taking  
14             into account all votes submitted to the Adminis-  
15             trator pursuant to clause (i), and who agrees to  
16             serve as allocator, shall be the allocator.

17             “(3) PEREMPTORY STRIKE.—The Adminis-  
18             trator may reject any allocator selected by the allo-  
19             cation parties if the proposed allocator is not on the  
20             list provided under paragraph (6)(B) of subsection  
21             (c). In the case of any such rejection, the allocation  
22             parties shall select the allocator in order of numeri-  
23             cal ranking in accordance with this subsection.

24             “(4) SELECTION OF ALLOCATOR BY EPA.—If  
25             the allocation parties do not select an allocator pur-

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

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

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



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

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

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

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

17          “(h) ALLOCATION DETERMINATION.—

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

1 costs at the facility, and provide such report to the  
2 allocation parties and the Administrator. The allo-  
3 cator shall provide the report to the allocation par-  
4 ties and the Administrator within 180 days of the is-  
5 suance of the list of allocation parties pursuant to  
6 subsection (c)(6) or the date of the contract for allo-  
7 cation service pursuant to subsection (f), whichever  
8 is later. Upon request, for good cause shown, the  
9 Administrator may grant the allocator additional  
10 time to complete the allocation, not to exceed 90  
11 days.

12 “(2) FACTORS IN THE ALLOCATION.—The allo-  
13 cator shall prepare a nonbinding, equitable allocation  
14 of percentage shares for the facility based on the fol-  
15 lowing factors:

16 “(A) The amount of hazardous substances  
17 contributed by each allocation party.

18 “(B) The degree of toxicity of hazardous  
19 substances contributed by each allocation party.

20 “(C) The mobility of hazardous substances  
21 contributed by each allocation party.

22 “(D) The degree of involvement of each al-  
23 location party in the generation, transportation,  
24 treatment, storage, or disposal of the hazardous  
25 substance.

1           “(E) The degree of care exercised by each  
2 allocation party with respect to the hazardous  
3 substance, taking into account the characteris-  
4 tics of the hazardous substance.

5           “(F) The cooperation of each allocation  
6 party in contributing to the response action and  
7 in providing complete and timely information  
8 during the allocation process.

9           “(G) Such other factors that the Adminis-  
10 trator determines are appropriate by published  
11 guidance. Any such guidance shall be consistent  
12 with this Act and shall be published only after  
13 notice and opportunity for public comment. An  
14 alleged failure of the allocator to consider 1 or  
15 more additional factors set forth in such guid-  
16 ance shall not be deemed unlawful conduct or  
17 procedural error for purposes of subsection  
18 (l)(2) or (3).

19           “(3) CONDUCT OF ALLOCATION PROCESS.—The  
20 allocator shall conduct the allocation process and  
21 render a decision based solely on the provisions of  
22 this section, including the allocation factors specified  
23 in paragraph (2). Each party to the allocation shall  
24 be afforded an opportunity to be heard (either orally  
25 or in writing, at the allocator’s discretion), and an

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

4 “(4) IDENTIFICATION OF ORPHAN SHARES.—

5 “(A) COMPONENTS OF ORPHAN SHARE.—

6 The allocator may determine that a percentage  
7 share for the facility is specifically attributable  
8 to an orphan share. The orphan share shall  
9 consist only of the following:

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

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

1 section 122(g), including the fair market  
2 value of in-kind services provided by a mu-  
3 nicipality.

4 “(iii) The difference between the ag-  
5 gregate share that the allocator deter-  
6 mines, on the basis of information pre-  
7 sented, to be specifically attributable to al-  
8 location parties with a limited ability to  
9 pay response costs and the share actually  
10 assumed by those parties in any settle-  
11 ments with the United States pursuant to  
12 section 122(g).

13 “(iv) Shares that the allocator deter-  
14 mines, on the basis of the information pre-  
15 sented, are specifically attributable to par-  
16 ties that, solely due to the operation of  
17 subsection (d)(3), have no liability under  
18 this Act for the costs of response actions  
19 at the facility for which the allocation is  
20 being performed.

21 “(B) UNATTRIBUTABLE SHARES.—Shares  
22 attributable to hazardous substances that the  
23 allocator cannot attribute to any identified  
24 party shall be distributed among the allocation  
25 parties, including the orphan share.

1       “(i) ANSWERS AND CERTIFICATIONS TO  
2 ALLOCATOR’S INFORMATION REQUESTS.—

3           “(1) SUBPOENAS AND INFORMATION RE-  
4 QUESTS.—Where necessary to assist in determining  
5 the allocation of shares, the allocator may request  
6 information or documents from any allocation party  
7 in accordance with paragraphs (2) or (5) of section  
8 104(e), and require by subpoena the attendance of  
9 persons or the production of documents, or other in-  
10 formation in accordance with section 104(e)(7). Any  
11 allocation party to whom a request is directed shall  
12 include in the response a certification by a respon-  
13 sible representative or authorized representative that  
14 satisfies the requirement of section 104(e)(3). The  
15 allocator may also request the Administrator to uti-  
16 lize the authorities of paragraph (2) and to exercise  
17 any information-gathering authority of the Adminis-  
18 trator under this Act.

19           “(2) POWERS OF THE ALLOCATOR.—In addi-  
20 tion to the information-gathering authority set forth  
21 in paragraph (1), the allocator shall have the au-  
22 thority to schedule meetings and require the attend-  
23 ance of allocation parties at such meetings; to re-  
24 quire that allocation parties wishing to present simi-  
25 lar legal or factual positions consolidate their pres-

1 entations; to obtain or employ support services, in-  
2 cluding secretarial and clerical services, computer  
3 support services, and legal and investigative services;  
4 and to take any other actions necessary to conduct  
5 a fair, efficient, and impartial allocation process.

6 “(j) CIVIL AND CRIMINAL PENALTIES.—

7 “(1) CIVIL PENALTIES.—Where the allocator is-  
8 sues an administrative subpoena or information re-  
9 quest pursuant to subsection (i), a party who unrea-  
10 sonably fails to comply with the subpoena or request  
11 shall be subject to a civil penalty not to exceed  
12 \$25,000 for each day of noncompliance.

13 “(2) ENFORCEMENT.—The allocator may seek  
14 enforcement of an administrative subpoena or infor-  
15 mation request pursuant to subsection (i)(1), and  
16 shall seek such enforcement by requesting that the  
17 Attorney General commence an action to enforce the  
18 subpoena or request. The Attorney General, within  
19 30 days after receiving such request from the allo-  
20 cator, shall—

21 “(A) notify the allocator that the Attorney  
22 General will commence an action to enforce the  
23 subpoena or information request;

24 “(B) notify the allocator that the Attorney  
25 General will not seek enforcement of the sub-

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

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

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

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



1 that other circumstances make an award of expenses  
2 unjust.

3 “(5) CRIMINAL.—Any person who knowingly  
4 and willfully makes any false material statement or  
5 representation in the response to an allocator’s in-  
6 formation request or subpoena issued pursuant to  
7 subsection (i) shall be deemed to have made a false  
8 statement on a matter within the jurisdiction of the  
9 United States within the meaning of section 1001 of  
10 title 18, United States Code.

11 “(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

12 “(1) DOCUMENT REPOSITORY.—The allocator  
13 shall establish and maintain a document repository  
14 containing copies of all documents and informa-  
15 tion—

16 “(A) provided by the Administrator pursu-  
17 ant to this section,

18 “(B) provided or generated by the alloca-  
19 tion parties, or

20 “(C) generated by the allocator during the  
21 allocation.

22 The documents and information in the document re-  
23 pository shall be available only to the parties to the  
24 allocation process for review and copying at their  
25 own expense, subject to the confidentiality provisions

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

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

1           “(A) a new allocation pursuant to sub-  
2           section (m) or (n) for the same remedial action,  
3           or

4           “(B) an initial allocation for a different re-  
5           medial action at the same facility.

6           Nothing in this section shall be construed to author-  
7           ize any person, including the allocator, to withhold  
8           any documents or information from Congress, or any  
9           duly authorized Committee thereof, or limit in any  
10          manner the right of Congress, or any duly author-  
11          ized Committee thereof, to obtain such documents or  
12          information. Any person disclosing such documents  
13          or information to Congress shall notify the person  
14          who produced such documents or information of the  
15          fact of such disclosure pursuant to paragraph (5).

16          “(3) DISCOVERABILITY AND ADMISSIBILITY.—  
17          Notwithstanding the foregoing, if the original of any  
18          document or material submitted to the allocator or  
19          placed in the document repository was, in the hands  
20          of the party which provided it, otherwise discover-  
21          able or admissible, then such original document, if  
22          subsequently sought from such party, shall remain  
23          so. If a fact generated or obtained during the alloca-  
24          tion was, in the hands of a witness, otherwise discov-

1 erable or admissible, then such fact, if subsequently  
2 sought from such other party, shall remain so.

3 “(4) NO WAIVER OF PRIVILEGE.—The submis-  
4 sion of, documents, or information pursuant to the  
5 allocation process shall not be deemed to be a waiver  
6 of any privilege, applicable to such documents or in-  
7 formation under any Federal or State law or rule of  
8 discovery or evidence.

9 “(5) PROCEDURE WHEN DISCOVERY IS  
10 SOUGHT.—Any person, including the United States  
11 and any Federal, State, or local agency, department  
12 or instrumentality, receiving any request for a state-  
13 ment, document, or material submitted, or for the  
14 record of any allocation proceeding, shall promptly  
15 notify the person who originally submitted such item  
16 and, except in the case of a request from the Con-  
17 gress or a duly authorized committee thereof, shall  
18 provide such submitting person the opportunity to  
19 assert and defend the confidentiality of such item.  
20 No person shall release or provide a copy of the item  
21 to any person not a party to such allocation, other  
22 than the Congress or a duly authorized committee  
23 thereof, except as may be required by court order.

24 “(6) CIVIL PENALTY FOR VIOLATION OF CON-  
25 FIDENTIALITY.—Any person who fails to maintain

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

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

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

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

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

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

1 the Attorney General shall make any such determination  
2 within 180 days after the receipt of the first offer based  
3 on the allocator's report. The determinations of the Ad-  
4 ministrator and the Attorney General under this sub-  
5 section shall not be judicially reviewable. No such deter-  
6 mination may be delegated to any officer or employee of  
7 the Environmental Protection Agency or the Department  
8 of Justice below the level of an Assistant Secretary or Act-  
9 ing Assistant Secretary with authority for implementing  
10 this Act at the Environmental Protection Agency or the  
11 Department of Justice.

12       “(m) SECOND ALLOCATION.—If the United States  
13 rejects an allocator's report, the parties shall select a new  
14 allocator pursuant to subsection (e) to perform, on an ex-  
15 pedited basis, a new allocation based on the same record  
16 available to the first allocator. The moratorium on com-  
17 mencement of litigation and tolling of statutes of limita-  
18 tion set forth in subsection (b) shall be extended until 90  
19 days after the issuance of the second allocation report. If  
20 the United States rejects the second allocation the Presi-  
21 dent may, following the expiration of the moratorium on  
22 commencement of litigation, commence an action under  
23 section 107.

24       “(n) NEW INFORMATION.—Any settling party, in-  
25 cluding the United States, may seek a new allocation pur-

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

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

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

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

18 “(o) SETTLEMENT FOLLOWING ALLOCATION.—

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

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

1 the additional terms and conditions of settle-  
2 ment (other than the allocated percentage  
3 share) that are acceptable to the President, and

4 “(B) is not in default on any information  
5 requests under this Act,

6 then the President shall not seek a higher percent-  
7 age share other than the premia authorized by this  
8 section, unless the President has rejected the offer  
9 on a basis other than the percentage share, or unless  
10 the Administrator and the Attorney General have re-  
11 jected the allocation report pursuant to subsection  
12 (l).

13 “(2) EXPLANATION OF REFUSAL TO SETTLE.—  
14 If the Administrator and the Attorney General de-  
15 termine not to settle on the basis of the allocation,  
16 they shall provide the allocation parties and mem-  
17 bers of the affected community with a written expla-  
18 nation of the Administrator’s determination.

19 “(3) SETTLEMENT PROVISIONS.—Settlements  
20 based on allocated shares shall include each of the  
21 following:

22 “(A) A waiver of contribution rights  
23 against all parties who are potentially respon-  
24 sible parties for the response action, as well as  
25 a waiver of any rights to challenge any settle-



1           ment the President enters into with any other  
2           potentially responsible party.

3           “(B) Covenants not to sue, consistent with  
4           section 122(f), and provisions regarding per-  
5           formance or adequate assurance of performance  
6           of response actions addressed in the settlement.

7           “(C) A premium determined on a site spe-  
8           cific basis and subject to the limitations set  
9           forth in paragraph (4), that compensates for  
10          the United States litigation risk with respect to  
11          potentially responsible parties who have not re-  
12          solved their liability to the United States, ex-  
13          cept that no such premium shall apply if all  
14          parties settle or the settlement covers 100 per-  
15          cent of response costs.

16          “(D) Contribution protection, consistent  
17          with section 113(f), regarding matters ad-  
18          dressed in the settlement. Such settlement does  
19          not discharge any of the other potentially re-  
20          sponsible parties unless its terms so provide,  
21          but it reduces the potential liability of the oth-  
22          ers by the amount of the settlement.

23          “(E) Provisions through which the settling  
24          parties shall receive reimbursement from the  
25          Fund for any response costs incurred by such

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

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

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

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

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

1 less than 60 percent of responsibility at the fa-  
2 cility.

3 “(D) Twenty percent of the total costs as-  
4 sumed by a settling party, where settlements  
5 (and any orphan share identified by the allo-  
6 cator) account for 40 percent or less of respon-  
7 sibility at the facility.

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

20 “(5) AUTHORIZATION OF REIMBURSEMENT.—  
21 In any settlement in which a party agrees to per-  
22 form response work in excess of its share, the Ad-  
23 ministrator shall have authority to carry out his  
24 duty to reimburse settling parties under this section

1 pursuant to such reasonable procedures as the Ad-  
2 ministrator may prescribe.

3 “(6) REIMBURSEMENT CLAIMS.—The Adminis-  
4 trator shall require all claims for reimbursement to  
5 be supported by—

6 “(A) documentation of actual costs in-  
7 curred; and

8 “(B) sufficient information to enable the  
9 Administrator to determine whether such costs  
10 were reasonable.

11 “(7) SETTLEMENTS WITH SMALL BUSINESS  
12 PARTIES.—In connection with any small business al-  
13 location party that makes a written offer to settle-  
14 ment pursuant to paragraph (1), and that the Presi-  
15 dent determines has a limited ability or inability to  
16 pay its allocated share, the President shall apply the  
17 provisions of section 122(g)(1)(D)(ii).

18 “(8) INDEPENDENT AUDITING.—The Adminis-  
19 trator may require independent auditing of any  
20 claim for reimbursement.

21 “(p) POST-ALLOCATION LITIGATION.—

22 “(1) IN GENERAL.—The United States may  
23 commence an action under section 107 against any  
24 person liable under that section who has not resolved  
25 its liability to the United States following allocation,

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

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

1 United States. This certification shall not be subject  
2 to judicial review.

3 “(3) DEFENDANTS.—No person may commence  
4 an action under section 107 or otherwise seek con-  
5 tribution against any person who was not identified  
6 as an allocation party pursuant to subsection (c) or  
7 subsequently identified as a potentially liable party  
8 under subsection (n) (relating to new information).

9 “(4) ADMISSIBILITY OF ALLOCATOR’S RE-  
10 PORT.—The allocator’s report shall not be admissi-  
11 ble in any court for any purpose, except as set forth  
12 in this section. The allocator’s report, subject to the  
13 rules and discretion of the court, may be admissible  
14 solely for the purpose of assisting the court in mak-  
15 ing an equitable allocation of response costs among  
16 the relative shares of nonsettling liable parties.

17 “(5) COSTS OF ALLOCATION PROCEDURE ON  
18 ORPHAN SHARE.—

19 “(A) INCLUDED AS COSTS OF RE-  
20 SPONSE.—The costs of implementing the alloca-  
21 tion procedure set forth in this section, includ-  
22 ing reasonable fees and expenses of the allo-  
23 cator, shall be considered necessary costs of re-  
24 sponse for purposes of this Act.

1           “(B) ORPHAN SHARE.—The costs attrib-  
2           utable to any funding of orphan shares identi-  
3           fied by the allocator pursuant to subsection  
4           (e)(4) also shall be considered necessary costs  
5           of response for purposes of this Act, and shall  
6           be recoverable from liable parties who do not  
7           resolve their liability on the basis of the alloca-  
8           tion.

9           “(6) REJECTION OF SHARE DETERMINATION.—  
10          In any action by the United States under this title,  
11          if the United States has rejected an offer of settle-  
12          ment that is consistent with subsection (o) and that  
13          was presented to the United States prior to the expi-  
14          ration of the moratorium period set forth in sub-  
15          section (b), the offeror shall be entitled to recover  
16          from the United States the offeror’s reasonable costs  
17          of defending the action after the making of the offer  
18          (including reasonable attorneys’ fees) if the ultimate  
19          resolution of liability or allocation of costs with re-  
20          spect to the offeror (taking into account all settle-  
21          ments and reimbursements with respect to the facil-  
22          ity other than those attributable to insurance or in-  
23          demnification), is as, or more, favorable to the  
24          offeror than the offer based on the allocation.

