Calendar No. 702

103D CONGRESS
2D SESSION

S. 1834

[Report No. 103–349]
[Report No. 103–389]

A BILL

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

SEPTEMBER 30 (legislative day, SEPTEMBER 12), 1994

Reported with an amendment

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7 (legislative day, JANUARY 25), 1994

Mr. BAUCUS (by request) (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and ordered referred to the Committee on Environment and Public Works for consideration only of matters within that Committee's jurisdiction, provided that if and when reported from the Committee, the bill then be referred to the Committee on Finance for consideration only of matters within that Committee's jurisdiction for a period not to exceed thirty session days

AUGUST 19 (legislative day, AUGUST 18), 1994

Reported by Mr. BAUCUS, with an amendment

[Omit the part struck through and insert the part printed in italic]

AUGUST 19 (legislative day, AUGUST 18), 1994

Referred to the Committee on Finance pursuant to the order of February 7, 1994

SEPTEMBER 30 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. MOYNIHAN, with an amendment

[Omit the part in bold linetype and insert the part printed in bold italic]

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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

~~(a) SHORT TITLE.—This Act may be cited as the ''Superfund Reform Act of 1994''.~~

~~(b) TABLE OF CONTENTS.—~~

~~Sec. 1. Short title; table of contents.~~

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

~~Sec. 101. Purposes and objectives.~~
~~Sec. 102. Early, direct and meaningful community participation.~~
~~Sec. 103. Community working groups.~~
~~Sec. 104. Citizen information and access offices.~~
~~Sec. 105. Response to comments.~~
~~Sec. 106. Multiple sources of risk demonstration projects.~~
~~Sec. 107. Assessing risks from multiple sources.~~
~~Sec. 108. Multiple sources of risk in priority setting.~~
~~Sec. 109. Disease registry and medical care providers.~~
~~Sec. 110. Substance profiles.~~
~~Sec. 111. Determining health effects.~~
~~Sec. 112. Public health and related health activities at National Priorities List sites.~~
~~Sec. 113. Health studies.~~
~~Sec. 114. Distribution of materials to health professionals and medical centers.~~
~~Sec. 115. Grant awards/contracts/community assistance activities.~~
~~Sec. 116. Public health recommendations in remedial actions.~~
~~Sec. 117. Agency for Toxic Substances and Disease Registry notification.~~

~~TITLE II—STATE ROLES~~

~~Sec. 201. State authority.~~
~~Sec. 202. Transfer of authorities.~~
~~Sec. 203. State role in determination of remedial action taken.~~
~~Sec. 204. State assurances.~~
~~Sec. 205. Siting.~~
~~Sec. 206. The National Priorities List.~~
~~Sec. 207. The State Registry.~~

~~TITLE III—VOLUNTARY RESPONSE~~

~~Sec. 301. Purposes and objectives.~~
~~Sec. 302. State voluntary response program.~~
~~Sec. 303. Site characterization program.~~

~~TITLE IV—LIABILITY AND ALLOCATION~~

~~Sec. 401. Response authorities.~~
~~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. Enhancement of settlement authorities.~~
~~Sec. 409. Allocation procedures.~~

~~TITLE V—REMEDY SELECTION~~

~~Sec. 501. Purposes and objectives.~~
~~Sec. 502. Cleanup standards and levels.~~
~~Sec. 503. Remedy selection.~~
~~Sec. 504. Miscellaneous amendments to section 121.~~
~~Sec. 505. Response authorities.~~
~~Sec. 506. Removal actions.~~
~~Sec. 507. Transition.~~

~~TITLE VI—MISCELLANEOUS~~

~~Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.~~
~~Sec. 602. Transfers of uncontaminated property.~~
~~Sec. 603. Agreements to transfer by deed.~~
~~Sec. 604. Alternative or innovative treatment technologies.~~
~~Sec. 605. Definitions.~~
~~Sec. 606. Conforming amendment.~~

~~TITLE VII—FUNDING~~

~~Sec. 701. Authorizations 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.~~

~~TITLE VIII—INSURANCE~~

~~Sec. 801. Short title.~~
~~Sec. 802. Environmental Insurance Resolution Fund.~~
~~Sec. 803. Financial statements, audits, investigations, and inspections.~~
~~Sec. 804. Stay of pending litigation.~~
~~Sec. 805. Sunset provisions.~~
~~Sec. 806. Sovereign immunity of the United States.~~
~~Sec. 807. Effective date.~~

~~TITLE IX—TAX~~

~~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.~~

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

~~SEC. 101. PURPOSES AND ACTIVITIES.~~

~~The purposes and objectives of the community participation activities required by this title are to—~~

~~(a) inform citizens and elected officials at all levels of government of the existence and status of facilities listed on the National Priority List and contaminated sites identified on State Registries (as established by section 207 of this Act);~~

~~(b) provide citizens with information regarding the Superfund identification and cleanup process and maintain lists of technical, health and other relevant experts licensed or located in the state who are available to assist the community;~~

~~(c) ensure wide dissemination of and access to information in a manner that is easily understood by the community, considering any unique cultural needs of the community, including presentation of information orally and distribution of information in languages other than English; and~~

~~(d) ensure that the President is aware of and considers the views of affected communities.~~

~~SEC. 102. EARLY, DIRECT AND MEANINGFUL COMMUNITY PARTICIPATION.~~

~~(a) Section 117(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this Act as ''the Act'' (42 U.S.C. 9617) is amended by amending the first sentence to read as follows:~~

~~''(1) AUTHORITY.—Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants or services available to any group of individuals which may be affected by a release or threatened release of a hazardous substance or pollutant, or contaminant at or from a facility where there is significant response action under this Act including, a site assessment, remedial investigation/feasibility study, or removal or remedial action.''.~~

~~(b) Section 117(e) of the Act is amended by striking paragraph (2) and inserting in the following:~~

~~''(2) AMOUNT.—The amount of any grants or services may not exceed $50,000 for a single recipient of grants or services. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each recipient of grants or services shall be~~

~~required, as a condition of the grants or services, to contribute at least 20 percent of the total costs of the technical assistance for which such grants and services are made. The President may waive the 20 percent contribution requirement if the grants or services recipient demonstrates financial need, and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one award or grants or services may be made with respect to a single facility, but the grants or services may be renewed to facilitate public participation at all stages of remedial action.''.~~

~~(c) Section 117 of the Act (42 U.S.C. 9617) is amended by adding after subsection (e) the following new subsections:~~

~~''(f) EARLY, DIRECT AND MEANINGFUL COMMUNITY INVOLVEMENT.—The President shall provide for early, direct and meaningful community involvement in each significant phase of response activities taken under this Act. The President shall provide the community with access to information necessary to develop meaningful comments on critical decisions regarding facility characterization, risks posed by the facility, and selection of removal and remedial actions. The President shall consider the views, pref-~~

~~erences and recommendations of the affected community regarding all aspects of the response activities, including the acceptability to the community of achieving background levels.~~

~~"(g) INFORMATION TO BE DISSEMINATED.—In addition to other information the President considers appropriate, the President shall ensure that the community is provided information on the following:~~

~~"(1) the availability of a Technical Assistance Grant (TAG) under subsection (e), directions on completing the TAG application, and the details of the application process;~~

~~"(2) the possibility (where relevant) that members of a community may qualify to receive an alternative water supply or relocation assistance;~~

~~"(3) the Superfund process, and rights of private citizens and public interest or community groups;~~

~~"(4) the potential for or existence of a Community Working Group (CWG) established under subsection (i) (as added by the Superfund Reform Act of 1994); and~~

~~"(5) an objective description of the facility's location and characteristics, the contaminants present,~~

~~the known exposure pathways, and the steps being taken to assess the risk presented by the facility.~~

~~''(h) PROCESS FOR INVOLVEMENT.—As early as practicable after site discovery, the President shall provide regular, direct, and meaningful community involvement in all phases of the response activities at the facility, including—~~

~~''(1) SITE ASSESSMENT.—Whenever practicable, during the site assessment, the President shall solicit and evaluate the concerns and interests of the community likely affected by the facility. The evaluation may consist of face-to-face community surveys, a minimum of one public meeting, written responses to significant concerns, and other appropriate participatory activities.~~

~~''(2) REMEDIAL INVESTIGATION/FEASIBILITY STUDY.—During the remedial investigation and feasibility study, the President shall solicit the views and preferences of the community on the remediation and disposition of the hazardous substances, pollutants or contaminants at the site. The community's views and preferences shall be described in the remedial investigation and feasibility study and considered in the development of remedial alternatives for the facility.''.~~

~~SEC. 103. COMMUNITY WORKING GROUPS.~~

~~Section 117 of the Act (42 U.S.C. 9617) is amended by adding after subsection (h) (as added by this Act) the following new subsection:~~

~~''(i) COMMUNITY WORKING GROUPS.—~~

~~''(1) CREATION AND RESPONSIBILITIES.—The President shall provide the opportunity to establish a representative public forum, known as a Community Working Group (CWG), to achieve direct, regular and meaningful consultation with community members throughout all stages of a response action. The President shall consult with the CWG at each significant phase of the remedial process.~~

~~''(2) INFORMATION CLEARINGHOUSE.—The CWG shall serve as a facility information clearinghouse for the community. In addition to maintaining records of facility status and lists of active citizen groups and available experts, the CWG shall also be a repository for health assessment information and other related health data.~~

~~''(3) LAND USE RECOMMENDATIONS.—To establish land use expectations more reliably, and obtain greater community support for remedial decisions affecting future land use, the President shall consult with the CWG on a regular basis throughout the remedy selection process regarding reasonably~~

~~anticipated future use of land at the facility. The CWG may offer recommendations to the President at any time during the response activities at the facility on the reasonably anticipated future use of land at the facility, taking into account development possibilities and future waste management needs. The President shall not be bound by any recommendation of the CWG. However, when the CWG achieves substantial agreement on the reasonably anticipated future use of the land at the facility, the President shall give substantial weight to that recommendation. In cases where there is substantive disagreement within the CWG over a recommendation regarding the reasonably anticipated future use of land at the facility, the President shall seek to reconcile the differences. In the event of continued substantive disagreement, substantial weight shall be given to the views of the residents of the affected community. Should the President make a determination that is inconsistent with a CWG recommendation on the reasonably anticipated future use of land at the facility, the President shall issue a written reason for the inconsistency.~~

~~"(4) MEMBERS. CWG membership shall not exceed twenty persons. CWG members shall serve~~

~~without pay. Nominations for CWG membership shall be solicited and accepted by the President. Selection of CWG members shall be made by the President. In selecting citizen participants for the CWG, the President shall provide notice and an opportunity to participate in CWGs to persons who potentially are affected by facility contamination in the community. Special efforts shall be made to ensure that the composition of CWGs reflects a balanced representation of all those interested in facility remediation. In general, it shall be appropriate for the President to offer members of the following groups representation on a CWG—~~

~~''(A) Residents and/or landowners who live on or have property immediately adjacent to or near the facility, or who may be directly affected by releases from the facility, with a minimum of one representative of the recipient a grant for technical assistance, if any, awarded under subsection (e);~~

~~''(B) Persons who, although not physically as close to the facility as those in the group identified in subparagraph (A), may be potentially affected by releases from the facility;~~

~~''(C) Members of the local medical community who have resided in the community for at least five years;~~

~~''(D) Representatives of Indian tribes;~~

~~''(E) Representatives of citizen, environmental or public interest groups with members residing in the community;~~

~~''(F) Local government officials;~~

~~''(G) Workers at the facility who will be involved in actual cleanup operations;~~

~~''(H) Persons at the facility during response actions;~~

~~''(I) Facility owners and the significant PRPs who, whenever practicable, represent a balance of interests; and,~~

~~''(J) Members of the local business community.~~

~~''(5) OTHER COMMUNITY VIEWS.—The existence of a CWG shall not affect or diminish any other obligation of the President to consider the views of any person in selecting response actions under this Act.''.~~

~~SEC. 104. CITIZEN INFORMATION AND ACCESS OFFICES.~~

~~Section 117 of the Act (42 U.S.C. 9617) is amended by adding after subsection (i) (as added by this Act) the following new subsection:~~

~~''(j) CITIZEN INFORMATION AND ACCESS OFFICES.—~~

~~''(1) CREATION AND RESPONSIBILITIES.—The Administrator shall ensure that an independent Citizen Information and Access Office (CIAO) is established in each state and on each tribal land affected by a National Priorities List facility.~~

~~''(2) PRIMARY FUNCTIONS.—The primary functions of each CIAO shall be to—~~

~~''(A) inform citizens and elected officials at all levels of government of the existence and status of National Priorities List facilities in the state;~~

~~''(B) provide citizens with information about each phase of the Superfund process, including the site identification, assessment and cleanup phases;~~

~~''(C) ensure wide distribution of information that is easily understood by citizens;~~

~~''(D) serve as a state-wide, or tribal land-wide clearinghouse of information; and~~

~~''(E) assist in the Administrator's efforts to notify, nominate, and select potential Community Working Group members.''.~~

~~SEC. 105. RESPONSE TO COMMENTS.~~

~~Section 117(a) (42 U.S.C. 9617(a)) of the Act is amended by striking ''both of'' from the phrase immediately preceding paragraph (1) and by inserting after paragraph (2) the following new paragraph:~~

~~''(3) Consider the recommendations of any Community Working Group, community members and Technical Assistance Grant recipients established for the facility pursuant to this section. Provide, in writing a response to each significant comment received during the public comment period. The written response shall include an explanation of how the lead agency has used or rejected significant comments of the Community Working Group in its final decision.''.~~

~~SEC. 106. MULTIPLE SOURCES OF RISK DEMONSTRATION PROJECTS.~~

~~Section 117 of the Act (42 U.S.C. 9617) is amended by adding after subsection (j) (as added by this Act) the following new subsection:~~

~~''(k) MULTIPLE SOURCES OF RISK DEMONSTRATION PROJECTS.—~~

~~"(1) IN GENERAL.—The Administrator shall select at least 10 demonstration projects to be implemented over a five year period, relating to the identification, assessment, management of, and response to, multiple sources of risk in and around designated facilities. These demonstration projects will examine various approaches to protect communities exposed to such multiple sources of risk. The Administrator shall promulgate regulations that set forth the criteria by which demonstration projects will be selected.~~

~~"(2) ADDITIONAL HEALTH BENEFITS.—In the course of conducting these demonstration projects, if a distinct pattern of adverse health effects is identified in the surrounding community, the Administrator shall consider the provision of additional health benefits to the affected community, in an effort to improve community health and welfare. Additional benefits may include services such as consultations on health information and health screening, the kind and availability of which will be set forth in regulations promulgated by the Administrator. These benefits shall not duplicate any activities already undertaken at those facilities by the Agency~~

~~for Toxic Substances and Disease Registry under section 104(i) of this Act.~~

~~''(3) MULTIPLE SOURCES OF RISK.—For the purposes of this section, the term ''multiple sources of risk'' means—~~

~~''(A) health risks from the existence of and exposure to hazardous substances in the vicinity of a facility for which a response action under this Act is considered, which may present risks to persons who are also at risk due to conditions at such a facility; or~~

~~''(B) health risks from releases or threatened releases of a hazardous substance, pollutant or contaminant from facilities, permitted or otherwise, in the vicinity of a facility for which a response action under this Act is being considered, which may present risks to persons who are also at risk due to the specific facility for which a response action is being considered.~~

~~''(4) CONSISTENCY WITH DESIGNATION OF EMPOWERMENT ZONES.—The Administrator shall, to the maximum extent practicable, select locations for conducting demonstration projects under this subsection that coincide with areas which have been identified as empowerment zones under the Omnibus~~

~~Budget Reconciliation Act of 1994 (Public Law 103–66).~~

~~''(5) RIGHT TO PETITION.—Any person may petition the Administrator to conduct a demonstration project under this subsection at a specified location. Without regard to paragraph (4), the Administrator may grant such a petition if—~~

~~''(A) the petition sets out a reasonable basis in fact that the population residing in the vicinity of the specified location may be exposed to multiple sources of risk as described in paragraph (3) and;~~

~~''(B) the petition otherwise meets the requirements of regulations promulgated by the Administrator which set forth the criteria by which demonstration projects will be selected.~~

~~''(6) REVIEWS OF PETITIONS.—The Administrator's determinations and reviews of petitions under this subsection are committed to the Administrator's unreviewable discretion.~~

~~''(7) INTERAGENCY COORDINATION.—The Administrator shall coordinate with other departments or agencies as necessary in carrying out the responsibilities of this subsection.''.~~

~~SEC. 107. ASSESSING RISKS FROM MULTIPLE SOURCES.~~

~~Section 105(a) of the Act (42 U.S.C. 9605(a)) is amended by adding after paragraph (10) the following new paragraph:~~

~~''(11) standards and procedures for assessing the risks, and the cumulative impact of such risks, posed by the release or threatened release of hazardous substances, or pollutants, or contaminants from multiple sources of risk (as described in section 117(l)(3) of this Act) in and around a facility, for utilization in response actions authorized by this Act. The demonstration projects authorized under subsection 117(l) of this Act shall be used to help meet the requirements of this subsection.''.~~

~~SEC. 108. MULTIPLE SOURCES OF RISK IN PRIORITY SETTING.~~

~~Section 105(a)(8)(A) of the Act (42 U.S.C. 9605(a)(8)(A)) is amended by adding in the last sentence before ''and other appropriate factors'' the following ''the presence of multiple sources of risk (described in section 117(l)(3) of this Act) to affected communities.''.~~

~~SEC. 109. DISEASE REGISTRY AND MEDICAL CARE PROVIDERS.~~

~~Section 104(i)(1) of the Act (42 U.S.C. 9604(i)(1)) is amended:~~

~~(a) by amending subparagraph (A) to read as follows:~~

~~''(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;'';~~ ~~and~~

~~(b) by amending subparagraph (E) by striking ''admissions to hospitals and other facilities and services operated or provided by the Public Health Service'' and by inserting ''referral to accredited medical care providers''.~~

~~SEC. 110. SUBSTANCE PROFILES.~~

~~Section 104(i)(3) of the Act (42 U.S.C. 9604(i)(3)) is amended by amending the paragraph beginning ''Any toxicological profile or revision thereof'' to read as follows: ''Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the listing but which have been found at non-National Priorities List facilities and which have been determined by ATSDR to be of critical health concern. Profiles required under this paragraph~~

shall be revised and republished as necessary, based on scientific need. Such profiles shall be provided to the States and made available to other interested parties.''.

SEC. 111. DETERMINING HEALTH EFFECTS.

Section 104(i)(5) of the Act (42 U.S.C. 9604(i)(5)) is amended—

(a) in subparagraph (A) by—

(1) striking ''designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance'' and inserting ''conducted directly or by means such as cooperative agreements and grants with appropriate public and nonprofit institutions. The research shall be designed to determine the health effects (and techniques for development of methods to determine such health effects) of the substance''; and

(2) redesignating clause (iv) as ''(v)'', striking ''and'' after clause (iii), and by inserting a new clause (iv) to read as follows:

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

(b) striking subparagraph (D).

SEC. 112. PUBLIC HEALTH AND RELATED HEALTH ACTIVITIES AT NPL FACILITIES.

Section 104(i)(6) of the Act (42 U.S.C. 9604(i)(6)) is amended by—

(a) amending subparagraph (A) to read as follows:

''(A) The Administrator of ATSDR shall perform a public health assessment or related health activity for each facility on the National Priorities List established under section 105 of this Act. The public health assessment or related health activity shall be completed for each facility proposed for inclusion on the National Priorities List not later than one year after the date of proposal for inclusion, including those facilities owned by any department, agency, or instrumentality of the United States.''; and

(b) in subparagraph (H), striking ''health assessment'' and ''such assessment'' each place that they appear and inserting ''public health assessment or related health activity''.

SEC. 113. HEALTH STUDIES.

Section 104(i)(7)(A) of the Act (42 U.S.C. 9604(i)(7)(A)) is amended to read as follows:

''(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results

of a public health assessment or on the basis of other appropriate information, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epidemiologic or other health studies of the entire exposed population.''.

SEC. 114. DISTRIBUTION OF MATERIALS TO HEALTH PROFESSIONALS AND MEDICAL CENTERS.