25          “(q) REIMBURSEMENT FOR UAO PERFORMANCE.—

1           “(1) REIMBURSEMENT.—Parties who satisfac-  
2           torily perform work under an administrative order  
3           issued under section 106(a) with respect to a reme-  
4           dial action for which an allocation is required by  
5           subsection (a)(1), shall be entitled to reimbursement  
6           for the reasonable and necessary costs of work they  
7           perform in excess of the share assigned to them in  
8           the allocation in accordance with the provisions of  
9           this section, provided that the allocation report is  
10          not rejected by the United States and, that, at the  
11          end of the moratorium following the allocation, the  
12          performing party, in consideration of such reim-  
13          bursement—

14                 “(A) agrees not to contest liability for all  
15                 response costs not inconsistent with the Na-  
16                 tional Contingency Plan to the extent of the al-  
17                 located share;

18                 “(B) receives no covenant not to sue;

19                 “(C) agrees that its reimbursement shall  
20                 be reduced by an amount equal to the maxi-  
21                 mum litigation risk premium provided for in  
22                 subsection (o)(4) based on the total allocated  
23                 shares of the allocation parties who have not  
24                 reached settlements with the United States by



1 the end of the moratorium on commencement of  
2 actions provided in subsection (b); and

3 “(D) waives contribution rights against all  
4 parties who are potentially responsible parties  
5 for the response action, as well as waives any  
6 rights to challenge any settlement the President  
7 enters into with any other potentially respon-  
8 sible party.

9 “(2) OFFSET.—Any and all reimbursement pro-  
10 vided to a performing party for work in excess of its  
11 share is subject to equitable offset or reduction by  
12 the Administrator upon a finding of a failure to per-  
13 form any aspect of the remedy in a proper and time-  
14 ly manner.

15 “(3) TIME OF PAYMENT.—Any and all reim-  
16 bursement to a performing party for work in excess  
17 of its share shall be paid after work is completed,  
18 but no sooner than completion of the construction of  
19 the remedial action.

20 “(4) LIMIT ON ORPHAN SHARE FUNDING.—The  
21 amount of orphan share funding available to the  
22 performing party shall be further limited as follows:

23 “(A) Performing parties who fully waive  
24 their right to challenge remedy selection at the  
25 end of the moratorium following allocation shall

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

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

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

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

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

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

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

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

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

18 “(r) FUNDING OF ORPHAN SHARES.—

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

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

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

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

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

3 “(s) PROCEDURES.—The Administrator, after con-  
4 sultation with the Attorney General, may promulgate rules  
5 (or guidance) of Agency organization, procedure, and  
6 practices but shall not have additional authority, except  
7 as specifically set forth in this section, to promulgate rules  
8 or publish guidance to restrict the allocator’s discretion  
9 in the conduct of the allocation.

10 “(t) ROLE OF FEDERAL AGENCIES.—Federal depart-  
11 ments, agencies, or instrumentalities that are identified as  
12 potentially responsible parties shall be subject to, and be  
13 entitled to the benefits of, the allocation process provided  
14 by this section to the same extent as any other party.

15 “(u) REPRESENTATION OF THE UNITED STATES  
16 AND AFFECTED STATES.—The Administrator and the At-  
17 torney General, and a representative of any State that  
18 may be responsible for a portion of the orphan share, shall  
19 be entitled to review all documents and participate in any  
20 phase of the allocation proceeding.

21 “(v) ANNUAL REPORT.—The President shall report  
22 annually to Congress on the administration of the alloca-  
23 tion scheme under this section, and provide information  
24 comparing allocation results with actual settlements at  
25 multiparty facilities.

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

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

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

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

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

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

1 authorizes modification of any such order, judgment  
2 or decree; or

3 “(D) the validity, enforceability, finality or mer-  
4 its of any preexisting contract or agreement relating  
5 to any allocation of responsibility or any sharing of  
6 response costs under this Act.

7 “(x) RESPONSE ACTION CONTRACTOR.—A person  
8 who is potentially liable under this Act solely as a response  
9 action contractor with respect to a facility in accordance  
10 with section 119 shall not be named as an allocation party  
11 under this section with respect to that facility.”.

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

13 (a) PURPOSES.—The purposes of this section are—

14 (1) to promote the reuse and recycling of scrap  
15 material in furtherance of the goals of waste mini-  
16 mization and natural resource conservation while  
17 protecting human health and the environment;

18 (2) to level the playing field between the use of  
19 virgin materials and recycled materials; and

20 (3) to remove the disincentives and impedi-  
21 ments to recycling because of potential liability.

22 (b) CLARIFICATION OF LIABILITY UNDER CERCLA  
23 FOR RECYCLING TRANSACTIONS.—Title I is amended by  
24 adding after section 128 the following new section:

1 **“SEC. 129. RECYCLING TRANSACTIONS.**

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

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

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

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



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

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

6           “(4) The recyclable material could have been a  
7           replacement or substitute for a virgin raw material,  
8           or the product to be made from the recyclable mate-  
9           rial could have been a replacement or substitute for  
10          a product made, in whole or in part, from a virgin  
11          raw material.

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

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

23          “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 compliance with a substantive (not a procedural  
2 or administrative) provision of any Federal,  
3 State, or local environmental law or regulation,  
4 or compliance order or decree issued pursuant  
5 thereto, applicable to the handling, processing,  
6 reclamation, or other management activities as-  
7 sociated with the recyclable material; or

8 “(B) the person added hazardous substances to  
9 the recyclable material for purposes other than proc-  
10 essing for recycling; or

11 “(C) the person failed to exercise reasonable  
12 care with respect to the management and handling  
13 of the recyclable material.

14 “(2) For purposes of this subsection, an objectively  
15 reasonable basis for belief shall be determined using cri-  
16 teria that include (but are not limited to) the size of the  
17 person’s business, customary industry practices, the price  
18 paid in the recycling transaction, and the ability of the  
19 person to detect the nature of the consuming facility’s op-  
20 erations concerning its handling, processing, reclamation  
21 or other management activities associated with the recy-  
22 clable material.

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

1 with recyclable material shall be deemed to be a sub-  
2 stantive provision.

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

6 “(h) PCBs.—An exemption under this section does  
7 not apply if the recyclable material contained poly-  
8 chlorinated biphenyls in excess of 50 parts per million or  
9 any new standard promulgated pursuant to applicable  
10 Federal laws.

11 “(i) REGULATIONS.—The Administrator has the au-  
12 thority, under section 115, to promulgate additional regu-  
13 lations concerning this section.

14 “(j) EFFECT ON PENDING OR CONCLUDED AC-  
15 TIONS.—The exemptions provided in this section shall not  
16 affect any concluded judicial or administrative action or  
17 any pending judicial action initiated by the United States  
18 prior to enactment of this section.

19 “(k) LIABILITY FOR ATTORNEY’S FEES FOR CER-  
20 TAIN ACTIONS.—Any person who commences an action for  
21 contribution against a person who is not liable by oper-  
22 ation of this section shall be liable to that person for all  
23 reasonable costs of defending that action, including all  
24 reasonable attorney’s and expert witness fees.



1 “(l) RELATIONSHIP TO LIABILITY UNDER OTHER  
2 LAWS.—Nothing in this section shall affect—

3 “(1) liability under any other Federal, State, or  
4 local statute or regulation promulgated pursuant to  
5 any such statute, including any requirements pro-  
6 mulgated by the Administrator under the Solid  
7 Waste Disposal Act; or

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

## 11 **TITLE V—REMEDY SELECTION** 12 **AND CLEANUP STANDARDS**

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

14 Section 121(d) (42 U.S.C. 9621(d)) is amended as  
15 follows:

16 (1) In paragraph (3), by inserting “or 4010(c)  
17 if appropriate” after “3005”.

18 (2) By redesignating paragraphs (3) and (4) as  
19 paragraphs (9) and (10), respectively.

20 (3) By striking out the subsection heading and  
21 designation and all that follows through the end of  
22 paragraph (2) and inserting in lieu thereof the fol-  
23 lowing:

24 “(d) ESTABLISHMENT OF PROTECTIVE CONCENTRA-  
25 TION LEVELS.—

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

23           “(2) SCOPE AND PURPOSE OF NATIONAL RISK  
24           PROTOCOL.—The Administrator shall promulgate a  
25           national risk protocol for conducting risk assess-

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

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

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

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

1           “(ii) developing, consistent with the  
2           national goals under paragraph (1), chemi-  
3           cal concentration levels protective of recep-  
4           tors currently and reasonably anticipated  
5           to be exposed via the pathways included in  
6           such scenarios for the 100 contaminants  
7           most frequently occurring at facilities ad-  
8           dressed under this Act for which adequate  
9           toxicity information is available.

10           “(C) Methodologies for facility-specific  
11           evaluations of ecological risks.

12           “(3) STANDARDIZED FORMULAE OR METH-  
13           ODOLOGIES.—Standardized formulae or methodolo-  
14           gies established under subparagraphs (A) and (B) of  
15           paragraph (2) shall include the following:

16           “(A) National constants for specific char-  
17           acteristics of individual chemicals not expected  
18           to vary from facility to facility.

19           “(B) Facility-specific variables for physical  
20           characteristics of the facility and other factors.  
21           Criteria for identifying such variables shall in-  
22           clude the following:

23           “(i) Whether a characteristic or factor  
24           can be objectively measured based on ac-  
25           tual facility data or reasonably estimated

1 based on credible scientific studies when  
2 facility-measured data cannot be reason-  
3 ably obtained.

4 “(ii) Whether the effects of a char-  
5 acteristic or factor are scientifically well-  
6 understood.

7 “(iii) Whether the impact of the char-  
8 acteristic or factor on estimations of risk  
9 or protective concentration levels is signifi-  
10 cant.

11 “(C) Exposure factors related to demo-  
12 graphics (including separate exposure factors  
13 for sensitive subpopulations to be applied where  
14 relevant), activity patterns, and natural con-  
15 straints. Defaults or ranges of default values  
16 shall be established for such factors and used  
17 unless verifiable data are presented that the de-  
18 faults are significantly different from actual fa-  
19 cility conditions. In such cases, the values shall  
20 be determined on a site-specific basis after con-  
21 sideration of any views expressed by the Com-  
22 munity Working Group, if available, and the af-  
23 fected community.

24 “(4) APPLICATION OF NATIONAL RISK PROTO-  
25 COL.—(A) The President shall conduct an analysis

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

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

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

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

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

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

1           “(iii) identify criteria for the selection and  
2 application of transport and fate models;

3           “(iv) define the use of high end and central  
4 tendency exposure cases and assumptions;

5           “(v) define the use of population risk esti-  
6 mates in addition to individual risk estimates;

7           “(vi) define appropriate approaches for ad-  
8 dressing cumulative risks posed by multiple  
9 contaminants or multiple exposure pathways;  
10 and

11           “(vii) establish appropriate sampling ap-  
12 proaches and data quality requirements.

13           “(B) The national risk protocol shall establish  
14 guidelines for all risk assessments conducted under  
15 paragraph (2), including those by which protective  
16 concentration levels are established, which result in  
17 final protection at the 90th exposure percentile of  
18 the affected population defined by the President.

19           “(6) PHASING AND UPDATING OF THE NA-  
20 TIONAL RISK PROTOCOL.—The national risk protocol  
21 shall be developed in accordance with a schedule pro-  
22 mulgated by the Administrator within 90 days after  
23 the date of enactment of the Superfund Reform Act  
24 of 1994. The national risk protocol may be devel-  
25 oped and promulgated in phases as determined ap-

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

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

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

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



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

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

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

1           “(I) the level of any maximum contami-  
2           nant level or non-zero maximum contaminant  
3           level goal for any hazardous substance, pollut-  
4           ant, or contaminant which has been established  
5           under title XIV of the Public Health Service  
6           Act (the Safe Drinking Water Act), and

7           “(II) a protective concentration level that  
8           attains the goal in paragraph (1) for any other  
9           hazardous substance, pollutant, or contaminant.

10          Attainment of such levels shall satisfy the require-  
11          ments of paragraph (1). Each total remedy selected  
12          under this Act and each protective concentration  
13          level established under this subsection shall achieve  
14          the goal of this subparagraph in the ground water  
15          or surface water unless the President makes a find-  
16          ing which is published with an explanation and ap-  
17          propriate documentation that the achievement of the  
18          goal is technically impracticable from an engineering  
19          perspective or, in the case of ground water that  
20          meets the requirements of subsection (b)(4)(C) and  
21          has low levels of contamination relative to such goal,  
22          compliance with or attainment of such goal is unrea-  
23          sonably costly considering the factors under sub-  
24          section (b)(4)(A). Upon making such a finding, the

1 President shall publish the alternative remedial  
2 strategy and its goals.

3 “(ii) For the purpose of this section, the phrase  
4 ‘ground water that may be used for drinking water’  
5 shall not include ground waters (I) containing more  
6 than 10,000 milligrams per liter total dissolved sol-  
7 ids, (II) that are so contaminated by naturally oc-  
8 ccurring conditions or by the effects of broad-scale  
9 human activity unrelated to a specific activity that  
10 restoration of drinking water quality is impractica-  
11 ble, or (III) the potential source of drinking water  
12 is physically incapable of yielding a quantity of 150  
13 gallons per day of water to a well or spring without  
14 adverse environmental consequences.

15 “(iii) Remedial actions for contaminated ground  
16 water (other than ground water that may be used  
17 for drinking water) shall attain levels appropriate for  
18 the current or reasonably anticipated future use of  
19 such ground water, or levels appropriate considering  
20 the current use of any ground water or surface  
21 water to which such contaminated ground water dis-  
22 charges.

23 “(iv) Concentration levels other than those re-  
24 quired under clause (i) may be established for  
25 ground water that may be used for drinking water

1 in any case in which the following conditions are  
2 met:

3 “(I) The President determines that the use  
4 of alternate concentration levels is appropriate.

5 “(II) There are known and projected  
6 points of entry of such ground water into sur-  
7 face water.

8 “(III) On the basis of measurements or  
9 projections, there is or will be no increase of  
10 such constituents that would pose a threat to  
11 human health or the environment from such  
12 ground water in such surface water.

13 “(IV) The remedial action includes en-  
14 forceable measures that will preclude human ex-  
15 posure to the contaminated ground water within  
16 the facility and up to all known and projected  
17 points of entry of such ground water into sur-  
18 face water.

19 “(V) Monitoring to ensure attainment of  
20 the alternative concentration level is conducted  
21 in ground water at a point or points imme-  
22 diately prior to where the ground water enters  
23 into surface water. In such cases, the point of  
24 human exposure may be assumed to be at such  
25 known and projected points of entry.

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

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

1 formation presented by responsible parties at such  
2 facility) without a requirement that the remedial  
3 measure for which a finding of technical imprac-  
4 ticability is under consideration be first constructed  
5 or installed and operated and its performance over  
6 time reviewed, unless such projection, modeling,  
7 measure, or other analysis are insufficient or inad-  
8 equate to make such a finding.

9 “(D) Procedural requirements of Federal and  
10 State standards, requirements, criteria, or limita-  
11 tions, including permitting requirements, shall not  
12 apply to response actions conducted on-site. Compli-  
13 ance with subparagraph (A) shall not be required  
14 with respect to return, replacement, or disposal of  
15 contaminated media or residuals of contaminated  
16 media into the same medium in or very near existing  
17 areas of contamination on-site.

18 “(E)(i) The President may select a remedial ac-  
19 tion meeting the requirements of paragraph (1) that  
20 does not comply with or attain a Federal or State  
21 standard, requirement, criterion, or limitation as re-  
22 quired by subparagraphs (A) and (C), if the Presi-  
23 dent finds any of the following:

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

1 with or attain the applicable requirements of  
2 subparagraphs (A) and (C) of this paragraph  
3 when completed.

4 “(II) Compliance with or attainment of  
5 such requirement at that facility will result in  
6 greater risk to human health and the environ-  
7 ment than alternative options.

8 “(III) Compliance with or attainment of  
9 such requirement is technically impracticable  
10 from an engineering perspective.

11 “(IV) The remedial action selected will at-  
12 tain a standard of performance that is equiva-  
13 lent to that required under a standard, require-  
14 ment, criterion, or limitation identified under  
15 subparagraph (A) through use of another ap-  
16 proach.

17 “(V) With respect to a State standard, re-  
18 quirement, criterion, or limitation under clauses  
19 (i), (ii), and (iii) of subparagraph (A), the State  
20 has not consistently applied (or demonstrated  
21 the intention to consistently apply) the stand-  
22 ard, requirement, criterion, or limitation in  
23 similar circumstances at other remedial actions  
24 within the State.

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

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

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



1           “(B) Any State standard, requirement, criteria,  
2           or limitation referred to in subparagraph (A) shall  
3           apply where each of the following conditions is met:

4                   “(i) The State standard, requirement, cri-  
5                   teria, or limitation is of general applicability  
6                   and was adopted by formal means.

7                   “(ii) The State standard, requirement, cri-  
8                   teria, or limitation was adopted on the basis of  
9                   hydrologic, geologic, or other relevant consider-  
10                  ations and was not adopted for the purpose of  
11                  precluding onsite remedial actions or other land  
12                  disposal for reasons unrelated to protection of  
13                  human health and the environment.

14                  “(iii) The State arranges for, and assures  
15                  payment of the incremental costs of utilizing, a  
16                  facility for disposition of the hazardous sub-  
17                  stances, pollutants, or contaminants con-  
18                  cerned.”.

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

20           Section 121(b) (42 U.S.C. 9621(b)) is amended to  
21 read as follows:

22           “(b) GENERAL RULES. —

23                   “(1) SELECTION OF PROTECTIVE REMEDIES.—

24           Remedies selected at individual facilities shall be  
25           protective of human health and the environment and

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

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

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

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

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

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

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

22 “(v) The potential for economic redevelo-  
23 pment.

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

1 ecosystems, natural resources, or areas of  
2 unique historic or cultural significance.

3 “(vii) Current plans for the facility by the  
4 property owner or owners, not including poten-  
5 tial voluntary remedial measures.

6 “(B) In developing its recommendation, the  
7 Community Working Group shall consider factors  
8 (ii) through (vii) of subparagraph (A), and the  
9 President shall give substantial weight to that rec-  
10 ommendation where consensus is reached, or sub-  
11 stantial weight to the views of the affected commu-  
12 nity where the Community Working Group does not  
13 reach consensus in accordance with section 117(g).