Section 104(i)(14) of the Act (42 U.S.C. 9604(i)(14)) is amended to read as follows:

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

''(A) assemble, develop as necessary, and distribute to the States, medical colleges, physicians, nursing institutions, nurses, and other health professionals and medical centers, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of prevention, diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through means the Administrator of ATSDR considers appropriate; and

''(B) assemble, develop as necessary, and distribute to the general public and to at-risk popu-

lations appropriate educational materials and other information on human health effects of hazardous substances.''.

SEC. 115. GRANT AWARDS/CONTRACTS/COMMUNITY ASSISTANCE ACTIVITIES.

Section 104(i)(15) of the Act (42 U.S.C. 6904(i)(15)) is amended by—

(a) inserting ''(A)'' before ''The activities'';

(b) striking ''cooperative agreements with States (or political subdivisions thereof)'' and inserting ''grants, cooperative agreements, or contracts with States (or political subdivisions thereof), other appropriate public authorities, public or private institutions, colleges, and universities, and professional associations,'';

(c) in the second sentence, inserting ''public'' before ''health assessments''; and

(d) adding a new subparagraph as follows:

''(B) When a public health assessment or related health activity is conducted at a facility on, or a release being evaluated for inclusion on the National Priorities List, the Administrator of ATSDR may provide the assistance specified in this paragraph to public or private nonprofit entities, individuals, and community-based groups

who may be affected by the release or threatened release of hazardous substances in the environment.''.

SEC. 116. PUBLIC HEALTH RECOMMENDATIONS IN REMEDIAL ACTIONS.

Section 121(c) of the Act (42 U.S.C. 9621(c)) is amended by inserting after the phrase ''remedial action'' the second time it appears the following: '', including public health recommendations and decisions resulting from activities under section 104(i),''.

SEC. 117. ATSDR NOTIFICATION.

Section 122 of the Act (42 U.S.C. 9622) is amended by inserting after subsection (m) the following new subsection:

''(n) NOTIFICATION OF ATSDR.—When the Agency for Toxic Substances and Disease Registry (ATSDR) has conducted health related response activities pursuant to section 104(i) in response to a release or threatened release of any hazardous substance that is the subject of negotiations under this section, the President shall notify ATSDR of the negotiations and shall encourage the participation of ATSDR in the negotiations.''.

~~TITLE II—STATE ROLES~~

~~SEC. 201. STATE AUTHORITY.~~

~~(a) Title I of the Act (42 U.S.C. 9600 et seq.) is amended by adding after section 126 the following new section:~~

~~"SEC. 127. STATE AUTHORITY.~~

~~"(a) STATE PROGRAM AUTHORIZATION.—~~

~~"(1) IN GENERAL.—At any time after the promulgation of the criteria required by paragraph (3) of this subsection, a State may apply to the Administrator to carry out, under its own legal authorities, response actions and enforcement activities at all facilities listed or proposed for listing on the National Priorities List, or certain categories of facilities listed or proposed for listing on the National Priorities List, within the State. This section shall not apply to any facility owned or operated by a department, agency, or instrumentality of the United States listed on the National Priorities List if, on the date of enactment of the Superfund Reform Act of 1994, an interagency agreement for such facility has been entered into pursuant to section 120(a)(2).~~

~~"(2) REQUIREMENTS FOR AUTHORIZATION.—If the Administrator determines that the State possesses the legal authority, technical capability, and~~

~~resources necessary to conduct response actions and enforcement activities in a manner that is substantially consistent with this Act and the National Contingency Plan at the facilities listed or proposed for listing on the National Priorities List for which it seeks authorization, the Administrator, pursuant to a contract or agreement entered into between the Administrator and the State, may authorize the State to assume the responsibilities established under this Act at all such facilities or categories of facilities. Except as otherwise provided in this Act, such responsibilities include, but are not limited to, responding to a release or threatened release of a hazardous substance or pollutant or contaminant; selecting response actions; expending the Fund in amounts authorized by the Administrator to finance response activities; and taking enforcement actions, including cost recovery actions to recover Fund expenditures made by the State. In an application for authorization, a State shall acknowledge its responsibility to address all response actions at the facilities for which it seeks authorization.~~

~~"(3) PROMULGATION OF REGULATIONS. The Administrator shall issue regulations to determine a State's eligibility for authorization and establish a~~

~~process and criteria for withdrawal of such an authorization. At a minimum, a State must demonstrate—~~

~~"(A) that it has a process for allocating liability among potentially responsible parties that is substantially consistent with section 122a of this Act (as added by the Superfund Reform Act of 1994);~~

~~"(B) that it provides for public participation in a manner that is substantially consistent with section 117 of this Act and the National Contingency Plan;~~

~~"(C) that it provides for selection and conduct of response actions in a manner that is substantially consistent with section 121 of this Act; and~~

~~"(D) that it provides for notification of and coordination with trustees in a manner that is substantially consistent with section 104(b)(2) and section 122(j)(1) of this Act.~~

~~"(b) REFERRAL OF RESPONSIBILITIES.—~~

~~"(1) IN GENERAL.—At any time after the promulgation of the criteria required by paragraph (3) of this subsection, a State may apply to the Administrator to carry out, under its own legal authorities,~~

~~response actions at a specific facility or facilities listed or proposed for listing on the National Priorities List, within the State.~~

~~"(2) REQUIREMENTS FOR REFERRAL.—If the Administrator determines that the State possesses the legal authority, technical capability, and resources necessary to conduct response actions and enforcement activities in a manner substantially consistent with this Act and the National Contingency Plan at the facilities listed or proposed for listing on the National Priorities List facilities for which it seeks referral, the Administrator, pursuant to a contract or agreement entered into between the Administrator and the State, may refer the responsibilities established under this Act to the State for the facilities for which the State seeks referral. Except as otherwise provided in this Act, such responsibilities include, but are not limited to, responding to a release or threatened release of a hazardous substance or pollutant or contaminant; selecting response actions; expending the Fund in amounts authorized by the Administrator to finance response activities; and taking enforcement actions, including cost recovery actions to recover Fund expenditures made by the State.~~

~~"(3) PROMULGATION OF REGULATIONS.—The Administrator shall promulgate regulations to determine a State's eligibility for referral and establish a process and criteria for withdrawal of such referral. At a minimum, a State must demonstrate that it meets the requirements described in subsection (a)(3).~~

~~"(c) AUTHORIZED USE OF FUND.—At facilities listed on the National Priorities List for which a State is authorized under subsection (a), and at facilities listed on the National Priorities List which are referred to a State under subsection (b), the State shall be eligible for response action financing from the Fund. The Administrator shall ensure that all allocations of the Fund to the States for the purpose of undertaking site-specific response actions are based primarily on the relative risks to human health and the environment posed by the facilities eligible for funding. The amount of Fund financing for a State-selected response action at a facility listed on the National Priorities List shall—~~

~~"(1) take into account the number and financial viability of parties identified as potentially liable for response costs at such facility, and~~

"(2) be limited to the amount necessary to achieve a level of response that is not more stringent than that required under this Act.

A State also may obtain Fund financing to develop and enhance its capacity to undertake response actions and enforcement activities. The Administrator shall establish specific criteria for allocating expenditures from the Fund among States for the purposes of undertaking response actions and enforcement activities at referred and State-authorized facilities, and building state capacities to undertake such response actions and enforcement activities. The Administrator shall develop a program and provide an appropriate level of Fund financing to assist Indian tribes in developing and enhancing their capabilities to conduct response actions and enforcement activities.

"(d) STATE COST SHARE.—As provided in section 104(c)(3)(B) of this Act (as added by the Superfund Reform Act of 1994), a State shall pay or assure payment of 15 percent of the costs of all response actions and program support or other costs for which the State receives funds from the Fund under this section. An Indian tribe authorized to conduct a response actions and enforcement activities or to which facilities have been referred under this section is not subject to the cost-share requirement of this subsection.

1 ~~"(e) TERMS AND CONDITIONS; COST RECOVERY.—A~~
2 ~~contract or agreement for a State authorization or referral~~
3 ~~under this section is subject to such terms and conditions~~
4 ~~as the Administrator prescribes. The terms and conditions~~
5 ~~shall include requirements for periodic auditing and re-~~
6 ~~porting of State expenditures from the Fund. The contract~~
7 ~~or agreement may cover a specific facility, a category of~~
8 ~~facilities, or all facilities listed or proposed to be listed on~~
9 ~~the National Priorities List in the State. The contract or~~
10 ~~agreement shall require the State to seek cost recovery,~~
11 ~~as contemplated by this Act, of all expenditures from the~~
12 ~~Fund. Five percent of the monies recovered by the State~~
13 ~~may be retained by the State for use in its hazardous sub-~~
14 ~~stance response program, and the remainder shall be re-~~
15 ~~turned to the Fund. Before making further allocations~~
16 ~~from the Fund to any State, the Administrator shall take~~
17 ~~into consideration the effectiveness of the State's enforce-~~
18 ~~ment program and cost recovery efforts.~~

19 ~~"(f) ENFORCEMENT OF AGREEMENTS.—If the Ad-~~
20 ~~ministrator enters into a contract or agreement with a~~
21 ~~State pursuant to this section, and the State fails to com-~~
22 ~~ply with any terms and conditions of the contract or agree-~~
23 ~~ment, the Administrator, after providing sixty days notice,~~
24 ~~may withdraw the State authorization or referral, or seek~~
25 ~~in the appropriate Federal district court to enforce the~~

~~contract or agreement to recover any funds advanced or any costs incurred because of the breach of the contract or agreement by the State.~~

~~"(g) MORE STRINGENT STATE STANDARDS.—Under either an authorization or referral, a State may select a response action that achieves a level of cleanup that is more stringent than required under section 121(d) of this Act if the State agrees to pay for the incremental increase in response cost attributable to achieving the more stringent cleanup level. Neither the Fund nor any party liable for response costs shall incur costs in excess of those necessary to achieve a level of cleanup required under section 121(d) of this Act.~~

~~"(h) OPPORTNITY FOR PUBLIC COMMENT.—The Administrator shall make available, for public review and comment, applications for authorization under subsection (a) and applications for referral under subsection (b). The Administrator shall not approve or withdraw authorization or referral from a State unless the Administrator notifies the State, and makes public, in writing, the reasons for such approval or withdrawal.~~

~~"(i) PERIODIC REVIEW OF AUTHORIZED STATE PROGRAMS AND REFERRALS.—The Administrator shall conduct a periodic review of authorized State programs and referrals to determine, among other things, whether—~~