14 “(C) All information considered by the Presi-  
15 dent in evaluating reasonably anticipated future land  
16 uses under this paragraph shall be included in the  
17 administrative record under section 113(k).

18 “(3) APPROPRIATE REMEDIAL ACTION.—(A)  
19 The President shall identify and select an appro-  
20 priate remedy that prevents exposures in excess of  
21 protective concentration levels established under sub-  
22 section (d) by balancing the following factors:

23 “(i) The effectiveness of the remedy, in-  
24 cluding its implementability.

1           “(ii) The long-term reliability of the rem-  
2           edy, that is, its capability to achieve long-term  
3           protection of human health and the environ-  
4           ment considering the preference for treatment  
5           of hot spots.

6           “(iii) Any short-term risk posed by the im-  
7           plementation of the remedy to the affected com-  
8           munity, to those engaged in the cleanup effort,  
9           and to the environment.

10          “(iv) The acceptability of the remedy to  
11          the affected community.

12          “(v) The reasonableness of the cost of the  
13          remedy.

14          “(B) HOT SPOTS.—The following shall apply to  
15          the remediation of hot spots:

16               “(i) For purposes of this section, the term  
17               ‘hot spot’ means a discrete area within a facility  
18               that contains hazardous substances, pollutants  
19               or contaminants that are present in high con-  
20               centrations, are highly mobile, or cannot be reli-  
21               ably contained, that would present a significant  
22               risk to human health or the environment should  
23               exposure occur. The President shall develop  
24               guidelines for the identification of hot spots.  
25               Such guidelines shall recommend appropriate

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

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

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

1           “(iv) Notwithstanding the presence of a  
2 hot spot, the President may select a final con-  
3 tainment remedy for hot spots at landfills and  
4 mining sites or similar facilities under the fol-  
5 lowing circumstances:

6           “(I) The hot spot is small relative to  
7 the overall volume of waste or contamina-  
8 tion being addressed, the hot spot is not  
9 readily identifiable and accessible, and  
10 without the presence of the hot spot con-  
11 tainment would have been selected as the  
12 appropriate remedy under subparagraph  
13 (A) for the larger body of waste or area of  
14 contamination in which the hot spot is lo-  
15 cated.

16           “(II) The volume and areal extent of  
17 the hot spot is extraordinary compared to  
18 other facilities, and it is highly unlikely  
19 due to the size and other characteristics of  
20 the hot spot that any treatment technology  
21 will be developed that could be imple-  
22 mented at reasonable cost.

23           Where final containment for a hot spot is selected,  
24 the President shall publish an explanation of the  
25 basis for that decision.

1           “(4) SELECTION OF RESPONSE ACTIONS FOR  
2 GROUND WATER CONTAMINATION.—

3           “(A) FACTORS.—The President shall identify  
4 and select an appropriate remedy for contaminated  
5 ground water that achieves protection of human health  
6 and the environment pursuant to subsection (d)(1) and the goal as  
7 determined pursuant to subsection (d)(7)(C) by  
8 balancing the following factors:  
9

10           “(i) The effectiveness of the remedy in  
11 achieving the goal under subsections (d)(1)  
12 and (d)(7)(C).

13           “(ii) The long-term reliability of the  
14 remedy, that is, its capability to achieve  
15 long-term protection of human health and  
16 the environment.

17           “(iii) Any short-term risk posed by  
18 the implementation of the remedy to the  
19 affected community, to those engaged in  
20 the cleanup effort, and to the environment.

21           “(iv) The acceptability of the remedy  
22 to the affected community.

23           “(v) The reasonableness of the cost of  
24 the remedy.



1           “(vi) The timeframe in which the goal  
2           of any such remedy will be achieved in re-  
3           lation to the urgency of the need and the  
4           timing of the use of such ground water

5           “(vii) The implementability of the  
6           remedy.

7           “(B) EARLY EVALUATION AND PHASED  
8           REMEDIAL ACTION.—(i) The President shall, as  
9           appropriate, employ a phased approach to site  
10          characterization and remediation in which rem-  
11          edies are arrived at through a sequence of in-  
12          vestigations and actions. Information gathered  
13          in one phase shall be used to inform each suc-  
14          cessive phase until final remediation goals are  
15          determined and attained.

16          “(ii) To facilitate efficient and effective  
17          site characterization that promotes early evalua-  
18          tion of remedial alternatives and to prevent the  
19          ground water contamination problems from  
20          worsening, the President shall ensure, to the ex-  
21          tent practicable, that hydrogeologic and con-  
22          taminant-related information necessary to select  
23          final ground water remedial actions, including  
24          findings of technical impracticability, shall be  
25          collected as part of site characterization activi-

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

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

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

1 (d)(7)(C), which includes, at a minimum, the  
2 following requirements:

3 “(i) Prevention or elimination of any  
4 actual human ingestion of drinking water  
5 containing any hazardous substance, pol-  
6 lutant or contaminant at levels in excess of  
7 the maximum contaminant level or non-  
8 zero maximum contaminant level goal es-  
9 tablished under title XIV of the Public  
10 Health Service Act (the Safe Drinking  
11 Water Act) including, as appropriate, the  
12 provision of an alternate water supply;

13 “(ii) Prevention or elimination of any  
14 actual human exposure through water that  
15 may be used for drinking to any hazardous  
16 substances, pollutants, or contaminants at  
17 levels in excess of those levels needed to  
18 protect human health.

19 “(iii) Unless technically impracticable  
20 from an engineering perspective, prevent  
21 impairment of any surface water des-  
22 ignated use established under section 303  
23 of the Federal Water Pollution Control Act  
24 caused by such hazardous substance, pol-  
25 lutant, or contaminant in any surface

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

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

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

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

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

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

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

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

1 sources to achieve protection of human health and  
2 the environment, the President shall specify the na-  
3 ture of the restrictions required to achieve such pro-  
4 tectons, including restrictions on the permissible  
5 uses of land, prohibitions on specified activities upon  
6 the property, restrictions on the drilling of wells or  
7 the use of ground water, or restrictions on the use  
8 of surface water, and may ensure that such restric-  
9 tions are incorporated into a hazardous substance  
10 easement, as provided by section 104(k). In review-  
11 ing remedial action alternatives which would require  
12 the use of such restrictions and providing oppor-  
13 tunity for public comment on those alternatives, the  
14 President shall identify the nature of any institu-  
15 tional controls that would be required to implement  
16 such restrictions, known or anticipated affected per-  
17 sons, the likely duration of such restrictions, and the  
18 anticipated costs of acquiring any appropriate haz-  
19 ardous substance easements and enforcing the ap-  
20 propriate restrictions.”.

21 **SEC. 503. MISCELLANEOUS AMENDMENTS TO SECTION 121.**

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

1           (1) in the first sentence, by striking out “initi-  
2           ation” and inserting in lieu thereof “completion of  
3           all physical on-site construction,”;

4           (2) in the second sentence, by inserting “(1)”  
5           after “it is the judgment of the President that”; and

6           (3) in the second sentence, by inserting after  
7           “section 104 or 106,” the following: “or (2) an in-  
8           terim containment remedy was selected for such site  
9           and an appropriate final remedial action is available  
10          under subsection (b)(3)(B)(iii) and appropriate to  
11          select in accordance with subsection (b)(3)(A) of this  
12          section,”.

13          (b) Section 121(e)(1) (42 U.S.C. 9621(e)(1)) is  
14          amended by adding at the end thereof the following: “Fur-  
15          thermore, no Federal, State, or local permit or permit ap-  
16          plication shall be required for on-site or off-site activities  
17          conducted under section 311(b).”.

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

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

1 rect response actions or to enforce the provisions of this  
2 Act and shall be entitled to recover the costs thereof.”.

3 (b) DISPOSAL AUTHORITY.—Section 104(j) (42  
4 U.S.C. 9604(j)) is amended—

5 (1) in paragraph (1), by striking “remedial” in  
6 the first sentence and inserting “response”;

7 (2) by striking paragraph (2);

8 (3) by redesignating paragraph (3) as para-  
9 graph (2) and in that paragraph by striking “es-  
10 tate” and inserting “property”; and

11 (4) by inserting after paragraph (2) (as redesign-  
12 dated) the following new paragraph:

13 “(3) DISPOSAL AUTHORITY.—The President is  
14 authorized to dispose of any interest in real property  
15 acquired for use by the Administrator under this  
16 subsection by sale, exchange, donation, or otherwise  
17 and any such interest in real property shall not be  
18 subject to any of the provisions of section 120 except  
19 the notice provisions of section 120(h)(1). Any mon-  
20 eys received by the President pursuant to this para-  
21 graph shall be deposited in the Fund.”.

22 (c) PRIVATE PARTY REMOVAL LIMITATIONS.—Sec-  
23 tion 104(a)(2) (42 U.S.C. 9604(a)(2)) is amended by add-  
24 ing at the end the following: “In any case in which imple-  
25 mentation of a removal action is expected to obviate or



1 in fact does obviate the need to conduct a long-term reme-  
2 dial action, such removal action must—

3 “(A) comply with the protective concentra-  
4 tion levels and other standards in subsections  
5 (b) and (d) of section 121; and

6 “(B) allow for public participation in ac-  
7 cordance with section 117 to the maximum ex-  
8 tent practicable.”.

9 **SEC. 505. REMOVAL ACTIONS.**

10 (a) OBLIGATIONS FROM FUND.—Section 104(c)(1)  
11 (42 U.S.C. 9604(c)(1)) is amended—

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

16 (2) by striking “\$2,000,000” and inserting  
17 “\$4,000,000”; and

18 (3) by striking “12 months” and inserting “two  
19 years”.

20 (b) NON-EMERGENCY REMOVALS.—Section 120(e)  
21 (42 U.S.C. 9620(e)) is amended by adding at the end the  
22 following new paragraph:

23 “(7) NOTIFICATION OF AND CONCURRENCE  
24 FROM EPA OR STATE FOR NON-EMERGENCY RE-  
25 MOVAL ACTIONS.—(A) Before the commencement of

1 any non-emergency removal action by a department,  
2 agency, or instrumentality of the United States,  
3 such department, agency, or instrumentality shall—

4 “(i) notify the Environmental Protection  
5 Agency and the State of the planned removal  
6 action; and

7 “(ii) obtain, in the case of facilities which  
8 are listed or proposed for listing on the Na-  
9 tional Priorities List, concurrence in the  
10 planned removal action from the Environmental  
11 Protection Agency or the State, as applicable.

12 “(B) The lack of concurrence under clause (ii)  
13 shall not delay the commencement of the remedial  
14 investigation and feasibility study in accordance with  
15 the time requirements of this section. The require-  
16 ments of this paragraph relating to notification and  
17 concurrence shall not affect, alter, or supplant, di-  
18 rectly or indirectly, the applicability of any State law  
19 to the removal action concerned. Within a reasonable  
20 period of time after any emergency removal action is  
21 carried out by a department, agency, or instrumen-  
22 tality of the United States, the department, agency,  
23 or instrumentality shall notify the Environmental  
24 Protection Agency or the State, as appropriate, of  
25 the removal action.”.

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

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

4 “(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

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

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

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

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

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

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

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

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

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

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

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

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

13          “(7) METHODS OF ACQUIRING EASEMENTS.—  
14          The President may acquire a hazardous substance  
15          easement by purchase or other agreement, by con-  
16          demnation, or by any other means permitted by law.  
17          Compensation for such easement shall be at fair  
18          market value, or for other consideration as agreed to  
19          by the parties, for the interest acquired. The costs  
20          of obtaining such easements, ensuring adequate pub-  
21          lic notice of such easements, and otherwise tracking  
22          and maintaining the protections afforded by the  
23          easements shall be considered response costs which  
24          are recoverable under this Act.

1           “(8) ASSIGNMENT OF EASEMENTS TO PARTIES  
2 OTHER THAN THE PRESIDENT.—

3           “(A) AUTHORITY TO ASSIGN.—The Presi-  
4 dent may assign an easement acquired under  
5 this subsection to a State or other governmental  
6 entity that has the capability of effectively en-  
7 forcing the easement over the period of time  
8 necessary to achieve the purposes of the ease-  
9 ment. In the case of any assignment, the ease-  
10 ment shall be fully enforceable by the assignee.  
11 Any assignment of such an easement by the  
12 President may be made by following the same  
13 procedures as are used for the transfer of an  
14 interest in real property to a State under sec-  
15 tion 104(j).

16           “(B) EFFECT OF ASSIGNMENT.—Any in-  
17 terest in property granted to a State or other  
18 governmental entity which restricts, limits, or  
19 controls the use of land or other natural re-  
20 sources in order to prevent exposure to, reduce  
21 the likelihood of, or otherwise respond to, a re-  
22 lease or threatened release of a hazardous sub-  
23 stance, pollutant, or contaminant, and which is  
24 expressly designated in writing as a hazardous  
25 substance easement within the meaning of this

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

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

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



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

7 “(11) ENFORCEMENT.—

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

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

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

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

18   **SEC. 507. TRANSITION.**

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

1 Federal and State requirements specified in section  
2 121(d)(7) of that Act (as amended by this Act).

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

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

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

## 19 **TITLE VI—MISCELLANEOUS**

### 20 **SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNER-** 21 **SHIP AND MIXED RESPONSIBILITY FACILI-** 22 **TIES.**

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

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

1           “(D) A provision allowing for the partici-  
2           pation of other responsible parties (if any) in  
3           the response action.”; and

4           (2) by inserting after paragraph (7) the follow-  
5           ing new paragraphs:

6           “(8) EXCEPTION TO REQUIRED ACTION.—(A) A  
7           department, agency, or instrumentality of the United  
8           States that owns or operates a facility at which the  
9           department, agency, or instrumentality exercised no  
10          regulatory or other control over activities that di-  
11          rectly or indirectly resulted in a release or threat of  
12          a release of a hazardous substance shall be subject  
13          to the requirements of paragraphs (1) through (6),  
14          other than subparagraphs (F) and (G) of paragraph  
15          (5), unless and to the extent the department, agen-  
16          cy, or instrumentality demonstrates to the satisfac-  
17          tion of the Administrator that—

18                 “(i) no department, agency, or instrumen-  
19                 tality was the primary or sole source or cause  
20                 of a release or threat of release of a hazardous  
21                 substance at the facility;

22                 “(ii) the activities either directly or indi-  
23                 rectly resulting in a release or threat of a re-  
24                 lease of a hazardous substance at the facility

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

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

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

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

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

15 “(A) addressed; or

16 “(B) waived;

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

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

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

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

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

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

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

8 Section 120(h) (42 U.S.C. 9620(h)) is amended by  
9 adding after paragraph (5) the following new paragraph:

10 “(6) AGREEMENTS TO TRANSFER BY DEED.—  
11 Nothing in this subsection shall be construed to pro-  
12 hibit the head of the department, agency, or instru-  
13 mentality of the United States from entering into an  
14 agreement to transfer by deed real property or facili-  
15 ties prior to the entering of such deed.”.

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

18 Section 111(a) is amended by adding after paragraph  
19 (6) the following new paragraph:

20 “(7) ALTERNATIVE OR INNOVATIVE TREAT-  
21 MENT TECHNOLOGIES.—Payment of no more than  
22 50 percent of response costs incurred by a poten-  
23 tially liable party in taking actions approved by the  
24 Administrator to achieve required levels of response  
25 under this Act after employing an alternative or in-

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

11 **SEC. 606. DEFINITIONS.**

12       Section 101 (42 U.S.C. 9601) is amended as follows:

13           (1) Paragraph (10)(H) is amended by striking  
14       “subject to” and inserting “in compliance with”.

15           (2) Paragraph (14) is amended by adding at  
16       the end the following: “The term includes methane,  
17       but only when a response action undertaken to ad-  
18       dress a release or threat of release of a hazardous  
19       substance (as otherwise defined in this paragraph)  
20       at a landfill or similar site also addresses methane.”.

21           (3) Paragraph (20) is amended—

22               (A) in subparagraph (A), by inserting “the  
23       United States or” after “similar means to”;

24               (B) in subparagraph (D)—



1 (i) in the first sentence by inserting  
2 “the United States or” after “does not in-  
3 clude”;

4 (ii) in the second sentence, by insert-  
5 ing “any department, agency, or instru-  
6 mentality of the United States or” before  
7 “any State”; and

8 (iii) in the second sentence, by strik-  
9 ing “a” after “such” and inserting “de-  
10 partment, agency, or instrumentality of the  
11 United States or”; and

12 (C) by adding after subparagraph (D) the  
13 following new subparagraphs:

14 “(E)(i) The term ‘owner or operator’ includes a  
15 trust or estate or a person who holds title to a vessel  
16 or facility, or otherwise is affiliated with the vessel  
17 or facility solely in a fiduciary capacity. Subject to  
18 clauses (ii) and (iii), a fiduciary holding such title or  
19 having such affiliation shall be personally subject to  
20 the obligations and liabilities of an owner or opera-  
21 tor to the same extent as if the vessel or facility  
22 were held by the fiduciary free of trust.

23 “(ii) The personal obligations and liabilities of  
24 a fiduciary referred to in clause (i) shall be limited  
25 to the extent to which the assets of the trust or es-

1       tate are sufficient to indemnify the fiduciary, un-  
2       less—

3               “(I) the obligations and liabilities would  
4       have arisen even if the person had not served  
5       as fiduciary;

6               “(II) the fiduciary’s own failure to exercise  
7       due care with respect to a vessel or facility  
8       caused or contributed to the release of hazard-  
9       ous substances following establishment of the  
10      trust, estate, or fiduciary relationship;

11              “(III) the fiduciary had a role in establish-  
12      ing the trust, estate, or fiduciary relationship,  
13      and such trust, estate, or fiduciary relationship  
14      has no objectively reasonable or substantial pur-  
15      pose apart from the avoidance or limitation of  
16      liability under this Act; or

17              “(IV) the fiduciary has not complied with  
18      such other requirements as the Administrator  
19      may set forth by regulation.