~~"(1) the response actions were selected and conducted in a manner that was substantially consistent with this Act, the National Contingency Plan, and the contract or agreement between the Administrator and the State;~~

~~"(2) the State response costs financed by Fund expenditures were incurred in the manner agreed to by the State, in accordance with the contract or agreement between the Administrator and the State; and~~

~~"(3) the State's cost recovery efforts and other enforcement efforts were conducted in accordance with the contract or agreement between the Administrator and the State.~~

~~The Administrator, in consultation with the States, shall develop specific criteria for periodic reviews of authorized State programs and referrals. The Administrator shall establish a mechanism to make the periodic State reviews available to the public.~~

~~"(j) MODIFICATION OF RESPONSE.—At a facility for which a State selects a response action under an authorization or a referral, the State shall afford the opportunity for public participation in a manner that is substantially consistent with the requirements of section 117(f)–(i) of this Act, and shall give notice of and a copy of the pro-~~

~~posed plan for response action to the Administrator. The State also shall give prompt written notice and a copy of the final decision in selecting the response action to the Administrator. Within 90 days from the date of receipt of such notice and final response action decision from the State, the Administrator may issue a notice of a request to modify the State-selected remedy. The Administrator's notice shall be in writing and shall set forth the basis for the Administrator's position, and the final date for responding to the Administrator's request, which shall be no less than 90 days from the date of the notice. If the State's response does not resolve the Administrator's concerns to the Administrator's satisfaction, the Administrator may withhold the distribution of Fund monies for the selected response action or may withdraw all or part of the State's authorization or referral.~~

~~"(k) EFFECT OF SECTION.—The President shall retain the authority to take response actions at facilities listed or proposed for listing on the National Priorities List that are not being addressed by a State under an authorization or referral pursuant to this section. At facilities listed or proposed for listing on the National Priorities List that are being addressed by a State under either an authorization or a referral, the President may take response actions that the President determines necessary to~~

~~protect human health or the environment, if the State fails, after a request by the Administrator to take such response actions in a timely manner. A State does not have the authority, except pursuant to this section, to take or order a response action, or any other action relating to releases or threatened releases, at any facility listed or proposed for listing on the National Priorities List. This section does not affect the authority of the United States under this Act to seek cost recovery for costs incurred by the United States.''.~~

~~(b) TRANSITION AND CONFORMING AMENDMENTS.—~~

~~(1) Sections 104(c)(5), 104(c)(7), 104(d)(1) and 104(d)(2) of the Act are each amended by inserting after the heading in each paragraph the following ''This paragraph applies only to response actions for which a Record of Decision or other decision document is signed before the date of enactment of the Superfund Reform Act of 1994 and response actions covered by a contract or agreement for which a State has selected, pursuant to the option provided in subsection (c)(3)(C) (as added by the Superfund Reform Act of 1994), the funding requirements set forth in subsection (c)(3)(A) (as amended by Superfund Reform Act of 1994).'';~~

~~(2) Section 114(a) of the Act is amended by striking ''Nothing'' and inserting ''Except as otherwise provided in this Act, nothing'';~~

~~(3) Section 121(f)(1) of the Act is amended by striking the existing provisions and inserting ''The President may repeal, no earlier than one year after the promulgation of final regulations under sections 127(a)(3) and 127(b)(3), the regulations issued under this paragraph prior to the date of enactment of the Superfund Reform Act of 1994.'';~~

~~(4) Section 121(f)(2) of the Act is amended by—~~

~~(A) striking ''legally applicable or relevant and appropriate'' from the second sentence of subparagraph (A); and~~

~~(B) striking ''subsection (d)(4)'' from the second sentence of subparagraph (A) and inserting ''subsection (d)(5)(C)'';~~

~~(5) Section 121(f)(3) of the Act is amended by—~~

~~(A) striking ''legally applicable or relevant and appropriate'' from the second sentence of subparagraph (A); and~~

(B) striking ''subsection (d)(4)'' from the second sentence of subparagraph (A) and inserting ''subsection (d)(5)(C)''; and

(6) Section 302(d) of the Act is amended by striking ''Nothing'' and inserting ''Except as otherwise provided in this Act, nothing''.

SEC. 202. TRANSFER OF AUTHORITIES.

Section 120(g) of the Act (42 U.S.C. 9620(g)) is amended by adding, after ''the Environmental Protection Agency,'' the phrase ''and except as provided in section 127,''.

SEC. 203. STATE ROLE IN DETERMINATION OF REMEDIAL ACTION TAKEN.

Section 120(h)(3) of the Act (42 U.S.C. 9620(h)(3)) is amended by adding at the end thereof the following: ''If the property being transferred is part of a facility subject to a State authorization or a referral under section 127, all demonstrations required by this paragraph to be made to the Administrator shall be made to the appropriate State official.''.

SEC. 204. STATE ASSURANCES.

Section 104(c)(3) of the Act (42 U.S.C. 9604(c)(3)) is amended by—

(a) in the beginning of the paragraph after ''(3)'' inserting ''State cost shares for response ac-

~~tions and programs for which Superfund funds may be allocated under this section or section 127 shall be as follows—'';~~

~~(b) striking ''The'' before ''President'' and inserting ''(A) For all remedial actions for which a Record of Decision is signed before the date of enactment of the Superfund Reform Act of 1994, the'';~~

~~(c) redesignating subparagraphs (A), (B) and (C) of existing section 104(c)(3) as subparagraphs (1), (2) and (3) respectively; by striking ''(i)'', wherever it appears and inserting ''(I)''; and striking ''(ii)'' wherever it appears and inserting ''(II)'';~~

~~(d) adding a new subparagraph (B) as follows—~~

~~''(B) Subject to the provisions of subparagraph (C), for the costs of all response actions for which a Record of Decision or other decision document is signed after the date that is one year after the effective date of final regulations promulgated under section 127(a)(3) and section 127(b)(3), and for all program or other costs for which Fund money may be allocated to the State pursuant to this section or section 127, the President shall not provide or authorize funding from the Fund unless the State first enters into a contract or agreement with the President providing assurances deemed adequate by the President~~

that the State will pay or assure payment of 15 percentum of all such costs as required by section 127(d). The Administrator may provide funding authorized under this paragraph for a one-year or other period for all costs and facilities in a State; in that event, the State cost share requirement set forth above shall apply to all costs covered by such period.''; and

(e) adding a new subparagraph (C) as follows:

''(C) Each State shall have the option of receiving funding for all response action costs and program or other costs for which funding is authorized under this section or section 127 pursuant to either subparagraph (A) or subparagraph (B) of this paragraph. The option selected by the State shall apply to all contracts and agreements signed pursuant to this section or section 127.''.

SEC. 205. SITING.

Section 104(c)(9) of the Act (42 U.S.C. 9604(c)(9)) is amended to read as follows:

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

~~**SEC. 206. THE NATIONAL PRIORITIES LIST.**~~

~~(a) Section 105(a)(8)(B) of the Act (42 U.S.C. 9605(a)(8)(B)) is amended by striking ''as part of the plan'', and by inserting before ''Within'' the sentence ''The National Priorities List, and any modifications to the National Priorities List, may be adopted administratively, and without rulemaking.''.~~

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

~~''(C) before determining that a facility is to be listed on the National Priorities List, the Administrator shall publish a notice proposing the facility for listing on the National Priorities List and shall provide an opportunity for public comment. Public notice and opportunity for comment also shall be provided before a decision by the Administrator to remove a facility from the National Priorities List. The Administrator shall establish a procedure under which any person may request that a facility be considered for listing on, or removal from, the National Priorities List. The Administrator has the sole discretion to list or remove a facility on the National Priorities List.''.~~

SEC. 207. THE STATE REGISTRY.

Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8)) is amended by adding after subparagraph (C) (as added by this Act) a new subparagraph—

"(D) STATE REGISTRY.—Each State shall maintain and make available to the public a list of facilities in the State that are believed to present a current or potential hazard to human health or the environment due to the release or threatened release of hazardous substances or pollutants or contaminants. Each State, in consultation with the Administrator and other appropriate federal agencies, shall prepare such listing, and shall, on an annual basis, publish the State Registry, specifying the governmental agency addressing the facility, and whether the facility is on the National Priorities List.".

TITLE III—VOLUNTARY RESPONSE

SEC. 301. PURPOSES AND OBJECTIVES.

The purposes and objectives of this title are to—

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

(b) benefit the public welfare by returning contaminated sites to economically productive uses.

SEC. 302. STATE VOLUNTARY RESPONSE PROGRAM.

Title I of the Act is amended by adding after section 127 (as added by this Act) the following new section:

"SEC. 128. VOLUNTARY RESPONSE PROGRAM.

"(a) IN GENERAL.—The Administrator shall establish a program to provide technical and other assistance to the States to establish and expand voluntary response programs.

"(b) VOLUNTARY RESPONSE PROGRAM.—The Administrator shall assist States to establish and administer a voluntary program that—

"(1) covers all eligible facilities, as defined in subsection (c) of this section, within the State;

"(2) provides adequate opportunities for public participation, including prior notice and opportunity for comment, in selecting response actions;

"(3) provides opportunities for technical assistance for voluntary response actions;

"(4) has the capability, through enforcement or other mechanisms, of assuming the responsibility for completing a response action if the current owner or prospective purchaser fails or refuses to complete the necessary response, including operation and maintenance; and

"(5) provides adequate oversight and has adequate enforcement authorities to ensure that vol-

~~untary response actions are completed in accordance with applicable Federal and State laws, including applicable permit requirements and any on-going operation and maintenance or long-term monitoring activities.~~

~~''(c) ELIGIBLE FACILITIES.—~~

~~''(1) Except as provided in paragraph 2 of this subsection, the term 'eligible facility' means a facility or portion of a facility where there has been a release or threat of release of a hazardous substance, pollutant, or contaminant into the environment.~~

~~''(2) The term 'eligible facility' does not include any of the following—~~

~~''(A) a facility at which a remedial investigation and feasibility study is underway, unless the Administrator, in consultation with the State, determines that it is appropriate to allow the response action at such a facility to proceed under a voluntary response program;~~

~~''(B) a facility with respect to which a Record of Decision has been issued under section 104 of this Act;~~

~~''(C) a facility with respect to which a corrective action permit condition or order has~~

~~been proposed, issued, modified, or amended to require implementation of specific corrective measures under section 3004(u), 3004(v), or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6924(v), or 6928(h)):~~