20              “(iii) A fiduciary shall not be personally liable  
21      for undertaking or directing another to undertake a  
22      response action under section 107(d)(1).

23              “(F) The term ‘owner or operator’ shall not in-  
24      clude the United States or any department, agency,  
25      or instrumentality of the United States or a con-

1 servator or receiver appointed by a department,  
2 agency, or instrumentality of the United States if  
3 the United States or the conservator or receiver  
4 meets both of the following conditions:

5 “(i) The United States, conservator, or re-  
6 ceiver acquired ownership or control of a vessel  
7 or facility (or any right or interest therein)—

8 “(I) in connection with the exercise of  
9 receivership or conservatorship authority  
10 or the liquidation or winding up of the af-  
11 fairs of any entity subject to a receivership  
12 or conservatorship, including any subsidi-  
13 ary thereof; and

14 “(II) in connection with the exercise  
15 of any seizure or forfeiture authority.

16 “(ii) The United States, conservator, or re-  
17 ceiver does not participate in the management  
18 of the vessel or facility operations that result in  
19 a release or threat of release of hazardous sub-  
20 stances and complies with such other require-  
21 ments as the Administrator may set forth by  
22 regulation.”.

23 (4) Paragraph (23) (relating to the terms “re-  
24 move” and “removal”) is amended—

25 (A) in the first sentence—

1 (i) by striking “terms” and inserting  
2 “term”;

3 (ii) by striking “necessary” the first  
4 place it appears and inserting “nec-  
5 essarily”; and

6 (iii) by inserting after “environment,  
7 such actions” the phrase “or combination  
8 of such actions”;

9 (B) in the second sentence by striking  
10 “term includes” and inserting “terms include”;  
11 and

12 (C) by adding at the end the following:  
13 “The term ‘remove’ or ‘removal’ is not limited  
14 to emergency situations and includes actions to  
15 address future or potential exposures.”.

16 (5) Paragraph (25) (relating to the terms “re-  
17 spond” and “response”) is amended—

18 (A) by striking “terms” and inserting  
19 “term”;

20 (B) by striking the comma after “remedial  
21 action;”; and

22 (C) by striking “related thereto” and in-  
23 serting “(including attorneys’ fees and expert  
24 witness fees) and oversight activities related

1           thereto when such activities are undertaken by  
2           the President, a State or Indian Tribe”.

3           (6) Paragraph (29) (relating to the terms “dis-  
4           posal”, “hazardous waste”, and “treatment”) is  
5           amended by inserting before the period the follow-  
6           ing: “, except that the term ‘hazardous substance’  
7           shall be substituted for the term ‘hazardous waste’  
8           in the definitions of ‘disposal’ and ‘treatment’”.

9           (7) Paragraph (33) (relating to the term “pol-  
10          lutant or contaminant”) is amended by striking “;  
11          except that the” and inserting “. The”.

12          (8) Paragraph (35) (relating to the term “con-  
13          tractual relationship”) is amended—

14                 (A) in subparagraph (A)—

15                         (i) by striking out clause (iii); and

16                         (ii) in the matter preceding clause (i),  
17                         by striking out “clause (i), (ii), or (iii)”  
18                         and inserting “clause (i) or (ii)”;

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

21                         “(B)(i) To establish that the defendant had no  
22                         reason to know, as provided in clause (i) of subpara-  
23                         graph (A) of this paragraph, the defendant must  
24                         have undertaken, at the time of the acquisition, all  
25                         appropriate inquiry into the previous ownership and

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

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

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

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

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

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

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

1           “(VI) Inclusion of a visual inspection of  
2           the facility and its real property and of adjoining  
3           properties.

4           “(VII) Any specialized knowledge or experience on the part of the defendant.

5           “(VIII) The relationship of the purchase  
6           price to the value of the property if  
7           uncontaminated.

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

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

11           “(iii) In the case of property for residential use  
12           or other similar use, purchased by a nongovernmental or noncommercial entity, a site inspection  
13           and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.”; and

14           (C) By adding the following new subparagraph at the end thereof:

15           “(E) The term ‘contractual relationship’ shall  
16           not include the initial filing by a claimant of an



1 unpatented mining claim or the issuance of a patent  
2 for any such claim.”.

3 (9) The following new paragraphs are added  
4 after paragraph (38):

5 “(39) BONA FIDE PROSPECTIVE PURCHASER.—  
6 The term ‘bona fide prospective purchaser’ means a  
7 person who acquires ownership of a facility after the  
8 date of enactment of the Superfund Reform Act of  
9 1994, or a tenant of such a person, who can estab-  
10 lish each of the following by a preponderance of the  
11 evidence:

12 “(A) All active disposal of hazardous sub-  
13 stances at the facility occurred before that per-  
14 son acquired the facility.

15 “(B) The person made all appropriate in-  
16 quiry into the previous ownership and uses of  
17 the facility and its real property in accordance  
18 with generally accepted good commercial and  
19 customary standards and practices. The regula-  
20 tions promulgated by the Administrator pursu-  
21 ant to paragraph (35)(B)(ii) shall satisfy the  
22 requirements of this subparagraph. In the case  
23 of property for residential or other similar use,  
24 purchased by a nongovernmental or non-  
25 commercial entity, a site inspection and title

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

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

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

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

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

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

5 “(40) FIDUCIARY.—

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

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

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

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

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

1                   “(ii) who owns or controls property on  
2                   behalf of or for the benefit of a holder of  
3                   a security interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(B) is not—

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

1 Federal or State law at the facility con-  
2 cerned,

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

7 “(iii) otherwise responding to a re-  
8 lease or threatened release of a hazardous  
9 substance, pollutant, or contaminant at the  
10 facility concerned;

11 “(C) did not know or have reason to know  
12 of the presence of hazardous substances at the  
13 facility concerned before beginning construction  
14 activities;

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

18 “(E) exercised due care with respect to the  
19 hazardous substances discovered in the course  
20 of performing the construction activity, includ-  
21 ing precautions against foreseeable acts of third  
22 parties, taking into consideration the character-  
23 istics of such hazardous substance, in light of  
24 all relevant facts and circumstances.”.



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

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

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

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

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

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

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

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

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

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

1 **SEC. 609. CONSIDERATION OF LOCAL GOVERNMENT**  
2 **CLEANUP PRIORITIES.**

3 Section 104(c)(2) is amended—

4 (1) by inserting “(A)” after “(2)”; and

5 (2) by adding at the end the following new sub-  
6 paragraph:

7 “(B) In setting priorities for scheduling work and al-  
8 locating oversight resources for a remedial action at a fa-  
9 cility at which a potentially responsible party that is a  
10 State or local government proposes to carry out the reme-  
11 dial action (or a portion thereof), the Administrator  
12 should give higher priority to such remedial action (or por-  
13 tion thereof) if the State or local government demonstrates  
14 that the remedial action (i) will have a public benefit; and  
15 (ii) will result in the property on or adjacent to the facility  
16 being returned to productive use. A private potentially re-  
17 sponsible party may request similar consideration, in the  
18 Administrator’s discretion. Nothing in this subparagraph  
19 shall affect the responsibility of the Administrator to  
20 schedule and oversee the conduct of remedial action so as  
21 to assure protection of human health and the environ-  
22 ment.”.

23 **SEC. 610. CONSISTENT APPLICATION AMONG REGIONAL**  
24 **OFFICES.**

25 Section 115 (42 U.S.C. 9615), as amended by section  
26 407, is further amended as follows:

1           (1) By inserting the following immediately be-  
2           fore “The President”: “(a) PRESIDENTIAL RULE-  
3           MAKING AND DELEGATION AUTHORITY.—”.

4           (2) By inserting at the end thereof the follow-  
5           ing new subsection:

6           “(b) CONSISTENT APPLICATION AMONG REGIONAL  
7           OFFICES.—Each Regional Administrator should imple-  
8           ment, execute, and enforce this Act and regulations, guid-  
9           ance, and policies established in accordance with this Act  
10          by (1) the President (or by the Administrator pursuant  
11          to a delegation from the President), or (2) the Adminis-  
12          trator (or by the Deputy Administrator or an Assistant  
13          Administrator pursuant to a delegation from the Adminis-  
14          trator).”.

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

16          (a) STUDY.—The Administrator shall undertake a  
17          study of current Environmental Protection Agency proce-  
18          dures for suspension and debarment of persons and busi-  
19          ness entities, particularly response action contractors and  
20          to assess the feasibility and cost of creating a nationwide  
21          data base to track such persons. The study shall include,  
22          but shall not be limited, to the following items:

23               (1) Whether the certification process pursuant  
24               to 40 CFR 32 regarding debarment and suspensions  
25               is sufficient to uncover those persons who have pre-

1       viously served as a principal of a business entity af-  
2       filiated or unaffiliated with the certifying entity.

3           (2) Whether the 3-year period for certification  
4       is a sufficient length of time to uncover past activi-  
5       ties.

6           (3) Whether the process under Federal regula-  
7       tions for determining false certification is sufficient,  
8       particularly for those persons who are attempting to  
9       hide past debarment or suspension.

10          (4) The effectiveness of the current debarment  
11       and suspension procedures.

12          (5) The practicability of coordination, through  
13       a central data base, with other Federal agencies the  
14       tracking and sharing of data on such persons who  
15       have been debarred or suspended.

16          (6) The effectiveness of debarment and suspen-  
17       sion on the future conduct of persons or business en-  
18       tities with regard to compliance with Federal and  
19       State environmental laws.

20          (7) The extent of sharing data within the Envi-  
21       ronmental Protection Agency and among its regional  
22       offices.

23          (8) The cost of creating a central data base.

24       (b) REPORT AND RECOMMENDATIONS.—The Admin-  
25       istrator shall report the findings of this study to Congress

1 within 12 months after the enactment of this Act. The  
2 Administrator shall also make a recommendation to Con-  
3 gress whether statutory language or further regulations  
4 are necessary to correct any problems or deficiencies that  
5 may be uncovered.

6 **SEC. 612. PUBLIC COMMENT.**

7 Nothing in this Act or any amendments made by this  
8 Act shall limit the obligations of the President or the Ad-  
9 ministrator to fully consider and respond to public com-  
10 ments during any available comment period or otherwise  
11 abridge the requirements of subchapter II of chapter 5  
12 of title 5, United States Code (commonly referred to as  
13 the Administrative Procedures Act).

14 **SEC. 613. CERTIFICATION OF ENVIRONMENTAL TRAINING**  
15 **AND CERTIFICATION ORGANIZATIONS.**

16 (a) REGULATIONS.—(1) Not later than 2 years after  
17 enactment of this Act, the Administrator of the Environ-  
18 mental Protection Agency shall publish guidelines, in ac-  
19 cordance with subsection (b), for a model State program  
20 for organizations that train and certify individuals to per-  
21 form Phase I Environmental Site Assessments.

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

25 (A) formal environmental training;

- 1 (B) continuing environmental education;
- 2 (C) environmental certification and testing pro-  
3 cedures;
- 4 (D) revocation and disciplinary procedures;
- 5 (E) establishment of a code of ethics;
- 6 (F) consumer education;
- 7 (G) certification renewal procedures; and
- 8 (H) annual reporting of program activities.

9 (b) ESTABLISHMENT OF THE ENVIRONMENTAL CER-  
10 TIFICATION BOARD.—(1) Not later than 60 days after en-  
11 actment of this Act, the Administrator of the Environ-  
12 mental Protection Agency shall establish a certification  
13 advisory board to be known as the “Environmental Certifi-  
14 cation Board” (hereafter in this section referred to as the  
15 “Board”).

16 (2) The Board shall consist of a minimum of 6 mem-  
17 bers, appointed by the Administrator, with a demonstrated  
18 knowledge in the environmental field. The Board may in-  
19 clude representatives from the Environmental Protection  
20 Agency, environmental interest organizations, the chemi-  
21 cal/manufacturing industry, the environmental consulting  
22 service industry, the insurance industry, the banking/in-  
23 vestment industry, professional societies, private sector ac-  
24 creditation organizations, State government, and other ap-

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

1       entity seeks to determine whether a particular parcel  
2       of real property is subject to recognized environ-  
3       mental conditions. These conditions indicate the  
4       presence or likely presence of a hazardous substance  
5       or pollutant or contaminant on a property under  
6       conditions that indicate the existence of a release or  
7       threatened release at the facility into structures on  
8       the property or into the ground, ground water or  
9       surface water of the property.

10           (2) CERTIFIED PHASE I ENVIRONMENTAL PRO-  
11       FESSIONAL.—The term “Certified Phase I Environ-  
12       mental Professional” means any person receiving  
13       certification to perform Phase I Environmental Site  
14       Assessments from an approved environmental train-  
15       ing and certification organization in accordance with  
16       this section.

17           (3) APPROVED PHASE I ENVIRONMENTAL  
18       TRAINING AND CERTIFICATION ORGANIZATION.—The  
19       term “Approved Phase I Environmental Training  
20       and Certification Organization” means Phase I En-  
21       vironmental Training and Certification Organization  
22       whose curriculum, program, facilities, training, and  
23       testing methods comply with the regulations adopted  
24       by a State under this section.

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

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

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

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

8 (1) By amending the heading to read as follows:

9 **“SEC. 120. FEDERAL ENTITIES AND FACILITIES.”.**

10 (2) By amending paragraph (1) of subsection  
11 (a) to read as follows:

12 “(1)(A) Each department, agency, and instru-  
13 mentality of the executive, legislative, and judicial  
14 branches of the United States shall be subject to,  
15 and comply with, all Federal, State, interstate and  
16 local requirements, both substantive and procedural  
17 (including any requirements for permits, reporting,  
18 or any provisions for injunctive relief and such sanc-  
19 tions as may be imposed by a court to enforce such  
20 relief), regarding response actions related to, or  
21 management of, hazardous substances, pollutants, or  
22 contaminants in the same manner, and to the same  
23 extent, as any nongovernmental entity is subject to  
24 such requirements, including enforcement and liabil-  
25 ity under sections 106 and 107 of this title and the  
26 payment of reasonable service charges.

1           “(B) The Federal, State, interstate, and local  
2 substantive and procedural requirements referred to  
3 in subparagraph (A) include, but are not limited to,  
4 all administrative orders and all civil and adminis-  
5 trative penalties and fines, regardless of whether  
6 such penalties and fines are punitive or coercive in  
7 nature or are imposed for isolated, intermittent, or  
8 continuing violations. The United States hereby ex-  
9 pressly waives any immunity otherwise applicable to  
10 the United States with respect to any such sub-  
11 stantive or procedural requirement (including, but  
12 not limited to, any injunctive relief, administrative  
13 order or civil or administrative penalty or fine re-  
14 ferred to in the preceding sentence, or reasonable  
15 service charge).

16           “(C) The reasonable service charges referred to  
17 in this paragraph include, but are not limited to,  
18 fees or charges assessed in connection with the proc-  
19 essing and issuance of permits, renewal of permits,  
20 amendments to permits, review of plans, studies,  
21 and other documents, and inspection and monitoring  
22 of facilities, as well as any other nondiscriminatory  
23 charges that are assessed in connection with a State,  
24 interstate, or local response program.

1           “(D) Neither the United States, nor any agent,  
2           employee, or officer thereof, shall be immune or ex-  
3           empt from any process or sanction of any State or  
4           Federal court with respect to the enforcement of any  
5           injunctive relief.

6           “(E) No agent, employee, or officer of the Unit-  
7           ed States shall be personally liable for any civil pen-  
8           alty under any Federal or State response law with  
9           respect to any act or omission within the scope of  
10          their official duties. An agent, employee, or officer of  
11          the United States shall be subject to any criminal  
12          sanction (including, but not limited to, any fine or  
13          imprisonment) under any Federal or State response  
14          law, but no department, agency, or instrumentality  
15          of the executive, legislative, or judicial branch of the  
16          United States shall be subject to any such sanctions.

17          “(F) The waiver of sovereign immunity pro-  
18          vided in this paragraph shall not apply to the extent  
19          a State law would apply any standard or require-  
20          ment to such Federal department, agency, or instru-  
21          mentality in a manner which is more stringent than  
22          such standard or requirement would be applied to  
23          any other person.

24          “(G) Nothing in this section shall be construed  
25          to affect the liability of any person or entity other

1 than a department, agency, or instrumentality of the  
2 United States under sections 106 and 107 of this  
3 Act.

4 “(H)(i) The Administrator may issue an order  
5 under section 106 of this Act to any department,  
6 agency, or instrumentality of the executive, legisla-  
7 tive, or judicial branch of the United States. The  
8 Administrator shall initiate an administrative en-  
9 forcement action against such a department, agency,  
10 or instrumentality in the same manner and under  
11 the same circumstances as action would be initiated  
12 against any other person.

13 “(ii) No administrative order issued to such de-  
14 partment, agency, or instrumentality shall become  
15 final until such department, agency, or instrumentality  
16 has had the opportunity to confer with the Ad-  
17 ministrator.

18 “(iii) Unless a State law in effect on the effec-  
19 tive date of the Superfund Reform Act of 1994, or  
20 a State Constitution, requires the funds to be used  
21 in a different manner, all funds collected by a State  
22 from the Federal Government from penalties and  
23 fines imposed for violation of any substantive or pro-  
24 cedural requirement referred to in subsection (a) of  
25 this section shall be used by the State only for

1 projects designed to improve or protect the environ-  
2 ment or to defray the costs of environmental protec-  
3 tion or enforcement.

4 “(I) Each such department, agency, and instru-  
5 mentality shall have the right to contribution protec-  
6 tion set forth in section 113, when such department,  
7 agency, or instrumentality resolves its liability under  
8 this Act.”.

9 (3) By striking paragraph (4) of subsection (a).

10 (4) By inserting “(other than the indemnifica-  
11 tion requirements of section 119)” after “respon-  
12 sibility” in subsection (a)(3).

13 **SEC. 616. WORKER TRAINING AND EDUCATION GRANTS.**

14 Section 111(c)(12) (42 U.S.C. 9611(c)(12)) is  
15 amended—

16 (1) by striking “\$10,000,000” and inserting  
17 “\$20,000,000”; and

18 (2) by inserting before the period at the end  
19 “and \$30,000,000 for each of fiscal years 1995,  
20 1996, 1997, 1998, and 1999”.

21 **SEC. 617. REPORT AND OVERSIGHT REQUIREMENTS.**

22 (a) SUBMISSION TO STATE GOVERNORS.—Section  
23 301(h)(1) (42 U.S.C. 9651(h)(1)) is amended in the mat-  
24 ter preceding subparagraph (A) by striking “to Congress



1 of such Agency” and inserting “of such Agency to Con-  
2 gress and the Governor of each State”.

3 (b) PROGRESS REPORT.—Section 301(h)(1)(A) is  
4 amended to read as follows:

5 “(A) A progress report of accomplishments  
6 and expenditures on a State-by-State basis, in-  
7 cluding—

8 “(i) a statement of the number of  
9 completed record of decisions, removal ac-  
10 tions, remedial actions, and enforcement  
11 actions; and

12 “(ii) a statement of—

13 “(I) the aggregate amount ex-  
14 pended in each State;

15 “(II) the amount expended in  
16 each State for site investigation and  
17 cleanup activities;

18 “(III) the amount expended in  
19 each State for non site-specific costs;  
20 and

21 “(IV) the amount expended for  
22 enforcement actions and cost recovery  
23 activities.”.

24 (c) OTHER REPORT CONTENTS.—Section 301(h)(1)  
25 is amended—

1           (1) in subparagraph (B) by striking the period  
2           at the end and inserting “and removal or remedial  
3           action.”; and

4           (2) in subparagraph (C) by inserting “, removal  
5           action, and remedial action” after “study”.

6           (d) RESPONSE TO STATE COMMENTS BY EPA.—Sec-  
7           tion 301(h) is amended by adding at the end the following:

8           “(4) RESPONSE TO STATE COMMENTS BY  
9           EPA.—The Administrator of the Environmental Pro-  
10          tection Agency shall respond in writing to any com-  
11          ments submitted to the Administrator by a State re-  
12          garding reports developed under this subsection.”.

13   **SEC. 618. REMEDIAL TECHNOLOGIES.**

14          Section 311 (42 U.S.C. 9660) is amended by adding  
15          at the end the following:

16          “(h) REMEDIAL TECHNOLOGIES.—

17                 “(1) REPORT.—Not later than 18 months after  
18                 the date of the enactment of this subsection, the Ad-  
19                 ministrator shall publish a report which—

20                         “(A) identifies existing remedial technology  
21                         demonstration and development programs con-  
22                         ducted by the Administrator, the States, and  
23                         Federal agencies;

1           “(B) identifies and prioritizes remedial  
2           technology needs at National Priorities List fa-  
3           cilities; and

4           “(C) to the extent information is available  
5           to the Administrator, identifies and prioritizes  
6           remedial technology needs identified through  
7           the performance of removal actions at facilities  
8           not on the National Priorities List.

9           “(2) STATE INVOLVEMENT.—In preparing the  
10          report pursuant to paragraph (1), the Administrator  
11          shall solicit State involvement.”.

12 **SEC. 619. REIMBURSEMENT TO STATE AND LOCAL GOVERN-**  
13 **MENTS.**

14          (a) AMENDMENT OF SECTION 123.—Section 123 (42  
15 U.S.C. 9623) is amended to read as follows:

16 **“SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOV-**  
17 **ERNMENTS.**

18          “(a) APPLICATION.—Any State or general purpose  
19          unit of local government for a political subdivision of a  
20          State that is affected by a release or threatened release  
21          at any facility may apply to the President for reimburse-  
22          ment under this section.

23          “(b) REIMBURSEMENT.—

24                  “(1) EMERGENCY RESPONSE ACTIONS.—The  
25          President is authorized to reimburse States and local

1 community authorities for expenses incurred (before  
2 or after the enactment of the Superfund Reform Act  
3 of 1994) in carrying out emergency response actions  
4 necessary to prevent or mitigate injury to human  
5 health or the environment associated with the re-  
6 lease or threatened release of any hazardous sub-  
7 stance or pollutant or contaminant. Such actions  
8 may include, where appropriate, security fencing to  
9 limit access, cleanup of illicit drug laboratories, re-  
10 sponse to fires and explosions, and other measures  
11 that require immediate response at the State or local  
12 level.

13 “(2) STATE OR LOCAL FUNDS NOT SUP-  
14 PLANTED.—Reimbursement under this section shall  
15 not supplant State or local funds normally provided  
16 for response.

17 “(c) AMOUNT.—(1) The amount of any reimburse-  
18 ment to a local authority under subsection (b)(1) may not  
19 exceed \$25,000 for a single response. The reimbursement  
20 under this section with respect to a single facility shall  
21 be limited to the units of local government having jurisdic-  
22 tion over the political subdivision in which the facility is  
23 located.

24 “(2) The amount of any reimbursement to a State  
25 under subsection (b)(1) may not exceed \$50,000 for a sin-

1 gle response. The reimbursement under this section with  
2 respect to a single facility shall be limited to the State  
3 in which the facility is located.

4 “(3) The total amount made available to State and  
5 local governments under subsection (b)(1) may not exceed  
6 \$50,000 for a single response.

7 “(d) PROCEDURE.—Reimbursements authorized pur-  
8 suant to this section shall be in accordance with rules pro-  
9 mulgated by the Administrator.”.

10 (b) AMENDMENT OF SECTION 111.—Paragraph (11)  
11 of section 111(c) of such Act is amended—

12 (1) by striking out “LOCAL GOVERNMENT RE-  
13 IMBURSEMENT.—” and inserting in lieu thereof  
14 “STATE AND LOCAL GOVERNMENT REIMBURSE-  
15 MENT.—(A)”;

16 (2) by adding at the end the following new sub-  
17 paragraph:

18 “(B) Reimbursements to States under section  
19 123, except that no State may receive more than  
20 \$2,000,000 in any one fiscal year.”.

21 (c) DEADLINE FOR REGULATIONS.—The Adminis-  
22 trator of Environmental Protection Agency shall promul-  
23 gate any regulations necessary to implement section 123  
24 of the Comprehensive Environmental Response, Com-  
25 pensation, and Liability Act of 1980 (42 U.S.C. 9623),

1 as amended by subsection (a), not later than 24 months  
2 after the date of the enactment of this Act.

3 **SEC. 620. STUDY OF SMALL DISADVANTAGED BUSINESS**

4 **GOALS.**

5 The Administrator of the Environmental Protection  
6 Agency shall study the advisability and feasibility of insti-  
7 tuting a small disadvantaged business goal program for  
8 all contracts entered into by the Federal Government  
9 under the Comprehensive Environmental Response, Com-  
10 pensation, and Liability Act of 1980 and shall report the  
11 Administrator's recommendations to Congress within 1  
12 year after the date of the enactment of this Act. In carry-  
13 ing out the study, the Administrator shall give due consid-  
14 eration to the small disadvantaged business goals estab-  
15 lished under section 2323 of title 10, United States Code,  
16 for the Department of Defense and to the implementation  
17 of such goals by a State in any case in which a State is  
18 authorized to carry out such Act.

19 **SEC. 621. CONFORMING AMENDMENT.**

20 Section 104(g)(1) (42 U.S.C. 9604(g)(1)) is amended  
21 by striking "section" and inserting in lieu thereof "Act".

22 **TITLE VII—FUNDING**

23 **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

24 Section 111(a) is amended by striking  
25 "\$8,500,000,000 for the 5-year period beginning on the

1 date of enactment of the Superfund Amendments and Re-  
2 authorization Act of 1986, and not more than  
3 \$5,100,000,000 for the period commencing October 1,  
4 1991, and ending September 30, 1994” and inserting  
5 “\$9,600,000,000 for the period commencing October 1,  
6 1994, and ending September 30, 1999”.

7 **SEC. 702. ORPHAN SHARE FUNDING.**

8 Section 111(a) is amended by adding after paragraph  
9 (7) (as added by this Act) the following new paragraph:  
10 “(8) ORPHAN SHARE FUNDING.—Payment of  
11 orphan shares pursuant to section 130(e) of this  
12 Act.”.

13 **SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE**  
14 **REGISTRY.**

15 Section 111(m) (relating to ATSDR) is amended to  
16 read as follows:

17 “(m) AGENCY FOR TOXIC SUBSTANCES AND DIS-  
18 EASE REGISTRY.—There shall be directly available to the  
19 Agency for Toxic Substances and Disease Registry to be  
20 used for the purpose of carrying out activities described  
21 in subsection (c)(4) of this section and section 104(i) of  
22 this Act not less than \$100,000,000 per fiscal year for  
23 each of fiscal years 1995, 1996, 1997, 1998, and 1999  
24 of which \$20,000,000 per fiscal year shall be available for  
25 the purposes of section 104(i)(15)(C). Any funds so made

1 available which are not obligated by the end of the fiscal  
2 year in which made available shall be turned back to the  
3 Fund.”.

4 **SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT,**  
5 **AND DEMONSTRATION PROGRAMS.**

6 Section 111(n) is amended to read as follows:

7 “(n) LIMITATIONS ON RESEARCH, DEVELOPMENT,  
8 AND DEMONSTRATION PROGRAM.—

9 “(1) SECTION 311(a).—From the amounts  
10 available in the Fund, not more than the following  
11 amounts may be used for the purposes of section  
12 311(a) of this title (relating to hazardous substance  
13 research, demonstration, and training activities):

14 “(A) For fiscal year 1995 \$40,000,000.

15 “(B) For fiscal year 1996 \$50,000,000.

16 “(C) For fiscal year 1997 \$55,000,000.

17 “(D) For fiscal year 1998 \$55,000,000.

18 “(E) For fiscal year 1999 \$55,000,000.

19 No more than 10 percent of such amounts shall be  
20 used for training under section 311(a) of this title  
21 for any fiscal year.

22 “(2) SECTION 311(d).—For each of the fiscal  
23 years 1995, 1996, 1997, 1998, and 1999, not more  
24 than \$5,000,000 of the amounts available in the  
25 Fund may be used for the purposes of section



1 311(d) of this title (relating to university hazardous  
2 substance research centers).”.

3 **SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM**  
4 **GENERAL REVENUES.**

5 Section 111(p)(1) is amended to read as follows:

6 “(1) IN GENERAL.—The following sums are au-  
7 thorized to be appropriated, out of any money in the  
8 Treasury not otherwise appropriated, to the Hazard-  
9 ous Substance Superfund:

10 “(A) For fiscal year 1995, \$250,000,000.

11 “(B) For fiscal year 1996, \$250,000,000.

12 “(C) For fiscal year 1997, \$250,000,000.

13 “(D) For fiscal year 1998, \$250,000,000.

14 “(E) For fiscal year 1999, \$250,000,000.

15 In addition there is authorized to be appropriated to  
16 the Hazardous Substance Superfund for each fiscal  
17 year an amount equal to so much of the aggregate  
18 amount authorized to be appropriated under this  
19 subsection (and paragraph (2) of section 131(b) of  
20 this title) as has not been appropriated before the  
21 beginning of the fiscal year involved.”.

22 **SEC. 706. ADDITIONAL LIMITATIONS.**

23 Section 111 is amended by adding after subsection  
24 (p) the following new subsections:

1       “(q) CITIZEN INFORMATION AND ACCESS OF-  
2 FICES.—For each of the fiscal years 1995, 1996, 1997,  
3 1998, and 1999, not more than \$50,000,000 of the  
4 amounts available in the Fund may be used for the pur-  
5 poses of section 117(h) of this Act (relating to citizen in-  
6 formation and access offices).

7       “(r) VOLUNTARY RESPONSE PROGRAMS.—For each  
8 of the fiscal years 1995 through 1999, not more than  
9 \$20,000,000 of the amounts available in the Fund may  
10 be used for the purposes of section 128 of this Act (relat-  
11 ing to State voluntary cleanup programs).”.

12 **SEC. 707. USES OF THE FUND.**

13       Section 111(a) is amended by adding after paragraph  
14 (8) the following new paragraph:

15               “(9) REIMBURSEMENT OF POTENTIALLY RE-  
16 SPONSIBLE PARTY COSTS.—If a potentially respon-  
17 sible party and the Administrator enter into a settle-  
18 ment under this Act in which the Administrator is  
19 reimbursed for its response costs, and if the Admin-  
20 istrator determines, through a Federal audit of re-  
21 sponse the costs, that costs for which the Adminis-  
22 trator was reimbursed:

23                       “(A) are unallowable due to contractor  
24 fraud, or

1           “(B) are unallowable under the Federal  
2           Acquisition Regulations, or

3           “(C) should be adjusted due to routine  
4           contract and Environmental Protection Agency  
5           response cost audit procedures,

6           then the Administrator is authorized to use the fund  
7           to reimburse a potentially responsible party for any  
8           costs identified under subparagraph (A), (B), or (C)  
9           of this paragraph.”.

## 10       **TITLE VIII—ENVIRONMENTAL** 11       **INSURANCE RESOLUTION FUND**

### 12       **SEC. 801. SHORT TITLE.**

13           This title may be cited as the “Environmental Insur-  
14       ance Resolution and Equity Act of 1994”.

### 15       **SEC. 802. DEFINITIONS.**

16           For purposes of this title:

17           (1) **APPLICABLE COSTS.**—The term “applicable  
18       costs” means applicable National Priorities List  
19       (NPL) facility costs or applicable non-NPL facility  
20       costs. Costs of removal shall be treated as applicable  
21       costs only if the removal is conducted in accordance  
22       with section 104, 106 or 122 of CERCLA or under  
23       the regulations of the Administrator governing re-  
24       moval actions (40 CFR 300.415 or any successor  
25       regulations).

1           (2) APPLICABLE NPL FACILITY COSTS.—The  
2 term “applicable NPL facility costs” means the  
3 costs for an eligible NPL facility—

4           (A) of response (as defined in section  
5 101(25) of CERCLA);

6           (B) for natural resources damages under  
7 section 107 of CERCLA; or

8           (C) to defend potential liability for the  
9 costs described in subparagraph (A) or (B) or  
10 both, including, but not limited to, attorney’s  
11 fees, costs of suit, consultant and expert fees  
12 and costs, and expenses for testing and mon-  
13 itoring.

14           (3) APPLICABLE NON-NPL FACILITY COSTS.—  
15 The term “applicable non-NPL facility costs” means  
16 the costs for a non-NPL facility—

17           (A) of removal (as defined in section  
18 101(23) of CERCLA); and

19           (B) to defend potential liability for such  
20 costs of removal, including, but not limited to,  
21 attorney’s fees, costs of suit, consultant and ex-  
22 pert fees and costs, and expenses for testing  
23 and monitoring.

24           (4) BOARD.—The term “Board” means the  
25 Board of Trustees of the Fund.

1           (5) CERCLA.—The term “CERCLA” means  
2 the Comprehensive Environmental Response, Com-  
3 pensation and Liability Act of 1980 (42 U.S.C.  
4 9601 et seq.).

5           (6) ELIGIBLE COSTS.—The term “eligible  
6 costs” means the applicable costs incurred with re-  
7 spect to a hazardous substance disposed of at an eli-  
8 gible facility for which an eligible person either (A)  
9 has not been reimbursed or (B) has been reimbursed  
10 and that are the subject of a dispute between the eli-  
11 gible person and an insurer. The term eligible costs  
12 shall not include any costs paid by the United  
13 States.

14           (7) ELIGIBLE FACILITY.—The term “eligible fa-  
15 cility” means an eligible NPL facility or an eligible  
16 non-NPL facility.

17           (8) ELIGIBLE NPL FACILITY.—The term “eligi-  
18 ble NPL facility” means any facility placed on the  
19 National Priority List at any time, at which a haz-  
20 ardous substance was disposed of on or before De-  
21 cember 31, 1985.

22           (9) ELIGIBLE NON-NPL FACILITY.—The term  
23 “eligible non-NPL facility” means any site or facility  
24 where a removal (as defined in section 101(23) of  
25 CERCLA) was conducted pursuant to governmental

1 direction or oversight under CERCLA and the Na-  
2 tional Contingency Plan at any time, at which a haz-  
3 ardous substance was disposed of on or before De-  
4 cember 31, 1985.

5 (10) ELIGIBLE PERSON.—The term “eligible  
6 person” means any person that demonstrates, to the  
7 satisfaction of the Resolution Fund, that such per-  
8 son either—

9 (A) has received a notice at any time that  
10 it may be a potentially responsible party pursu-  
11 ant to CERCLA with respect to an eligible  
12 NPL facility, which notice requests or demands  
13 that such party perform response actions or pay  
14 response costs or natural resource damages for  
15 such facility; or

16 (B) is or was liable, or alleged to be liable,  
17 at any time for a removal (as defined in section  
18 101(23) of CERCLA) at any eligible facility,  
19 and had entered into a valid insurance contract for  
20 qualified insurance.

21 (11) FACILITY.—The term “facility” has the  
22 same meaning as provided in section 101(9) of  
23 CERCLA.

24 (12) FUND.—The term “Fund” means the En-  
25 vironmental Insurance Resolution Fund.

1           (13) NPL.—The term “NPL” means the Na-  
2           tional Priorities List.

3           (14) PERSON.—The term person means an in-  
4           dividual, firm, corporation, association, partnership,  
5           consortium, joint venture, commercial entity or gov-  
6           ernmental unit (including any predecessor in interest  
7           or any subsidiary thereof).