~~''(D) a land disposal unit with respect to which a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted;~~

~~''(E) a facility with respect to which an administrative or judicial order or decree concerning the response action has been issued, sought, or entered into by the United States under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or title XIV of the Public Health Service Act, commonly known as the Safe Drinking Water Act (42 U.S.C. 300(f) et seq.); and~~

~~''(F) a facility at which assistance for response activities may be obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C.~~

~~6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.~~

~~''(3) A facility listed or proposed for listing on the National Priorities List may be an ''eligible facility'' if—~~

~~''(A) the facility is not a facility identified in paragraph (2);~~

~~''(B) the State in which the facility is located has obtained a State authorization or referral under section 127 of this Act; and~~

~~''(C) the Administrator concurs in the State's determination to address the facility under its voluntary response program.~~

~~''(d) ANNUAL REPORTING.—The Administrator shall report, not later than 1 year after enactment of this Act and annually thereafter, to the Congress on the status of State voluntary response programs including—~~

~~''(1) whether the State's voluntary response program continues to meet the criteria set forth in subsection (b) or (c);~~

~~''(2) whether the State has adopted procedures to ensure that all response actions completed or undertaken under the State's voluntary response pro-~~

~~gram comply with all applicable Federal and State laws;~~

~~"(3) whether public participation opportunities have been adequate during the process of selecting a response action for each voluntary response;~~

~~"(4) whether voluntary response actions completed or undertaken under the State voluntary response program have been implemented in a manner that has reduced or eliminated risks to human health and the environment to the satisfaction of the State;~~

~~"(5) whether voluntary response actions completed or undertaken under the State voluntary response program at facilities listed or proposed for listing on the National Priorities List were conducted in accordance with section 121(d) of this Act; and~~

~~"(6) whether a voluntary response action has increased risk to human health or the environment, and whether a State has taken timely and appropriate steps to reduce or eliminate that risk to human health or the environment.~~

~~"(e) STATUTORY CONSTRUCTION.—This section is not intended—~~

~~''(1) to impose any requirement on a State voluntary response program existing on or after the date of enactment of this Act; or~~

~~''(2) to affect the liability of any person or response authorities afforded under any law (including any regulation) relating to environmental contamination, including this Act (except as expressly provided in section 101(39)(D) (42 U.S.C. 9601(39)(D)), section 107(a)(5)(C) (42 U.S.C. 9607(a)(5)(C)), the Solid Waste Disposal Act (42 U.S.C. 6901 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et. seq.), or title XIV of the Public Health Service Act, commonly known as the ''Safe Drinking Water Act'' (42 U.S.C. 300(f) et. seq.).''.~~

~~SEC. 303. SITE CHARACTERIZATION PROGRAM.~~

~~Title I of the Act is amended by adding after section 128 (as added by this Act) the following new section:~~

~~''SEC. 129 SITE CHARACTERIZATION TECHNICAL ASSISTANCE PROGRAM~~

~~''(a) IN GENERAL.—The Administrator shall establish a program to provide technical and other assistance to municipalities to conduct site characterizations for facilities at which voluntary response actions are being conducted or are proposed to be conducted pursuant to a~~

~~State voluntary response program that meets the requirements described in section 127.~~

~~"(b) TECHNICAL ASSISTANCE.—In carrying out the program established under subsection (a), the Administrator may provide technical and other assistance to a municipality to conduct a site characterization of a facility within the jurisdiction of the municipality at which voluntary response actions are being conducted or are proposed to be conducted. A municipality requesting technical and other assistance shall provide to the Administrator the following information—~~

~~"(1) describing the facility at which voluntary response actions are being conducted or are proposed to be conducted;~~

~~"(2) demonstrating the financial need of the owner or prospective purchaser of such a facility for funds to conduct a site characterization;~~

~~"(3) analyzing the potential of the facility for creating new businesses and employment opportunities on completion of the response action;~~

~~"(4) estimating the fair market value of the site after the proposed or ongoing response action, if a response action is necessary;~~

~~"(5) regarding the economic viability and commercial activity on real property—~~

~~''(A) located within the immediate vicinity of the affected site at the time of consideration of the application; or~~

~~''(B) projected to be located within the immediate vicinity of the affected site by the date that is 5 years after the date of the consideration of the application;~~

~~''(6) regarding the potential of the facility for creating new businesses and employment opportunities on completion of a response action;~~

~~''(7) regarding whether the affected site is located in an economically distressed community;~~

~~''(8) regarding the presence of multiple sources of risk as described in section 117(k) of this Act; and~~

~~''(9) in such form, as the Administrator considers appropriate to carry out the purposes of this section.''.~~

~~TITLE IV—LIABILITY AND ALLOCATION~~

~~SEC. 401. RESPONSE AUTHORITIES.~~

~~(a) Section 104(e)(2) of the Act (42 U.S.C. 9604(e)(2)) is amended by deleting the word ''cleanup'' and inserting the phrase ''response action'', and inserting after subparagraph (C) the following:~~

~~''(D) The nature and extent of all activities and operations at such vessel or facility, including the identity of any persons engaged in, responsible for, controlling, or having the ability to control such activities or operations.~~

~~''(E) Information relating to the liability or responsibility of any person to perform or pay for a response action.~~

~~''(F) Information that is otherwise relevant to enforce the provisions of this Act.''.~~

~~(b) Section 104(e)(7) of the Act (42 U.S.C. 9604(e)) is amended to read as follows:~~

~~''(7) ADMINISTRATIVE SUBPOENAS.—When it would assist in the collection of information necessary or appropriate for the purposes of implementing this Act, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdic-~~

~~tion to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.~~

~~"(8) CONFIDENTIALITY OF INFORMATION.—~~

~~"(A) Any records, reports, or information obtained from any person under this section (including records, reports or information obtained by representatives of the President and records, reports or information obtained pursuant to a contract, grant or other agreement to perform work pursuant to this section, but not including documents, reports, compilations, summaries, or other analyses prepared by the President or representatives of the President which reference or incorporate information obtained under this section) shall be available to the public, except as follows:~~

~~"(i) Upon a showing satisfactory to the President (or the State, as the case may be) by any person that records, reports or information, or any particular part thereof (other than health or safety effects data), to which the President (or the State, as the case may be) or any offi-~~

~~cer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of the United States (including government contractors) concerned with carrying out this chapter, or when relevant in any proceeding under this chapter, or, if such records, reports or information are obtained or submitted to the United States (or the State, as the case may be) pursuant to a contract, grant or other agreement to perform work pursuant to this section, to persons from whom the President seeks to recover costs pursuant to this Act.~~

~~''(ii) This section does not require that information which is exempt from disclosure pursuant to section 522(a) of title~~

~~5 of the United States Code by reason of subsection (b)(5), subsection (b)(6), or subsection (b)(7) of such section, be available to the public, nor shall the disclosure of any such information pursuant to this section authorize disclosure to other parties or be deemed to waive any confidentiality privilege available to the President under any federal or State law.''.~~

~~SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.—~~

~~(a) Section 106(a) of the Act (42 U.S.C. 9606(a)) is amended by—~~

~~(1) inserting after the phrase ''hazardous substance'' the phrase '', or pollutant or contaminant''; and~~

~~(2) by adding at the end thereof the following: ''The President may amend such orders and issue additional orders, as appropriate, without a subsequent finding of an imminent and substantial endangerment, to complete response action undertaken in response to a release or substantial threat of a release, or to require additional response actions that are necessary or appropriate.''.~~

~~(b) Section 106(b)(1) of the Act (42 U.S.C. 9606(b)(1)) is amended~~

~~(1) by striking out the phrase ''to enforce such order'', and~~

~~(2) by inserting before the period '', or be required to comply with such order, or both, even if another party has complied, or is complying, with the terms of the same order or another order pertaining to the same facility, release or threatened release''; and~~

~~(3) by inserting at the end of the paragraph the following ''For purposes of this title, a 'sufficient cause' requires—~~

~~''(A) an objectively reasonable belief by the person to whom the order is issued that the person is not liable for any response costs under section 107 of this title; or~~

~~''(B) that the action to be performed pursuant to the order is determined to be inconsistent with the national contingency plan.~~

~~The existence or results of an allocation process pursuant to section 122a of this title shall not affect or constitute a basis for a determination of 'sufficient cause.' ''.~~

~~(c) Section 106(b)(2) is amended by moving the second sentence of subsection (b)(2)(A) and redesignating it as subsection (b)(4), and by striking the word ''para-~~

graph'' in such newly designated subsection (b)(4) and replacing it with the word ''subsection''.

(d) Section 106(b)(2)(A) of the Act (42 U.S.C. 9602(b)(2)(A) is amended by striking out the phrase ''completion of '', and inserting the phrase ''the President determines that such person has completed''.

(e) Section 106(b)(2)(C) of the Act (42 U.S.C. 9606(b)(2)(C)) is amended by inserting after the words ''Subparagraph (D)'' the phrase'', or as may be authorized in a settlement entered into under section 122a of this title.''.

SEC. 403. LIMITATIONS TO LIABILITY FOR RESPONSE COSTS.