8           (15) QUALIFIED INSURANCE.—The term  
9           “qualified insurance” means insurance for com-  
10          prehensive general liability or commercial multi-peril  
11          insurance coverage for any period prior to January  
12          1, 1986. For purposes of this paragraph, com-  
13          prehensive general liability insurance includes broad  
14          form liability, general liability, commercial general li-  
15          ability, and excess or umbrella coverage; and com-  
16          mercial multi-peril insurance includes broad form  
17          property, commercial package, special multi-peril,  
18          and excess or umbrella coverage. Such term shall  
19          not include any other insurance, such as environ-  
20          mental impairment liability insurance, whether  
21          found in primary, excess, or umbrella coverage.

22          (16) VALID INSURANCE CONTRACT.—The term  
23          “valid insurance contract” means a contract for  
24          qualified insurance other than any of the following:

1           (A) An insurance contract with respect to  
2           which a person has entered into a settlement  
3           with an insurer providing, or where a final  
4           judgment has provided, that the contract has  
5           been satisfied and that such person has no  
6           right to make any further claims under such  
7           contract.

8           (B) An insurance contract which covers  
9           only a time period prior to the earliest date of  
10          the action or status of the insured person which  
11          resulted in liability or potential liability under  
12          section 107 of CERCLA.

13          (C) An insurance contract with an insur-  
14          ance company which is insolvent or in insol-  
15          vency proceedings.

16          (D) An insurance contract which is the  
17          subject of a settlement between the insurance  
18          company and the insured pursuant to which the  
19          policy has been reformed to include an absolute  
20          exclusion for pollution liability (“absolute pollu-  
21          tion exclusion”).

22          (17) STATE.—The term “State” has the same  
23          meaning as provided in section 101(27) of  
24          CERCLA.



1 **SEC. 803. ENVIRONMENTAL INSURANCE RESOLUTION**  
2 **FUND.**

3 (a) ENVIRONMENTAL INSURANCE RESOLUTION  
4 FUND ESTABLISHED.—There is hereby established the  
5 Environmental Insurance Resolution Fund.

6 (b) OFFICES.—The principal office of the Fund shall  
7 be in the District of Columbia or at such other place as  
8 the Fund may from time to time prescribe.

9 (c) STATUS OF RESOLUTION FUND.—Except as ex-  
10 pressly provided in this title, the Fund shall not be consid-  
11 ered an agency or establishment of the United States. The  
12 members of the Board of Trustees shall not, by reason  
13 of such membership, be deemed to be officers or employees  
14 of the United States.

15 (d) BOARD OF TRUSTEES.—

16 (1) IN GENERAL.—The Fund shall be adminis-  
17 tered by a Board of Trustees.

18 (2) MEMBERSHIP.—The Board shall consist of  
19 the following:

20 (A) GOVERNMENTAL MEMBERS.—

21 (i) The Administrator of the Environ-  
22 mental Protection Agency or the Adminis-  
23 trator's designee.

24 (ii) The Attorney General of the Unit-  
25 ed States or the Attorney General's des-  
26 ignee.

1 (B) PUBLIC MEMBERS.—Five public mem-  
2 bers appointed by the President not later than  
3 60 days after the date of enactment of this  
4 title, not less than two of whom shall represent  
5 insurers subject to section \_\_\_\_ of the Internal  
6 Revenue Code of 1986, and not less than two  
7 of whom shall represent eligible persons as de-  
8 fined in section 802(10). The public members  
9 shall be citizens of the United States.

10 (C) EX-OFFICIO MEMBER.—The Secretary  
11 of the Treasury shall serve as an ex officio  
12 member of the Board.

13 (3) CHAIR.—The Chair of the Board shall be  
14 designated by the President from time to time from  
15 among the members described in paragraph (2)(A).  
16 No expenditure may be made, or other action taken,  
17 by the Fund without the concurrence of the Chair  
18 of the Board.

19 (4) COMPENSATION.—Governmental members  
20 of the Board shall serve without additional com-  
21 pensation. Public members of the Board shall, while  
22 attending meetings of the Board or while engaged in  
23 duties related to such meetings or other activities of  
24 the Board pursuant to this title, be entitled to re-  
25 ceive compensation at the rate of \$200 per day, in-

1 cluding travel time. While away from their homes or  
2 regular places of business, members of the Board  
3 shall be allowed travel and actual, reasonable and  
4 necessary expenses to the same extent as officers of  
5 the United States.

6 (5) TERM OF PUBLIC MEMBERS.—Public mem-  
7 bers of the Board shall serve for a term of 5 years,  
8 except that such members may be removed by the  
9 President for any reason at any time. A public mem-  
10 ber whose term has expired may continue to serve  
11 on the Board until such time as the President ap-  
12 points a successor. The President may reappoint a  
13 public member of the Board, but no such member  
14 may consecutively serve more than two terms.

15 (6) VACANCIES.—A vacancy on the Board shall  
16 be filled in the same manner as the original appoint-  
17 ment, except that such appointment shall be for the  
18 balance of the unexpired term of the vacant position.

19 (7) QUORUM.—Four members of the Board  
20 shall constitute a quorum for the conduct of busi-  
21 ness.

22 (8) MEETINGS.—The Board shall meet not less  
23 than quarterly at the call of the Chair. Meetings of  
24 the Board shall be open to the public unless the  
25 Board, by a majority vote of members present in

1 open session, determines that it is necessary or ap-  
2 propriate to close a meeting. The Chair shall provide  
3 at least 10 days notice of a meeting by publishing  
4 a notice in the Federal Register and such notice  
5 shall indicate whether it is expected that the Board  
6 will consider closing all or a portion of the meeting.  
7 Nothing in this paragraph shall be construed to  
8 apply to informal discussions or meetings among  
9 Board members.

10 (e) OFFICERS AND EMPLOYEES.—

11 (1) CHIEF EXECUTIVE OFFICER; CHIEF FINAN-  
12 CIAL OFFICER.—(A) The Fund shall have a Chief  
13 Executive Officer appointed by the Board who shall  
14 exercise any authority of the Fund under such terms  
15 and conditions as the Board may prescribe.

16 (B) The Fund shall have a Chief Financial Of-  
17 ficer appointed by the Board.

18 (2) COMPENSATION.—No officer or employee of  
19 the Fund may be compensated by the Fund at an  
20 annual rate of pay which exceeds the rate of basic  
21 pay in effect from time to time for level I of the Ex-  
22 ecutive Schedule under section 5312 of title 5, Unit-  
23 ed States Code. No officer or employee of the Fund,  
24 other than a member of the Board, may receive any  
25 salary or other compensation from any source other

1 than the Fund for services rendered during the pe-  
2 riod of employment by the Fund.

3 (3) POLITICAL TEST OR QUALIFICATION.—No  
4 political test or qualification shall be used in select-  
5 ing, appointing, promoting, or taking other person-  
6 nel actions with respect to officers, agents, and em-  
7 ployees of the Fund.

8 (4) ASSISTANCE BY FEDERAL AGENCIES.—The  
9 Attorney General, the Secretary of the Treasury,  
10 and the Administrator of the Environmental Protec-  
11 tion Agency, may to the extent practicable and fea-  
12 sible, and in their sole discretion, make personnel  
13 and other resources available to the Fund. Such per-  
14 sonnel and resources may be provided on a reim-  
15 bursable basis, and any personnel so provided shall  
16 not be considered employees of the Fund for pur-  
17 poses of paragraph (2).

18 (f) POWERS OF RESOLUTION FUND.—Notwithstand-  
19 ing any other provision of law, except as provided in this  
20 title or as may be hereafter enacted by the Congress ex-  
21 pressly in limitation of the provisions of this subsection,  
22 the Fund shall have the power—

23 (1) to have succession until dissolved by Act of  
24 Congress;

1           (2) to make and enforce such bylaws, rules and  
2 regulations as may be necessary or appropriate to  
3 carry out the purposes of this title;

4           (3) to make and perform contracts, agreements,  
5 and commitments;

6           (4) to settle, adjust, and compromise, and with  
7 or without consideration or benefit to the Fund re-  
8 lease or waive in whole or in part, in advance or  
9 otherwise, any claim, demand, or right of, by, or  
10 against the Fund;

11           (5) to sue and be sued, complain and defend, in  
12 any State, Federal or other court;

13           (6) to determine its necessary expenditures and  
14 appoint, employ, and fix and provide for the duties,  
15 compensation and benefits of officers, employees, at-  
16 torneys, and agents, all of whom shall serve at the  
17 pleasure of the Board; except that all amounts with-  
18 drawn from the Treasury of the United States by or  
19 on behalf of the Resolution Fund shall be certified  
20 by a federally authorized certifying officer who is an  
21 employee of the Federal agency represented by the  
22 chair of the Resolution Fund;

23           (7) to hire or accept the voluntary services of  
24 consultants, experts, advisory boards, and panels to

1 aid the Fund in carrying out the purposes of this  
2 title; and

3 (8) to take such other actions as may be nec-  
4 essary to carry out the responsibilities of the Fund  
5 under this title.

6 (g) BORROWING AUTHORITY.—Nothing in this title  
7 shall be construed to permit the Fund to issue any evi-  
8 dence of indebtedness or otherwise borrow money.

9 **SEC. 804. RESOLUTION OFFERS.**

10 (a) IN GENERAL.—The Fund shall offer one com-  
11 prehensive resolution to each eligible person. The offer  
12 shall be for a percentage of all the eligible costs of such  
13 eligible person incurred in connection with all eligible fa-  
14 cilities. The amount of the offer shall be determined pur-  
15 suant to section 806.

16 (b) REQUESTS FOR RESOLUTION OFFERS.—

17 (1) IN GENERAL.—An eligible person may, at  
18 any time after the promulgation of the interim final  
19 regulations under section 812(a), file a request for  
20 a resolution offer from the Fund.

21 (2) RESPONSE TO REQUEST.—Not later than  
22 180 days after the receipt of a complete request as  
23 determined by the Fund, the Fund shall in writ-  
24 ing—

1 (A) make a resolution offer to each eligible  
2 person that has filed a request for a resolution  
3 offer; or

4 (B) notify a person filing such a request  
5 that such person is not an eligible person.

6 (c) JOINT VENTURES AND SUBSIDIARIES.—A joint  
7 venture shall not be aggregated with any individual joint  
8 venturer for purposes of this section but shall be treated  
9 as a distinct entity for such purposes. All claims by sub-  
10 sidiaries shall be included in a single claim by the cor-  
11 porate parent for purposes of this Act.

12 **SEC. 805. DOCUMENTATION OF CLAIMS AND INSURANCE**  
13 **COVERAGE.**

14 (a) SCREENING OF CLAIMS.—

15 (1) DENIAL BY REASON OF FELONY.—The  
16 Fund may deny a resolution offer to an otherwise el-  
17 igible person for a specific facility if the eligible per-  
18 son has been convicted of a felony under any Fed-  
19 eral or State statute which has a material effect on  
20 the response costs or natural resource damage in-  
21 curred at the facility.

22 (2) FILING AND ACTIVE PURSUIT OF CLAIMS.—  
23 The Fund may decide not to make an offer to an  
24 eligible person unless the eligible person has filed a  
25 claim and is actively pursuing the claim. The Fund



1        may also decide that an offer should be made to any  
2        such person.

3        (b) FILING OF CLAIMS.—For the purposes of sub-  
4        section (a), an eligible person shall be deemed to have filed  
5        a claim if the eligible person has notified one or more of  
6        its insurers of the existence of a claim, or has engaged  
7        in active investigation and preparation of a claim, or has  
8        filed a lawsuit seeking coverage for eligible costs. Failure  
9        to have filed a claim or to have engaged in settlement dis-  
10       cussions before January 1, 1994, shall not be deemed to  
11       preclude an eligible person from receiving an offer from  
12       the Fund if the eligible person had not received any notice  
13       letter from a governmental authority or one or more po-  
14       tentially responsible parties asserting its potential liability  
15       under CERCLA at any eligible facility until after January  
16       1, 1993.

17       (c) ACTIVE PURSUIT OF CLAIMS.—For purposes of  
18       this section, an eligible person shall be considered to be  
19       actively pursuing a claim if—

20                (1) the person has filed a lawsuit against an in-  
21                surer, or has filed a motion or another pleading in  
22                a lawsuit against an insurer, or has engaged in any  
23                discovery in a lawsuit against an insurer between  
24                January 1, 1993, and December 31, 1993 regarding  
25                eligible costs at an eligible facility;

1           (2) the person has engaged in settlement dis-  
2           cussions with an insurer between January 1, 1993,  
3           and December 31, 1993 regarding eligible costs at  
4           an eligible facility;

5           (3) the person has engaged in active investiga-  
6           tion and preparation of a claim before January 1,  
7           1994;

8           (4) if the person has received a letter from an  
9           insurer rejecting coverage or reserving its rights to  
10          reject coverage regarding eligible costs at an eligible  
11          facility, the person has sent within 1 year thereafter  
12          an additional status report or letter apprising an in-  
13          surer of activities regarding an eligible facility; or

14          (5) the eligible person has sent a letter to an  
15          insurer notifying an insurer of the potential exist-  
16          ence of a claim regarding eligible costs at an eligible  
17          facility and has received no response from the in-  
18          surer.

19          (d) DOCUMENTATION OF COVERAGE.—

20           (1) EFFECT OF DOCUMENTATION.—Coverage of  
21          an eligible person for policy years prior to 1986 and  
22          the applicable deductibles and limits on coverage  
23          shall be confirmed to the satisfaction of the Fund by  
24          the terms of the policies or other documentary proof

1 of insurance provided by, or for, the eligible person  
2 in accordance with this subsection.

3 (2) SUBMISSION OF DOCUMENTARY EVI-  
4 DENCE.—After promulgation of regulations govern-  
5 ing documentation requirements, an eligible person  
6 requesting an offer shall submit: copies of its insur-  
7 ance policies, or other documentary evidence suffi-  
8 cient to establish the following six terms of coverage:  
9 insurance company, policy number, type of policy,  
10 duration of policy, deductible or self-insured reten-  
11 tion, and limit of coverage. Documentary evidence  
12 may consist of any documents from an insurance  
13 company or broker or documents of the eligible per-  
14 son or other party which are generally contempora-  
15 neous with the term of the policy or with subsequent  
16 retrospective rating under the policy. Where docu-  
17 mentary evidence (other than a policy) is relied upon  
18 as the proof of coverage, an eligible person must cer-  
19 tify that it has undertaken a good faith investigation  
20 of its records, that its submission is complete and  
21 accurate to the best of its information and belief,  
22 and that it does not have a copy of the insurance  
23 policy. If an eligible person submits documentary  
24 evidence which does not establish all six terms of  
25 coverage but which does establish the name of the

1 insurance company and one or more other terms evi-  
2 dencing coverage, the named insurance company  
3 shall undertake an investigation for any policy or  
4 other relevant documents evidencing the eligible per-  
5 son's coverage. At the conclusion of the investiga-  
6 tion, the named insurance company shall—

7 (A) produce to the Fund any policies or  
8 other documents relevant to the eligible per-  
9 son's claim of coverage; or

10 (B) certify that it has undertaken a good  
11 faith investigation of its records and that it has  
12 produced any and all policies or documents  
13 available to the insurer and relevant to the eli-  
14 gible person's claim of coverage.

15 Subsequent to the named insurance company's pro-  
16 duction or certification, the Fund shall decide  
17 whether a person has provided adequate proof of in-  
18 surance based on the evidence presented. Submission  
19 of the six terms of coverage referred to in this para-  
20 graph shall be treated as adequate proof of insur-  
21 ance.

22 (e) PRIOR SETTLEMENTS.—

23 (1) DISCLOSURE.—Each eligible person shall be  
24 required to disclose and certify the amounts and  
25 terms of any settlement reached with an insurer for

1 eligible costs at eligible facilities. In the event that  
2 the terms of such a settlement are subject to a pro-  
3 tective order or are otherwise confidential, the eligi-  
4 ble person may provide evidence of the confidential  
5 nature of the settlement information to the Fund.  
6 Upon receipt of such evidence, the Fund shall be ob-  
7 ligated to preserve the confidentiality of all such set-  
8 tlement information.

9 (2) EFFECT OF TITLE ON PRIOR SETTLE-  
10 MENTS.—This title shall have no effect on prior set-  
11 tlements between eligible persons and an insurer.

12 **SEC. 806. AMOUNT OF RESOLUTION OFFERS.**

13 (a) RESOLUTION OFFERS.—The Fund shall make  
14 resolution offers to each eligible person equal to the appli-  
15 cable percentage (determined under this section) of the  
16 lesser of the following:

17 (1) The eligible costs actually incurred by an el-  
18 igible person.

19 (2) The available coverage, as determined under  
20 this section.

21 (b) APPLICABLE PERCENTAGE.—

22 (1) IN GENERAL.—For each eligible person that  
23 has not established a litigation venue pursuant to  
24 subsection (d), the applicable percentage shall be  
25 equal to the facility location percentage for that per-

1 son. For each eligible person that has established  
2 one or more litigation venues pursuant to subsection  
3 (d), the applicable percentage shall be comprised of  
4 one-half of the facility location percentage for that  
5 person plus one-half of the venue percentage for that  
6 person.

7 (2) FACILITY LOCATION PERCENTAGE.—

8 (A) ONE OR MORE ELIGIBLE NPL FACILI-  
9 TIES.—For each eligible person, the Fund shall  
10 establish a facility location percentage. The per-  
11 centage shall be equal to the weighted average  
12 of the State percentages for each eligible NPL  
13 facility for which such person has been identi-  
14 fied as a potentially responsible party. In deter-  
15 mining such weighted average, each such eligi-  
16 ble facility shall be accorded equal value, except  
17 as provided in paragraph (4).

18 (B) NO ELIGIBLE NPL FACILITIES.—For  
19 each person not identified as a potentially re-  
20 sponsible party at one or more eligible NPL fa-  
21 cilities but who is, or is alleged to be, liable at  
22 any time for removal (as defined in section  
23 101(23) of CERCLA) at one or more eligible  
24 non-NPL facilities, the Fund shall establish a  
25 facility location percentage equal to the weight-

1 ed average of the State percentages for each  
2 such eligible non-NPL facility. In determining  
3 such weighted average, each such facility shall  
4 be accorded equal value.