Section 107 of the Act (42 U.S.C. 9607), is amended (a) in subsection (a) by inserting:

''(5) Notwithstanding paragraphs (1) through (4) of this subsection, a person who does not impede the performance of response actions or natural resource restoration shall not be liable—

''(A) to the extent liability is based solely on subsection 107(a)(3) or 107(a)(4) of this Act, and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved less than five hundred

~~pounds of municipal solid waste (MSW) or sewage sludge as defined in sections 101(41) and 101(44) of this Act, respectively, or such greater or lesser amount as the Administrator may determine by regulation;~~

~~''(B) to the extent liability is based solely on subsection 107(a)(3) or 107(a)(4) of this Act, and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved less than ten pounds or liters of materials containing hazardous substances or pollutants or contaminants or such greater or lesser amount as the Administrator may determine by regulation, except where—~~

~~''(i) the Administrator has determined that such material contributed significantly or could contribute to the costs of response at the facility; or~~

~~''(ii) the person has failed to respond fully and completely to information requests by the United States, or has filed to certify that, on the basis of information within its possession, it qualifies for this exception;~~

~~''(C) to the extent liability is based solely on subsection 107(a)(1) of this Act, for a release or threat of release from a facility, and the person is a bona fide prospective purchaser of the facility as defined in section 101(39);~~

~~''(D) to the extent the liability of a department, agency, or instrumentality of the United States is based solely open section 107(a)(1) or (2) with regard to a facility over which the department, agency, or instrumentality exercised no regulatory or other control over activities that directly or indirectly resulted in a release or threat of release of a hazardous substance, and—~~

~~''(i) all activities that directly or indirectly resulted in a release or threat of a release of a hazardous substance during the period of ownership by the United States occurred prior to 1976;~~

~~''(ii) the activities either directly or indirectly resulting in a release or a threat of a release of a hazardous substance at the facility were pursuant to a statutory authority;''~~

~~''(iii) such department, agency, or instrumentality of the United States did not cause or contribute to the release or threat of release of hazardous substances or pollutants or contaminants at the facility; and~~

~~''(iv) there are persons, other than the United States, who are both potentially liable for the release of hazardous substances or pollutants or contaminants at the facility and fully capable of performing or financing the response action at the facility; or~~

~~''(E) to the extent the liability of a Federal or State entity or municipality is based solely on its ownership of a road, street, or other right of way or other public transportation route over which hazardous substances are transported, or the granting of a license or permit to conduct business; or~~

~~''(F) for more than 10 per centum of total response costs at the facility, in aggregate, for all persons to the extent their whose liability is based solely on subsections 107(a)(3) or 107(a)(4) of this Act, and the arrangement for disposal, treatment, or transport for disposal or~~

~~treatment, or the acceptance for transport for disposal or treatment involved only municipal solid waste (MSW) or sewage sludge as defined in sections 101(41) and 101(44), respectively, of this Act. Such limitation on liability shall apply only—~~

~~''(i) where either the acts or omissions giving rise to liability occurred before the date thirty-six months after enactment of this paragraph, or the person asserting the limitation institutes or participates in a qualified household hazardous waste collection program within the meaning of section 101(43); and~~

~~''(ii) where the disposal did not occur on lands owned by the United States or any department, agency, or instrumentality thereof, or on any tribal land.''.~~

~~(b) By inserting after subsection (m) the following:~~

~~''(n) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Where there are unrecovered response costs for which an owner of a facility is not liable by operation of subsection 107(a)(5)(C) of this Act, and a response action for which there are unrecovered costs inures to the benefit~~

of such owner, the United States shall have a lien upon the facility for such unrecovered costs. Such lien—

"(1) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of property;

"(2) shall be subject to the requirements for notice and validity established in paragraph (3) of subsection (l) of this section; and

"(3) shall continue until the earlier of satisfaction of the lien, or recovery of all response costs incurred at the facility.".

(c) Section 120 of the Act (42 U.S.C. 9620) is amended by inserting before the word "Facilities" in the title of the section the phrase "Entities And".

(d) Section 120(a)(1) of the Act (42 U.S.C. 9620(a)(1)) is amended—

(1) after the word "title" in the first sentence by inserting the phrase "the right to contribution protection set forth in sections 113 and 122, when such department, agency or instrumentality resolves its share of liability under this Act and liability for all federal civil and administrative penalties and fines imposed under this Act, regardless of whether such penalties and fines are punitive or coercive in

~~nature or are imposed for isolated or continuing violations.'';~~

~~(2) by inserting the word ''other'' before the phrase ''person or entity'' in the second sentence and by inserting after the second sentence the following new sentence ''The waiver of immunity in this section does not encompass uniquely governmental actions such as—~~

~~''(A) any actions of any department, agency or instrumentality, except for official seizure of or holding title to a facility, taken pursuant to Federal authority to regulate the economy in preparation for, during, or otherwise in connection with war through the use and implementation of national priority rating systems, national wage, profit and price incentives or controls, or otherwise to mobilize the national economy for war-related production; or~~

~~''(B) any actions of any department, agency, or instrumentality taken in response to a natural disaster pursuant to the Emergency Flood Control Work Act (33 U.S.C. 701(n)), or the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.).'';~~

~~(e) Section 120(a)(4) of the Act (42 U.S.C. 9620(a)(4)) is amended—~~

~~(1) by inserting ''currently'' before ''owned'' in the first sentence;~~

~~(2) by inserting after the word ''United States'' the phrase ''in the following circumstances: (A)''; and~~

~~(3) by inserting after the word ''List'' ''; (B) when such facilities are included on the National Priorities List but are specifically referred to the State by the Administrator pursuant to the provisions of section 127 of this Act; or (C) when such laws are part of an authorized program approved by the Administrator pursuant to section 127 of this Act, and such facilities are included on the National Priorities List and are to be addressed by the State authorized program pursuant to section 127 of this Act.~~

~~''Each department, agency, or instrumentality of the United States shall be subject to State requirements, both substantive and procedural, respecting liability for the costs of responding to releases or threats of releases of hazardous substances at non-federally owned facilities referred to the State pursuant to section 127 of this Act, or such require-~~

~~ments that are part of a State authorized program for non-federally owned facilities being addressed under a State authorized program pursuant to section 127 of this Act.'';~~

~~(4) after the word ''preceding'' by replacing the word ''sentence'' with ''sentences'';~~

~~(5) at the end of the section by adding ''This waiver of immunity for such facilities shall include all civil and administrative penalties and fines imposed under such laws, regardless of whether such penalties and fines are punitive or coercive in nature or are imposed for isolated or continuing violations. Neither the United States, nor any agent, employee or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any appropriate relief under such laws, but the United States shall be entitled to remove any action filed in State court against any department, agency, instrumentality, employee or officer of the United States to the appropriate Federal district court. No agent, employee, or officer of the United States shall be personally liable for any civil or administrative penalty under any Federal or State law with respect to any act or omission within the scope of the official duties~~

of the agent, employee, or officer. All funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in this subsection shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.''.

(f) Section 120(j)(1) of the Act (42 U.S.C. 9620(j)(1)) is amended before the phrase ''with respect to the site'' in the second sentence by inserting ''or any State law applicable under section 120(a)(4)''.

SEC. 404 LIABILITY.

(a) Section 107(a)(1) of the Act (42 U.S.C. 9607(a)(1)) is amended by striking the word ''and'' and inserting the word ''or'';

(b) Section 107(a)(3) of the Act (42 U.S.C. 9607(a)(3)) is amended by striking out the phrase ''by any other party or entity,'';

(c) Section 107(a)(4) of the Act (42 U.S.C. 9607(a)(4)) is amended—

(1) by inserting a blank line before the phrase ''from which there is a release'';

(2) by moving the phrase ''from which there is a release'' to the left margin;

~~(3) inserting a comma after the phrase ''threatened release''; and~~

~~(d) Section 107(a)(4)(A) of the Act (42 U.S.C. 9607(a)(4)(A)) is amended by inserting the phrase '', including direct costs, indirect costs, and costs of overseeing response actions conducted by private parties'' before the phrase ''incurred by the United States''.~~

~~(e) Section 107(a)(4)(B) of the Act (42 U.S.C. 9607(a)(4)(B)) is amended—~~

~~(1) by striking out the word ''other'' both times it appears; and~~

~~(2) by inserting the phrase ''other than the United States, a State or an Indian tribe'' before the phrase ''consistent with the national contingency plan''.~~

~~(f) Section 107(c)(3) of the Act (42 U.S.C. 9607(c)(3)) is amended—~~

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

~~(2) by striking out the phrase ''at least equal to, and not more than'' and inserting the phrase ''up to'';~~

~~(3) by striking out the comma after the word ''times''; and~~

~~(4) by striking out the phrase ''any costs incurred by the Fund as a result of such failure to take proper action'' and inserting the phrase ''such response costs''.~~

~~(g) Section 107 of the Act (42 U.S.C. 9607(a)(4)(B)) is amended by inserting the phrase '', or pollutant or contaminant'' after the term ''hazardous substance'' or ''hazardous substances'' wherever they appear in sections 107(a)(2), (3) and (4); 107(b); 107(c); 107(d)(1) and (2); 107(f)(1); 107(i); 107(j); and 107(k)(1)(B).~~

~~SEC. 405. CIVIL PROCEEDINGS.~~

~~(a) Section 113(a) of the Act (42 U.S.C. 9613(a)) is amended—~~

~~(1) by striking out the phrase ''upon application by any interested person'', and inserting the phrase ''by any adversely affected person through the filing of a petition for review''; and~~

~~(2) by striking out the phrase ''application shall be made'', and inserting in lieu thereof ''petition shall be filed''.~~

~~(b) Section 113(b) of the Act (42 U.S.C. 9613(b)) is amended—~~

(1) before ''without regard to the citizenship,'' by inserting the phrase ''or in any manner limiting or affecting the President's ability to carry out a response action under this title,''; and

(2) by inserting immediately after the first sentence the following sentence—''Any action initiated in any state or local court against the United States (or any department, agency, or instrumentality, officer or employee thereof) pursuant to or under any provision of or authorized by this title may be removed by the United States to the appropriate federal district court in accordance with section 1446 of title 18 of the United States Code.''.

(c) Section 113(g) of the Act (42 U.S.C. 9613(g)) is amended by striking paragraphs (2) and (3) and inserting:

''(2) ACTIONS FOR RECOVERY OF COSTS.—Except as provided in paragraph (3) below, an initial action for recovery of costs referred to in section 107 of this title must be commenced—

''(A) for removal action, within three years after completion of all removal action taken with respect to the facility, including off-site disposal of any removed materials; except that if physical on-site construction of the remedial

action is initiated within three years after the completion of all removal action taken with respect to the facility, costs incurred for removal action may be recovered in the cost recovery action brought under subparagraph (B); and

"(B) for a remedial action, within six years after initiation of physical on-site construction of the remedial action.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 of this title for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than three years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 of this title for recovery of costs at any time after such costs have been incurred.

"(3) CONTRIBUTING.—An action by a potentially responsible party against another potentially responsible party for recovery of any response costs

or damages must be commenced within the later of—

"(A) the time limitations set forth in paragraph (2) above, or

"(B) where recovery is sought for costs or damages paid pursuant to a judgment or settlement, three years after—

"(i) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(ii) the date of any administrative order or judicial settlement for recovery of the costs or damages paid or incurred pursuant to such a settlement.".

(d) Section 113(g) of the Act (42 U.S.C. 9613(g)) is amended by inserting the following at the end thereof:

"(4) CLAIMS BY THE UNITED STATES, STATES OR INDIAN TRIBES.—Claims by the United States under section 106, and claims by the United States, a State or Indian tribe under section 107(a), of this Act shall not be deemed compulsory counterclaims in an action against the United States, a State or an Indian tribe seeking response costs, contribution, damages, or any other claim by any person under this Act.".

~~(e) Section 113(j)(1) of the Act (42 U.S.C. 9613(j)(1) is amended—~~

~~(1) before the phrase ''or ordered'' by inserting the phrase ''or selected by the President pursuant to this Act,'';~~ ~~and~~

~~(2) after the phrase ''or ordered'' by inserting the phrase ''or sought''.~~

~~SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.~~

~~Section 113 of the Act (42 U.S.C. 9613) is amended (a) by amending subsection (f)(1) as follows—~~

~~(1) by redesignating the paragraph as subparagraph ''(1)(A),'';~~

~~(2) before the phrase ''may seek contribution'' by inserting the phrase ''who is liable or potentially liable under section 107(a) of this title'';~~

~~(3) by striking out the phrase ''during or following any civil action under section 106 of this title or under section 107(a) of this title'', and inserting in lieu thereof the phrase ''in a claim asserted under section 107(a)'';~~ ~~and~~

~~(4) by deleting the period at the end of the first sentence, and inserting ''except that there shall be no right of contribution where—~~

~~''(i) the person asserting the right of contribution has waived such rights in a settlement pursuant to this Act;~~

~~''(ii) the person from whom contribution is sought is liable solely under section 107(a)(3) of this Act, and contributed less than ten pounds or ten liters of material containing hazardous substances at the facility, or such greater or lesser amount as the Administrator may determine by regulation;~~

~~''(iii) the person from whom contribution is sought has entered into a final settlement with the United States pursuant to section 122(g).;~~

~~(5) before the phrase ''this section and the Federal Rules'' by inserting the phrase ''section 107(a),''; and~~

~~(6) by striking out the sentence ''Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 of this title or section 107 of this title.''.~~

~~(b) By inserting after subparagraph (1)(A) the following subparagraph—~~

~~''(B) Any person who commences an action for contribution against a person who is not liable by~~

operation of subsection 107(a)(5) of this Act, or against a person who is protected from suits in contribution by this section or by a settlement with the United States, shall be liable to the person against whom the claim of contribution is brought for all reasonable costs of defending against the claim, including all reasonable attorney's and expert witness fees.''.

(c) Section 113(f) of the Act (42 U.S.C. 9613(f)) is amended by striking out paragraph (2), and inserting the following:

''(2) SETTLEMENT.—A person that has resolved its liability to the United States in an administrative or judicially approved settlement shall not be liable for claims by other persons regarding response actions, response costs or damages addressed in the settlement. A person that has resolved its liability to a State in an administrative or judicially approved settlement shall not be liable for claims by persons other than the United States regarding response costs or damages addressed in the settlement for which the State has a claim under this title. Such settlement does not discharge any other potentially responsible persons unless its terms so provide, but it reduces the potential liability of such other

~~persons by the amount of the settlement. The protection afforded by this section shall include protection against contribution claims and all other types of claims, under Federal or State law, that may be asserted against the settling party for recovery of response costs or damages incurred or paid by another person, if such costs or damages are addressed in the settlement, but shall not include protection against claims based on contractual indemnification or other express contractual agreements to pay such costs or damages.''.~~

~~SEC. 407. SCOPE OF RULEMAKING AUTHORITY.~~

~~Section 115 of the Act (42 U.S.C. 9615), is amended by redesignating the text of the section as subsection ''(a)'' and adding a new subsection:~~

~~''(b) The authority conferred by this section includes, without limitation, authority to promulgate legislative regulations to define the terms and scope of sections 101 through 405 of this Act, inclusive.~~

~~''(c) This section confirms, without limitation, authority to promulgate regulations to define the terms of this Act as they apply to lenders and other financial services providers, and property custodians, trustees, and other fiduciaries.''.~~

~~SEC. 408. ENHANCEMENT OF SETTLEMENT AUTHORITIES.~~

~~Section 122 of the Act (42 U.S.C. 9622), is amended—~~

~~(a) by striking out subparagraph (e)(3);~~

~~(b) by redesignating subparagraphs (e) (4) and (5) as subparagraphs (e) (3) and (4), respectively;~~

~~(c) by redesignating subparagraph (e)(6) as a new section 122(o) and by amending redesignated section 122(n)—~~

~~(1) by deleting ''remedial investigation and feasibility study'' and inserting in lieu thereof ''response action''; and~~

~~(2) by deleting ''remedial action'' in both places where it appears and inserting ''response action'';~~

~~(d) by inserting at the end of section 122 the following—~~

~~''(p) RETENTION OF FUNDS.—If, as part of any agreement under this Chapter, the President will be carrying out any action and the parties will be paying amounts to the President, the President may retain such amounts in interest bearing accounts, and use such amounts, together with accrued interest, for purposes of carrying out the agreement.~~

~~''(q) Notwithstanding the limitations on review in section 113(h), and except as provided in subsection (g) of~~

~~this section, a person whose claim for response costs or contribution is limited as a result of contribution protection afforded by an administrative settlement under this section may challenge the cost recovery component of such settlement only by filing a complaint against the Administrator in the United States District Court within 60 days after such settlement becomes final. Venue shall lie in the district in which the appropriate Regional Administrator has her principal office. Any review of an administrative settlement shall be limited to the administrative record, and the settlement shall be upheld unless the objecting party can demonstrate on that record that the decision of the President to enter into the administrative settlement was arbitrary, capricious, or otherwise not in accordance with law.''.~~

~~(e) by deleting subsection (f)(1) and inserting in lieu thereof:~~

~~''(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements otherwise acceptable to the United States a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs, provided that—~~

~~''(A) the settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action for the release or threat of release that is the subject of the settlement;~~

~~''(B) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility;~~

~~''(C) The settling party waives all contribution rights against other potentially responsible parties at the facility; and~~

~~''(D) The settling party pays premium that compensates for the risks of remedy failure; future liability resulting from unknown conditions; unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action; and the United States' litigation risk with respect to persons who have not resolved their liability to the United States under this Act, unless all parties have settled their liability to the United States, or the settlement covers 100 percent of the United States' response costs. The President shall have sole discretion to determine the~~

~~appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President has discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.~~

~~''(2) DISCRETIONARY COVENANTS.—For all other settlements under this title, the President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this title, if the covenant not to sue is in the public interest. The President may include any conditions in such covenant not to sue, including but not limited to the additional condition referred to in paragraph (5) of this subsection. In determining whether such conditions or covenants are in the public interest, the President shall consider the effectiveness and reliability of the response action, the nature of the risks remaining at the facility, the strength of evidence, the likelihood of cost recovery, the reliability of any response action or actions to restore, replace or acquire the equivalent of injured natural resources, and any other factors relevant to the protection of human health, welfare, and the environment.'';~~

~~(f) by striking out the word ''remedial'', wherever it appears in paragraph (f)(2), and inserting the word ''response'';~~

~~(g) by deleting paragraphs (f)(3) and (f)(4);~~

~~(h) by redesignating existing paragraphs (f)(2), (f)(5) and (f)(6) as paragraphs (f)(3), (f)(4), and (f)(5), respectively;~~

~~(i) in redesignated subparagraph (f)(5)(A)—~~

~~(1) by striking out the word ''remedial'', and inserting in lieu thereof the word ''response'';~~

~~(2) by deleting ''paragraph (2)'' in the first clause of the first sentence and inserting ''paragraph (1) or (3)'' in lieu thereof; and~~

~~(3) by deleting ''de minimis settlements'' and inserting ''de minimis and other expedited settlements pursuant to subsection (g) of this section'' in lieu thereof;~~

~~(4) by striking the phrase ''the President certifies under paragraph (3) that remedial action has been completed at the facility concerned'', and inserting in lieu thereof the phrase ''that the response action that is the subject of the settlement agreement is selected''.~~

~~(j) by amending redesignated subsection (f)(5)(B)—~~

~~(1) by striking ''In extraordinary circumstances, the'' and inserting the word ''The'';~~

~~(2) by striking the phrase ''those referred to in paragraph (4) and'';~~

~~(3) by inserting ''the agreement containing the covenant not to sue provides for payment of a premium to address possible remedy failure or any releases that may result from unknown conditions, and'' before the phrase ''the other terms''; and~~

~~(4) by inserting at the end the following ''The President may, in his discretion, waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.''~~

~~(k) by deleting paragraph (g)(1)(A) and inserting in lieu thereof:~~

~~''(g) EXPEDITED FINAL SETTLEMENT.—~~

~~''(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—Wherever practicable and in the public interest, and as provided in section 122a of this title, the President will as promptly as possible offer~~

~~to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet one or more of the following conditions for eligibility for an expedited settlement:~~

~~''(A) the potentially responsible party's individual contribution of hazardous substances at the facility is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if:~~

~~''(i) the potentially responsible party's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions at the facility; such individual contribution is presumed to be minimal if it is one percent or less of the total volumetric contribution at the facility, unless the Administrator identifies a different threshold based on site-specific factors; and~~

~~''(ii) the potentially responsible party's hazardous substances do not present toxic or other hazardous effects that are~~

~~significantly greater than those of other hazardous substances at the facility; or''~~

~~(l) by inserting the following after subsection (g)(1)(B):~~

~~''(C) The potentially responsible party's liability is based solely on subsection 107(a)(3) or 107(a)(4) of this title, and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste (MSW) or sewage sludge as defined in section 101(41) or 101(44), respectively, of this Act. The Administrator may offer to settle the liability of generators and transporters of MSW or sewage sludge whose liability is limited pursuant to section 107(a)(5)(A) of this title for up to 10 percent of the total response costs at the facility; or~~

~~''(D) The potentially responsible party is a small business or a municipality and has demonstrated to the United States a limited ability to pay response costs. For purposes of this provision—~~

~~''(i) In the case of a small business, the President shall consider, to the extent~~

that information is provided by the small business, the business' ability to pay for its total allocated share, and demonstrable constraints on its ability to raise revenues.