5 (3) LITIGATION VENUE PERCENTAGE.—

6 (A) ONE OR MORE ELIGIBLE NPL FACILI-  
7 TIES.—For each eligible person that has estab-  
8 lished one or more litigation venues pursuant to  
9 subsection (d) with respect to one or more eligi-  
10 ble NPL facilities, the Fund shall establish a  
11 litigation venue percentage. The percentage  
12 shall be equal to the weighted average of the  
13 State percentages for each eligible NPL facility  
14 in each State in which such eligible person has  
15 established a litigation venue. In determining  
16 such weighted average, each eligible NPL facil-  
17 ity with respect to which such person has estab-  
18 lished a litigation venue shall be accorded equal  
19 value.

20 (B) NO ELIGIBLE NPL FACILITIES.—For  
21 each eligible person that does not have one or  
22 more eligible NPL facilities and has established  
23 litigation venue with respect to one or more eli-  
24 gible non-NPL facilities pursuant to subsection  
25 (d), the Fund shall establish a litigation venue

1 percentage equal to the weighted average of the  
2 State percentages for each eligible non-NPL fa-  
3 cility in each State in which such eligible person  
4 has established a litigation venue. In determin-  
5 ing such weighted average, each eligible non-  
6 NPL facility with respect to which litigation  
7 venue has been established shall be accorded  
8 equal value.

9 (4) EXTRA WEIGHTING OF LARGE SITES.—In  
10 determining the facility location percentage under  
11 paragraph (2)(A), the Fund shall count a facility  
12 twice for weighting purposes if—

13 (A) the facility is located in the same State  
14 as the State in which litigation venue has been  
15 established;

16 (B) the facility is included in the eligible  
17 person's coverage litigation in that venue; and

18 (C) total response costs incurred plus esti-  
19 mated response costs exceed \$50,000,000, as  
20 established by governmental cost summaries or  
21 demands, records or decision, or evidence satis-  
22 factory to the Fund of costs actually incurred.

23 (c) STATE PERCENTAGE.—

24 (1) CONGRESSIONAL FINDINGS.—The Congress  
25 finds that as of January 1, 1994, State law gen-



1 erally is more favorable to eligible persons that pur-  
2 sue claims concerning eligible costs against insurers  
3 in some States, that State law generally is more fa-  
4 vorable to insurers with respect to such claims in  
5 some States, and that in some States the law gen-  
6 erally favors neither insurers nor eligible persons  
7 with respect to such claims or that there is insuffi-  
8 cient information to determine whether such law  
9 generally favors insurers or eligible persons with re-  
10 spect to such claims. The Congress further finds  
11 that considerations of equity and fairness require  
12 that resolution offers made by the Fund must vary  
13 to reflect the relative state of the law among the sev-  
14 eral States.

15 (2) STATE PERCENTAGE CATEGORIES.—The  
16 States are hereby classified into the following per-  
17 centage categories:

18 (A) 20 PERCENT.—The State percentage  
19 shall be 20 percent for: Florida, Maine, Mary-  
20 land, Massachusetts, Michigan, New York,  
21 North Carolina, and Ohio.

22 (B) 60 PERCENT.—The State percentage  
23 shall be 60 percent for: California, Colorado,  
24 Georgia, Illinois, New Jersey, Washington,  
25 West Virginia, and Wisconsin.

1 (C) 40 PERCENT.—For all other States the  
2 State percentage shall be 40 percent.

3 (d) LITIGATION VENUE.—For purposes of this sec-  
4 tion, litigation venue is considered established with respect  
5 to an eligible person if—

6 (1) on or before December 31, 1993, the eligi-  
7 ble person had pending in a court of competent ju-  
8 risdiction a complaint against an insurer with re-  
9 spect to eligible costs at an eligible facility; and

10 (2) no motion to change venue with respect to  
11 such complaint was pending on or before January  
12 31, 1994.

13 (e) AVAILABLE COVERAGE.—

14 (1) IN GENERAL.—The Fund shall determine  
15 the available coverage for each eligible person by  
16 adding the limits of liability contained in all valid in-  
17 surance contracts of insurance (including per occur-  
18 rence, aggregate, primary, excess or other limits)  
19 and then by subtracting the total of all deductibles  
20 and self-insured retentions applicable to those poli-  
21 cies. In calculating the available coverage and the  
22 average deductible pursuant to section 808(c), the  
23 Fund shall exclude any deductible or self-insured re-  
24 tention contained in a policy which has already been  
25 paid by the eligible person.

1           (2) PER OCCURRENCE BASIS POLICIES.—For  
2 insurance policies with limits or deductibles ex-  
3 pressed on a per occurrence basis without an aggre-  
4 gate limit, the limit or deductible shall be an amount  
5 equal to the limit or deductible in the policy multi-  
6 plied by the number of eligible facilities of the eligi-  
7 ble person and by the number of years the policy  
8 was in effect. Per occurrence limits or deductibles  
9 may be adjusted by the Fund whenever there is an  
10 increase in the eligible facilities attributable to an el-  
11 igible party.

12           (f) ADJUSTMENT FOR OWNED PROPERTY SITES.—

13           (1) ADJUSTMENT.—If an eligible person seeks  
14 payment of eligible costs for an owned property site,  
15 only 70 percent of such eligible costs (including eligi-  
16 ble costs for off site contamination attributable to  
17 the owned property) shall be taken into account in  
18 making payments under this section.

19           (2) DEFINITIONS.—For purposes of this sub-  
20 section—

21           (A) OWNED PROPERTY SITE.—A facility  
22 shall be considered an owned property site if—

23           (i) an eligible person owned or leased  
24 the facility at the time of initial disposal or  
25 a predecessor company owned or leased the

1 facility at the time of initial disposal and  
2 the predecessor company merged into an  
3 eligible person or became the wholly owned  
4 subsidiary of an eligible person;

5 (ii) the property owned or leased by  
6 the eligible person or predecessor company  
7 represents all or a portion of the facility as  
8 specifically designated on the NPL or as  
9 subject to a removal covered by this title;

10 (iii)(I) an eligible person or prede-  
11 cessor company generated all of the haz-  
12 ardous substances which were disposed of  
13 during the period such person or prede-  
14 cessor owned or leased the facility, or (II)  
15 an eligible person or predecessor company  
16 owned a landfill which is part of the prop-  
17 erty on which a manufacturing or indus-  
18 trial facility is situated, the landfill was  
19 used for the treatment, storage, or disposal  
20 of waste generated from the manufacturing  
21 or industrial facility and from third par-  
22 ties, and the landfill contains waste that is  
23 not primarily municipal solid waste or sew-  
24 age sludge as defined in title VI of this  
25 Act; and

1 (iv) the hazardous substances associ-  
2 ated with the owned property constitute  
3 the basis for liability at the facility.

4 (B) PROPERTY NOT CONSIDERED OWNED  
5 PROPERTY.—A facility shall not be considered  
6 owned property of an eligible person for pur-  
7 poses of this section when the eligible person  
8 acquired the facility from, or acquired the as-  
9 sets of, a company which engaged in initial dis-  
10 posal of hazardous substances at the facility  
11 and the eligible person did not engage in initial  
12 disposal of hazardous substances at the facility  
13 during its period of ownership. An owned prop-  
14 erty site shall not include a public or commer-  
15 cial landfill primarily used for disposal, storage,  
16 or treatment of municipal solid waste or sewage  
17 sludge as defined in title VI of this Act.

18 (C) INITIAL DISPOSAL.—For purposes of  
19 this paragraph, the term initial disposal means  
20 the spilling, pumping, pouring, emitting,  
21 emptying, discharging, injecting, dumping, dis-  
22 posing, placing, or leaking of hazardous sub-  
23 stances into the environment caused by the fa-  
24 cility owner but does not include—

1 (i) any continuing or further leaking,  
2 escaping, or leaching of hazardous sub-  
3 stances into the environment during subse-  
4 quent periods of ownership which was not  
5 caused by the acts of a subsequent owner;

6 or

7 (ii) any activities undertaken by an  
8 owner related to response at the facility.

9 **SEC. 807. ACCEPTANCE OF RESOLUTION OFFER.**

10 (a) ACCEPTANCE.—

11 (1) ELECTION TO ACCEPT.—An eligible person  
12 may, when submitting a request for a resolution to  
13 the Fund, make a written irrevocable election to ac-  
14 cept any resolution to be made by the Fund.

15 (2) NOTIFICATION.—An eligible person that  
16 does not make an election pursuant to paragraph (1)  
17 shall, within 60 days of the receipt of a resolution  
18 offer from the Fund, notify the Fund in writing of  
19 its irrevocable acceptance or rejection of such offer.

20 An eligible person who does not so accept or reject  
21 a resolution offer within 60 days shall be deemed to  
22 have made an irrevocable election to reject the offer.

23 (b) ACCEPTANCE OR REJECTION PRIOR TO  
24 OFFER.—Upon expiration of the 60-day period imme-  
25 diately following the enactment of this Act, any eligible

1 person may notify the Fund that such eligible person ac-  
2 cepts or rejects any offer to be issued by the Fund under  
3 this title. Any such notice shall be signed by a duly author-  
4 ized officer of the eligible person, as certified by the sec-  
5 retary of the eligible person or by a person with equivalent  
6 authority.

7 (c) WAIVER OF INSURANCE CLAIMS.—Any eligible  
8 person accepting a resolution offer from the Fund shall  
9 agree in writing, subject to reinstatement described in sub-  
10 section (d) to waive, stay, or dismiss any of its existing  
11 and future claims against any insurer for eligible costs,  
12 including bad faith claims pertaining to actions to recover  
13 eligible costs.

14 (d) REINSTATEMENT OF INSURANCE CLAIMS.—If the  
15 Fund fails to timely fulfill its obligations to an eligible per-  
16 son under the terms of an accepted resolution offer, such  
17 eligible person shall be entitled to reinstate any of its exist-  
18 ing and future claims under a contract for insurance with  
19 respect to eligible costs. A shortfall provided for in section  
20 808(f) shall not be considered a failure of the Fund to  
21 timely fulfill its obligations.

22 **SEC. 808. RESOLUTION PAYMENTS.**

23 (a) TIME OF PAYMENT; PRE-RESOLUTION COSTS.—  
24 The Fund shall make equal annual payments over a period  
25 of 10 years for the applicable percentage of eligible costs

1 incurred by an eligible person on or before the date such  
2 person accepts a resolution offer. The Fund may, in its  
3 sole discretion, make such payments over a shorter period  
4 if the aggregate eligible costs do not exceed \$50,000. An  
5 eligible person shall submit to the Fund documentation  
6 of such costs as the Fund may require. The initial pay-  
7 ment to an eligible person under this paragraph shall be  
8 made not later than 60 days after the receipt of docu-  
9 mentation satisfactory to the Fund. Interest shall not ac-  
10 crue on amounts payable pursuant to a resolution offer  
11 during the 5-year period beginning on the date of the en-  
12 actment of this Act. In each year thereafter, interest shall  
13 accrue on the unpaid balance of the pre-resolution costs  
14 in an amount equal to the rate of interest on one year  
15 Treasury bills issued on the anniversary of such date of  
16 enactment, or if no bills were issued on such date, on the  
17 last date such bills were issued prior to such anniversary.

18 (b) TIME OF PAYMENT; POST-RESOLUTION COSTS.—  
19 The Fund shall make payments for eligible costs incurred  
20 by an eligible person after the date such person accepts  
21 a resolution offer to the eligible person, or to a contractor  
22 or other person designated by the eligible person, subject  
23 to such documentation as the Fund may require. Pay-  
24 ments under this title shall be made not later than 60



1 days after the receipt of documentation (satisfactory to  
2 the Fund) with respect to such costs.

3 (c) ADJUSTMENT FOR DEDUCTIBLE OR SELF INSUR-  
4 ANCE.—In the case of an eligible person that has submit-  
5 ted to the Fund, as proof of status as an eligible person,  
6 a valid insurance contract subject to a self-insured reten-  
7 tion or a deductible, payment to such eligible person pur-  
8 suant to a resolution shall be reduced once by an amount  
9 equal to the average of the amounts of self-insured reten-  
10 tions and deductibles in all valid insurance contracts of  
11 insurance of the eligible person. For purposes of determin-  
12 ing such average in the case of a per occurrence deductible  
13 or self-insured retention, the Fund shall only count such  
14 deductible or self-insured retention once for each policy  
15 year.

16 (d) ADJUSTMENT FOR CERTAIN DUTY-TO-DEFEND  
17 COSTS.—If an insurer has incurred and paid costs pursu-  
18 ant to a duty-to-defend clause contained in a contract for  
19 insurance, and such costs are the subject of a dispute be-  
20 tween the eligible person and an insurer, the Fund shall  
21 reduce payment of a resolution to an eligible person by  
22 such amount and pay such amount to the insurer. If such  
23 costs were paid by the insurer on or before the date the  
24 eligible person accepted a resolution offer made by the  
25 Fund, payment to an insurer under this section shall be

1 made in equal annual installments over a period of 10  
2 years, and interest shall not accrue with respect to such  
3 costs. The Fund may, in its sole discretion, make such  
4 payments over a shorter period if the aggregate costs do  
5 not exceed \$50,000.

6 (e) EFFECT OF PAYMENTS.—(1) Payments made to  
7 an eligible person by the Fund pursuant to a resolution  
8 offer shall be treated as payments made by an insurer in  
9 satisfaction of the terms and conditions of a contract of  
10 insurance. Such payments shall be allocated pro rata to  
11 each year in which proof of insurance has been estab-  
12 lished. The amount allocated to each coverage year shall  
13 be allocated 100 percent to the primary coverage until it  
14 is exhausted and then 100 percent to each successively  
15 higher layer of coverage until each such layer is exhausted.

16 (2) No insurer shall be allowed to collect recovery  
17 pursuant to a reinsurance contract on the basis of a pay-  
18 ment by the Fund unless such reinsurer is not subject to  
19 the fees under section \_\_\_\_\_ of the Internal Revenue  
20 Code or has not satisfied its obligations pursuant to such  
21 fees.

22 (f) SHORTFALL.—If, in any year during the first 10  
23 years after enactment, the Fund does not have sufficient  
24 funds available to pay all eligible costs of resolution offers  
25 accepted by eligible persons, the Fund shall determine the

1 amount of the costs which cannot be paid in that year  
2 (the “shortfall”). The Fund shall allocate the shortfall to  
3 the eligible persons in proportion to the size of their pend-  
4 ing claims for reimbursement from the Fund. This short-  
5 fall shall be paid to the eligible person and shall be amor-  
6 tized over the next 5 years, and the amortized amount  
7 shall be paid with interest at the rate specified for the  
8 amortization of past costs. A shortfall which is being am-  
9 ortized hereunder shall not be considered a default by the  
10 Fund, triggering the reinstatement of claims.

11 (g) INTERIM ALLOCATIONS.—An eligible person ac-  
12 cepting an offer of resolution shall be entitled to receive  
13 payment of all eligible costs which have been incurred. If  
14 an eligible person obtains reimbursement of such eligible  
15 costs as a result of a final allocation, contribution action,  
16 or otherwise, the eligible person must notify the Fund of  
17 the amount of the reimbursement and must either (1) re-  
18 duce its next claim to the Fund for payment of eligible  
19 costs by the amount of the reimbursement, or (2) refund  
20 the amount of the reimbursement.

21 **SEC. 809. REJECTION OF RESOLUTION OFFER AND REIM-**  
22 **BURSEMENT TO INSURER.**

23 If an eligible person rejects a resolution offer (includ-  
24 ing a rejection pursuant to section 807(b)), litigates a  
25 claim with respect to eligible costs against 1 or more in-

1 surers, and obtains a final judgment against, or enters  
2 into a settlement with, any such insurer, the Fund—

3 (1) shall reimburse to such insurer or insurers  
4 the lesser of the amount of the resolution offer made  
5 to the eligible person (or, in the case of a rejection  
6 pursuant to section 807(b), the amount which the  
7 Fund would have offered) or the final judgment or  
8 settlement; and

9 (2) may, if the resolution offer exceeded the  
10 final judgment or settlement, reimburse the insurer  
11 or insurers for unrecovered reasonable costs and  
12 legal fees, except that the total reimbursement under  
13 this subsection may not exceed the amount of the  
14 resolution offer to the eligible person (or, in the case  
15 of a rejection pursuant to section 807(b), the  
16 amount which the Fund would have offered).

17 Reimbursements pursuant to this subsection shall be sub-  
18 ject to such documentation as the Fund may require and  
19 shall be made by the Fund not later than 60 days after  
20 receipt by the Fund of a complete request for reimburse-  
21 ment satisfactory to the Fund.

22 **SEC. 810. FINANCIAL STATEMENTS, AUDITS, INVESTIGA-**  
23 **TIONS, AND INSPECTIONS.**

24 (a) IN GENERAL.—The financial statements of the  
25 Fund shall be prepared in accordance with generally ac-

1 cepted accounting principles and shall be audited annually  
2 by an independent certified public accountant in accord-  
3 ance with the auditing standards issued by the Comptrol-  
4 ler General. Such auditing standards shall be consistent  
5 with the private sector's generally accepted auditing  
6 standards.

7 (b) INVESTIGATIONS AND OTHER AUDITS.—The In-  
8 spector General of the Environmental Protection Agency  
9 is authorized to conduct audits and investigations as the  
10 Inspector General deems necessary or appropriate.

11 **SEC. 811. STAY OF PENDING LITIGATION.**

12 (a) ENACTMENT OPERATES AS STAY.—Except as  
13 provided in this section, enactment of this title shall oper-  
14 ate as a stay, applicable to all persons other than the Unit-  
15 ed States, of the commencement or continuation, including  
16 the issuance or employment of process or service of any  
17 pleading, motion, or notice, of any judicial, administrative,  
18 or other action with respect to claims for indemnity or  
19 other claims arising from a valid insurance contract of  
20 qualified insurance concerning insurance coverage for eli-  
21 gible costs.

22 (b) ACTIONS NOT AFFECTED.—Nothing in this title  
23 shall be construed to authorize a stay of any action involv-  
24 ing claims that do not concern eligible costs or a valid  
25 insurance contract of qualified insurance. Any such claim

1 shall be severed by operation of law from claims involving  
2 eligible costs or valid contracts of insurance of qualified  
3 insurance, and the insured party may proceed with the  
4 prosecution of the severed claims not involving eligible  
5 costs or not involving qualified insurance.

6 (c) TERMINATION OF STAY.—(1) The stay estab-  
7 lished by subsection (a) shall terminate with respect to an  
8 eligible person upon the earlier of the following:

9 (A) The rejection of a resolution offer (includ-  
10 ing an early rejection) by such eligible person pursu-  
11 ant to section 807.

12 (B) A determination by the Fund that an offer  
13 will not be made to such eligible person or that such  
14 person is not an eligible person.

15 (C) A determination by the Fund pursuant to  
16 section 816(b) that the minimum participation level  
17 has not been achieved.

18 (D) A failure by the Fund at any time after the  
19 date 10 years after the enactment of this Act to  
20 timely pay to such eligible person a resolution pay-  
21 ment equal to the total amount of eligible costs (in-  
22 cluding shortfalls from prior years) required to be  
23 paid to such person under a resolution offer in any  
24 year after such date.

1           (2) The stay established by subsection (a) shall termi-  
2 nate on the date that is 10 years after the enactment of  
3 this Act with respect to:

4           (A) A person that becomes an eligible person on  
5 or after such date.

6           (B) An eligible person that has not filed a re-  
7 quest for a resolution offer and has not rejected a  
8 resolution offer pursuant to section 807(b) before  
9 such date.

10          (d) AUTHORITY OF UNITED STATES UNAF-  
11 FECTED.—Nothing in this section shall be construed to  
12 limit or affect in any way the discretion or authority of  
13 the United States or any party to commerce or continue  
14 any allocation process, cost recovery, or other action pur-  
15 suant to the authority of sections 101 through 122a of  
16 CERCLA.

17          (e) STATUTE OF LIMITATION TOLLED.—Notwith-  
18 standing any other provision of Federal or State law, any  
19 Federal or State statute of limitation concerning the filing  
20 or prosecution of an action by an eligible person against  
21 an insurer, or by an insurer against an eligible person,  
22 with respect to eligible costs shall be tolled during the  
23 pendency of the stay of pending litigation established by  
24 this title.

1 **SEC. 812. REGULATIONS.**

2 (a) PROCEDURES AND DOCUMENTATION.—Not later  
3 than 120 days after the date of enactment of this title,  
4 the Fund shall publish in the Federal Register for public  
5 comment of not more than 60 days interim final regula-  
6 tions concerning procedures and documentation for the  
7 submission of requests for resolution offers and the pay-  
8 ment of accepted resolution offers. Not later than 60 days  
9 after the close of the public comment period, the Fund  
10 shall publish in the Federal Register final regulations con-  
11 cerning such procedures and documentation, which may  
12 be amended by the Fund from time to time. The Fund  
13 in its discretion may require that requests for resolution  
14 offers made before the issuance of final regulations pursu-  
15 ant to this subsection be revised to conform to the require-  
16 ments of such final regulations.

17 (b) OTHER REGULATIONS.—The Fund may prescribe  
18 such other regulations, rules and procedures as the Fund  
19 deems appropriate from time to time.

20 (c) JUDICIAL REVIEW.—No regulation, rule or proce-  
21 dure prescribed by the Fund shall be subject to review by  
22 any court except to the extent such regulation, rule or pro-  
23 cedure is not consistent with a provision of this title. No  
24 resolution offer made by the Fund shall be subject to re-  
25 view by any court.



1 **SEC. 813. COURT JURISDICTION AND PENALTIES.**

2 (a) JURISDICTION OF FEDERAL COURTS.—Notwith-  
3 standing section 1349 of title 28, United States Code:

4 (1) The Fund shall be deemed to be an agency  
5 of the United States for purposes of sections 1345  
6 and 1442 of title 28, United States Code.

7 (2) All civil actions to which the Fund is a  
8 party shall be deemed to arise under the laws of the  
9 United States, and the district courts of the United  
10 States shall have original jurisdiction of all such ac-  
11 tions, without regard to amount or value.

12 (3) Any civil or other action, case or con-  
13 troversy in a court of a State, or in any court other  
14 than a district court of the United States, to which  
15 the Fund is a party may at any time before the trial  
16 thereof be removed by the Fund, without the giving  
17 of any bond or security, to the district court of the  
18 United States for the district and division embracing  
19 the place where the same is pending, or, if there is  
20 no such district court, to the district court of the  
21 United States for the district in which the principal  
22 office of the Fund is located, by following any proce-  
23 dure for removal of causes in effect at the time of  
24 such removal.

1           (4) No attachment or execution shall be issued  
2           against the Fund or any of its property before final  
3           judgment in any State, Federal, or other court.

4           (b) FALSE OR FRAUDULENT STATEMENTS OR  
5 CLAIMS.—

6           (1) CRIMINAL PENALTIES.—(A) For purposes  
7           of section 287 of title 18, United States Code (relat-  
8           ing to false claims), the Fund shall be considered an  
9           agency of the United States and any officer or em-  
10          ployee of the Fund shall be considered a person in  
11          the civil service of the United States.

12          (B) For purposes of section 1001 of title 18,  
13          United States Code (relating to false statements or  
14          entries), the Fund shall be considered an agency of  
15          the United States.

16          (2) CIVIL PENALTIES.—Officers and employees  
17          of the Fund shall be considered officers and employ-  
18          ees of the United States for purposes of section  
19          3729 of title 31, United States Code (relating to  
20          false claims).

21 **SEC. 814. MISCELLANEOUS PROVISIONS.**

22          (a) ADMISSIBILITY OF RESOLUTION OFFER.—No  
23          resolution offered by the Fund shall be admissible in any  
24          legal action brought by an eligible person against an in-  
25          surer or by an insurer against an eligible person.

1 (b) RESOLUTION PROCESS NOT ADMISSION OF LI-  
2 ABILITY.—No provision of this title, and no action by an  
3 eligible person undertaken in connection with any provi-  
4 sion of this title shall in any way constitute an admission  
5 of liability in connection with the disposal of a hazardous  
6 substance.

7 (c) PRECEDENTIAL EFFECT.—No provision of this  
8 title shall affect or be construed to establish a precedent  
9 with respect to any insurance dispute between any person  
10 and insurer not subject to a stay under this title.

11 (d) SOVEREIGN IMMUNITY OF THE UNITED  
12 STATES.—No obligation or liability of the Fund shall con-  
13 stitute an obligation or liability of the United States, or  
14 of any department, agency, instrumentality, officer, or em-  
15 ployee thereof. No person shall have a cause of action of  
16 any kind against the United States, or any department  
17 agency, instrumentality, officer, or employee thereof with  
18 respect to any obligation, liability, or activity of the Fund.

19 **SEC. 815. REPORTS.**

20 (a) REPORT ON POTENTIAL FOR ESCALATION OF  
21 EIRF LIABILITY.—Not later than the end of the 5th year  
22 after enactment of this title, the President shall submit  
23 a report to Congress assessing the potential liability of the  
24 Fund over the next 5-year period. The report shall include  
25 recommendations for amendments to address any short-

1 falls between the projected potential liability of the Fund  
2 and the amounts authorized to be raised over such 5-year  
3 period.

4 (b) REPORT ON NON-NPL FACILITIES.—The Presi-  
5 dent shall conduct a study of the number of non-NPL fa-  
6 cilities and the average cleanup cost per non-NPL facility  
7 and shall report his findings not later than 3 years after  
8 the date of enactment.

9 (c) ANNUAL REPORTS.—The Fund shall report annu-  
10 ally to the President and the Congress not later than Jan-  
11 uary 15 of each year on its activities for the prior fiscal  
12 year. The report shall include—

13 (1) a financial statement audited by an inde-  
14 pendent auditor; and

15 (2) a determination of whether the fees and as-  
16 sessments imposed by section \_\_\_\_ of the Internal  
17 Revenue Code of 1986 will be sufficient to meet the  
18 anticipated obligations of the Fund.

19 (d) SPECIAL REPORTS.—The Fund shall promptly  
20 report to the President and the Congress at any time the  
21 Fund determines that the fees and assessments imposed  
22 by section \_\_\_\_ of the Internal Revenue Code of 1986 will  
23 be insufficient to meet the anticipated obligations of the  
24 Fund.

1 **SEC. 816. EFFECTIVE DATE.**

2 (a) IN GENERAL.—This title shall take effect on the  
3 date of enactment of this Act.

4 (b) MINIMUM PARTICIPATION LEVEL BY ELIGIBLE  
5 PERSONS.—

6 (1) IDENTIFICATION OF LITIGATING ELIGIBLE  
7 PERSONS.—Each insurance company providing in-  
8 surance coverage to eligible persons shall submit to  
9 the Fund, within 30 days after the enactment of this  
10 Act, a list of all eligible persons which filed suit  
11 against that company for eligible costs prior to the  
12 enactment of this Act and shall notify each eligible  
13 person which is on the list.

14 (2) REQUESTS FOR APPLICABLE PERCENT-  
15 AGE.—Each eligible person identified on a list under  
16 paragraph (1) shall file a request for its applicable  
17 percentage (as determined under section 806(b))  
18 with the Fund within 60 days after the enactment  
19 of this Act. The Fund shall determine the applicable  
20 percentage of the eligible person and notify the eligi-  
21 ble person of such percentage within 90 days of en-  
22 actment. Each eligible person receiving such notifi-  
23 cation shall decide whether to accept or reject the  
24 applicable percentage determination within 135 days  
25 of enactment. An eligible person which has made an  
26 early acceptance or rejection pursuant to section

1 807(b) shall be deemed to have accepted or rejected  
2 its applicable percentage, as the case may be. Any  
3 eligible person which does not file such a request  
4 within such period, and any eligible person which  
5 files such a request and does not reject the applica-  
6 ble percentage determination within 135 days after  
7 the enactment of this Act, shall be deemed to have  
8 accepted the determination solely for the purposes of  
9 this section.

10 (3) MINIMUM PARTICIPATION LEVEL.—Within  
11 150 days after enactment, the Fund shall deter-  
12 mine—

13 (A) the number of eligible persons on the  
14 list under paragraph (1), and

15 (B) the weighted average (as determined  
16 under paragraph (4)) of such eligible persons,  
17 which have accepted or rejected applicable percent-  
18 age determinations under this subsection. If more  
19 than 15 percent of the eligible persons on such list  
20 or more than a weighted average of 15 percent of  
21 such eligible persons have rejected such determina-  
22 tions, the provisions of this title and the insurance  
23 fee provisions of title IX shall cease to have any  
24 force and effect, and any fees paid by insurance  
25 companies which have not been utilized for adminis-

1       tration of the Fund shall be refunded to those com-  
2       panies.

3           (4) **WEIGHTED AVERAGE.**—The weighted aver-  
4       age of eligible persons accepting or rejecting applica-  
5       ble percentage determinations shall be determined by  
6       multiplying the acceptances or rejections by eligible  
7       persons listed under paragraph (1) times the num-  
8       ber of each such person’s eligible facilities (without  
9       regard to whether or not any such is the subject of  
10      any lawsuit).

11 **SEC. 817. TERMINATION OF AUTHORITY TO OFFER AND AC-**  
12 **CEPT RESOLUTION.**

13       (a) **AUTHORITY TO ACCEPT REQUEST FOR RESOLU-**  
14 **TION.**—The authority of the Fund to accept requests for  
15 resolution shall terminate on the date 10 years after the  
16 enactment of this Act.

17       (b) **AUTHORITY TO OFFER RESOLUTIONS.**—The au-  
18 thority of the Fund to offer resolutions to eligible persons  
19 shall terminate after the date 10 years and 180 days after  
20 the date of the enactment of this Act.

21       (c) **CONTINUING OBLIGATIONS.**—Until termination  
22 of the Fund, the Fund shall continue to—

23           (1) make payments pursuant to resolution of-  
24       fers for any eligible facility which is identified at the

1 time of acceptance of the resolution offer or within  
2 10 years after the enactment of this Act; or

3 (2) reimburse insurers with respect to litigation  
4 commenced or continued in connection with a resolu-  
5 tion offer made on or before the date 10 years after  
6 the date of the enactment of this Act, where the res-  
7 olution offer was rejected by an eligible person or  
8 not acted upon by an eligible person.

9 **SEC. 818. TERMINATION OF FUND.**

10 If, during any two-year calendar period commencing  
11 after the date 10 years after the date of the enactment  
12 of this Act, no eligible person makes a claim to the Fund  
13 for payment of eligible costs, the Fund shall terminate,  
14 and all amounts remaining in the Fund shall be deposited  
15 in the General Fund of the Treasury.

16 **TITLE IX—TAXES**

17 **SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
18 **OF 1986.**

19 (a) Section 59A(e)(1) of the Internal Revenue Code  
20 of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking  
21 “January 1, 1996” and inserting instead “January 1,  
22 2001”.

23 (b) Section 4611(e) of the Internal Revenue Code of  
24 1986 (26 U.S.C. 4611(e)) is amended—



1 (1) in paragraph (1), by striking “December  
2 31, 1986” and inserting instead “December 31,  
3 1995”;

4 (2) in paragraph (2)—

5 (A) by striking “December 31, 1993 or  
6 December 31, 1994” and inserting instead  
7 “December 31, 1998 or December 31, 1999”;

8 (B) by striking “December 31, of 1994 or  
9 1995, respectively” and inserting instead “De-  
10 cember 31 of 1999 or 2000, respectively”; and

11 (C) by striking “1994 or 1995” the last  
12 place it appears and inserting instead “1999 or  
13 2000”;

14 (3) in paragraph (3)(A), by striking “January  
15 1, 1987, and ending December 31, 1995” and in-  
16 serting instead “January 1, 1996, and ending De-  
17 cember 31, 2000”; and

18 (4) in paragraph (3)(B)—

19 (A) in the title thereof, by striking “Janu-  
20 ary 1, 1996” and inserting “January 1, 2001”;  
21 and

22 (B) by striking “Fund before January 1,  
23 1996” and inserting instead “Fund before Jan-  
24 uary 1, 2001”.

1 **SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON IN-**  
 2 **SURANCE COMPANIES.**

3 (a) IN GENERAL.—The Internal Revenue Code of  
 4 1986 is amended by inserting after section \_\_\_\_ the fol-  
 5 lowing new section:

6 **“SEC. . ENVIRONMENTAL FEES AND ASSESSMENTS ON**  
 7 **INSURANCE COMPANIES.**

8 “[RESERVED]”.

9 (b) CLERICAL AMENDMENTS.—The table of sections  
 10 for chapter \_\_\_\_ of the Internal Revenue Code of 1986  
 11 is amended by inserting after the item relating to section  
 12 \_\_\_\_ the following:

“Sec. . Environmental fees and assessments on insurance  
 companies.”.

13 **SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL IN-**  
 14 **SURANCE RESOLUTION FUND.**

15 (a) IN GENERAL.—

16 (1) Except as provided in section 802(f)(7) of  
 17 this Act, all expenditures of the Resolution Fund  
 18 shall be paid out of the fees and assessments im-  
 19 posed by section \_\_\_\_ of the Internal Revenue Code.

20 (2) Except as may be expressly authorized by  
 21 the Secretary of the Treasury, all funds of the Reso-  
 22 lution Fund shall be maintained in the Treasury of  
 23 the United States. The Secretary may provide for  
 24 the disbursement of such funds to the Resolution

1 Fund or on behalf of the Resolution Fund under  
2 such procedures, terms and conditions as the Sec-  
3 retary may prescribe.

4 (b) TRANSFER TO RESOLUTION FUND.—The Sec-  
5 retary of the Treasury shall transfer to the Resolution  
6 Fund on October 1 of fiscal year 1995, 1996, 1997, 1998  
7 and 1999, an amount equal to the fees and assessments  
8 anticipated to be collected pursuant to section \_\_\_\_ of the  
9 Internal Revenue Code of 1986 during the then current  
10 fiscal year.

11 (c) ADJUSTMENTS.—In each succeeding fiscal year  
12 the Secretary of the Treasury shall adjust the amounts  
13 transferred pursuant to paragraph (2) to reflect actual  
14 collections of fees and assessments during the prior fiscal  
15 year, except that with respect to the transfer made on Oc-  
16 tober 1, 1999, the Resolution Fund shall reimburse the  
17 Secretary the amount of such transfer subsequently deter-  
18 mined by the Secretary to have exceeded actual collections  
19 of fees and assessments during such fiscal year.

20 **SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.**

21 The Resolution Fund, including its capital, reserves,  
22 surplus, security holdings, and income shall be exempt  
23 from all taxation now or hereafter imposed by the United  
24 States (including any territory, dependency or possession

1 thereof) or any State, county, municipality or local taxing  
2 authority.

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HR 4916 IH—2

HR 4916 IH—3

HR 4916 IH—4

HR 4916 IH—5

HR 4916 IH—6

HR 4916 IH—7

HR 4916 IH—8

HR 4916 IH—9

HR 4916 IH—10

HR 4916 IH—11

HR 4916 IH—12

HR 4916 IH—13

HR 4916 IH—14

HR 4916 IH—15

HR 4916 IH—16

HR 4916 IH—17

HR 4916 IH—18

HR 4916 IH—19

HR 4916 IH—20

HR 4916 IH—21