''(ii) In the case of a municipal owner or operator, the President shall consider, to the extent that information is provided by the municipality, the following factors: (1) the municipality's general obligation bond rating and information about the most recent bond issue for which the rating was prepared; (2) the amount of total available funds (other than dedicated funds); (3) the amount of total operating revenues (other than obligated or encumbered revenues); (4) the amount of total expenses; (5) the amounts of total debt and debt service; (6) per capita income; and (7) real property values. A municipality may also submit for consideration by the President an evaluation of the potential impact of the settlement on essential services that the municipality must provide, and the feasibility of making delayed payments or payments over time. If a mu-

~~nicipality asserts that it has additional environmental obligations besides its potential liability under this Act, then the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations. A municipality may establish an inability to pay through an affirmative showing that such payment of its liability under this Act would either (I) create a substantial demonstrable risk that the municipality would default on existing debt obligations, be forced into bankruptcy, be forced to dissolve, or be forced to make budgetary cutbacks that would substantially reduce current levels of protection of public health and safety, or (II) necessitate a violation of legal requirements or limitations of general applicability concerning the assumption and maintenance of fiscal municipal obligations.''.~~

~~(m) by deleting paragraphs (2) and (3) of subsection (g) and inserting in lieu thereof:~~

~~''(2) The determination of whether a party is eligible for an expedited settlement shall be made on~~

~~the basis of information available to the President at the time the settlement is negotiated. Such determination, and the settlement, are committed to the President's unreviewable discretion. If the President determines not to apply these provisions for expedited settlements at a facility, the basis for that determination must be explained in writing.~~

~~''(3) Additional factors relevant to municipalities. In any settlement with a municipality pursuant to this title, the President may take additional equitable factors into account in determining an appropriate settlement amount, including, without limitation, the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.''.~~

~~(n) by striking in paragraph (g)(4) ''$500,000'' and inserting ''$2,000,000''.~~

~~(o) by striking paragraph (g)(5) and redesignating paragraph (g)(6) as (g)(5).~~

~~(p) by amending paragraph (h) by striking—~~

~~(1) the title, and inserting the phrase ''Authority to settle claims for penalties, punitive damages and cost recovery''; and~~

~~(2) by striking out the phrase ''settlement authority''.~~

~~(q) by amending paragraph (h)(1)—~~

~~(1) before the phrase ''costs incurred'' by inserting the phrase ''past and future'';~~

~~(2) before the phrase ''by the United States Government'' by inserting the phrase ''or that may be incurred'';~~

~~(3) by inserting after the phrase ''if the claim has not been referred to the Department of Justice for further action'', the following: ''The head of any department or agency with the authority to seek, or to request the Attorney General to seek, civil or punitive damages under this Act may settle claims for any such penalties or damages which may otherwise be assessed in civil administrative or judicial proceedings''; and by striking out ''$500,000'', and inserting in lieu thereof ''$2,000,000''.~~

~~(r) by striking paragraph (h)(4).~~

~~SEC. 409. ALLOCATION PROCEDURES.~~

~~The Act is amended by inserting following section 122:~~

~~"SEC. 122a ALLOCATION AT MULTI-PARTY FACILITIES.~~

~~''(a) SCOPE.—~~

~~''(1) Except as provided in paragraph (3) of this section, for each non-federally owned facility listed on the National Priorities List involving two or more potentially responsible parties, the Administrator shall—~~

~~''(A) initiate the allocation process established under this section for any remedial action selected by the President after the date of enactment of the Superfund Reform Act of 1994, and~~

~~''(B) initiate the allocation process established in subsections (c)(2) through (d)(3) of this section for any remedial action selected by the President prior to the date of enactment of the Superfund Reform Act of 1994, when requested by any potentially responsible party who has resolved its liability to the United States with respect to the remedial action or is performing the remedial action pursuant to an order issued under section 106(a) of this title, to assist in allocating shares among potentially~~

~~responsible parties. The allocation performed pursuant to this subsection shall not be construed to require—~~

~~"(i) payment of an orphan share pursuant to subsection (e) of this section; or~~

~~"(ii) the conferral of reimbursement rights pursuant to subsection (h) of this section.~~

~~"(2) Except as provided in paragraph (3) of this section, the Administrator may initiate the allocation process established under this section with respect to any other facility involving two or more potentially responsible parties, as the Administrator deems appropriate.~~

~~"(3) The allocation process established under this section shall not apply to any facility where—~~

~~"(i) there has been a final settlement, decree or order that determines all liability or allocated shares of all potentially responsible parties with respect to the facility; or~~

~~"(ii) where response action is being carried out by a State pursuant to referral or authorization under section 104(k) of this title.~~

~~"(4) Nothing in this section limits or affects—~~

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

~~"(B) the ability of a potentially responsible party at a facility to resolve its liability to the United States or other parties at any time before initiation or completion of the allocation process; or~~

~~"(C) the validity, enforceability, finality or merits of any judicial or administrative order, judgment or decree issued, signed, lodged, or entered with respect to liability under this Act, or authorizes modification of any such order, judgment or decree.~~

~~"(b) MORATORIUM ON COMMENCEMENT OR CONTINUATION OF SUITS.—~~

~~"(1) No person may commence an action pursuant to section 107 of this Act regarding a response action for which an allocation must be performed under subsection (a)(1)(A) of this section, or for which the Administrator has initiated an allocation under subsection (a)(1)(B) or (a)(2) of this section, until 60 days after issuance of the allocator's report under subsection (d)(1) of this section.~~

~~"(2) If an action under section 107 of this Act regarding a response for which an allocation is to be performed under this section is pending (A) upon date of enactment of the Superfund Reform Act of 1994, or (B) upon initiation of an allocation under subsection (a)(1)(B) or (a)(2) of this section, the action shall be stayed until 60 days after the issuance of an allocator's report, unless the court determines that a stay will not result in a just and expeditious resolution of the action.~~

~~"(3) Any applicable limitations period with respect to actions subject to paragraph (1) shall be tolled from the earlier of—~~

~~"(A) the date of listing of the facility on the National Priorities list; or~~

~~"(B) the commencement of the allocation process pursuant to this section, until 120 days after the allocation report required by this section has been provided to the parties to the allocation.~~

~~"(4) Nothing in this section shall in any way limit or affect the President's authority to exercise the powers conferred by sections 103, 104, 105, 106, or 122 of this title, or to commence an action where there is a contemporaneous filing of a judicial~~

~~consent decree resolving a party's liability; or to file a proof of claim or take other action in a proceeding under title 11 of the United States Code.~~

~~"(5) The procedures established in this section are intended to guide the exercise of settlement authority by the United States, and shall not be construed to diminish or affect the principles of retroactive, strict, joint and several liability under this title.~~

~~"(c) COMMENCEMENT OF ALLOCATION.—~~

~~"(1) RESPONSIBLE PARTY SEARCH.—At all facilities subject to this section, the Administrator shall, as soon as practicable but not later than 60 days after the earlier of the commencement of the remedial investigation or the listing of the facility on the National Priorities List, initiate a search for potentially responsible parties, using its authorities under section 104 of this title.~~

~~"(2) NOTICE TO PARTIES.—As soon as practicable after receipt of sufficient information, but not more than eighteen months after commencement of the remedial investigation, the Administrator shall—~~

~~"(A) notify those potentially responsible parties who will be assigned shares in the allo-~~

~~cation process and notify the public, in accordance with section 117(d) of this title, of the list of potentially responsible parties preliminarily identified by the Administrator to be assigned shares in the allocation process; and~~

~~''(B) provide the notified potentially responsible parties with a list of neutral parties who are not employees of the United States and who the Administrator determines, in his or her sole discretion, are qualified to perform an allocation at the facility.~~

~~''(3) SELECTION OF ALLOCATOR.—The Administrator shall thereafter—~~

~~''(A) acknowledge the parties' selection of an allocator from the list, or select an allocator from the list provided to the parties if the parties cannot agree on a selection within 30 days of the notice;~~

~~''(B) contract with the selected allocator for the provision of allocation services; and~~

~~''(C) make available all responses to information requests, as well as other relevant information concerning the facility and potentially responsible parties, to the parties and to the allocator within 30 days of the appointment of~~

~~the allocator. The Administrator shall not make available any privileged or confidential information, except as otherwise authorized by law.~~

~~''(4) PROPOSED ADDITION OF PARTIES.—~~

~~''(A) For 60 days after information has been made available pursuant to paragraph 3(C), the parties identified by the Administrator and members of the affected community shall have the opportunity to identify and propose additional potentially responsible parties or otherwise provide information relevant to the facility or such potentially responsible parties. This period may be extended by the Administrator for an additional 30 days upon request of a party.~~

~~''(B) Within 30 days after the end of the period specified in paragraph (A) for identification of additional parties, the Administrator shall issue a final list of parties subject to the allocation process, hereinafter the ''allocation parties''. The Administrator shall include in the list of allocation parties those parties identified pursuant to paragraph (A) in the allocation process unless the Administrator determines and explains in writing that there is not a suffi-~~

~~cient basis in law or fact to take enforcement action with respect to those parties under this title, or that they have entered into an expedited settlement under section 122(g). The Administrator's determination is to be based on the information available at the time of the determination and is committed to the Administrator's unreviewable discretion.~~

~~''(5) ROLE OF FEDERAL AGENCIES.—Federal departments, agencies or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process provided by this section to the same extent as any other party.~~

~~''(6) REPRESENTATION OF THE UNITED STATES.—The Administrator and the Attorney General shall be entitled to review all documents and participate in any phase of the allocation proceeding.~~

~~''(d) ALLOCATION DETERMINATION.—~~

~~''(1) SETTLEMENT AND ALLOCATION REPORT.—Following issuance of the list of allocation parties, the allocator may convene the allocation parties for the purpose of facilitating agreement concerning their shares. If the allocation parties do not agree to a negotiated allocation of shares, the allo-~~

~~cator shall prepare a written report, with a nonbinding, equitable allocation of percentage shares for the facility, and provide such report to the allocation parties and the Administrator.~~

~~"(2) INFORMATION REQUESTS.—To assist in the allocation of shares, the allocator may request information from the allocation parties, and may make additional requests for information at the request of any allocation party. The allocator may request the Administrator to exercise any information-gathering authority under this title where necessary to assist in determining the allocation of shares.~~

~~"(3) FACTORS IN THE ALLOCATION.—Unless the allocation parties agree to a negotiated allocation, the allocator shall prepare a nonbinding, equitable allocation of percentage shares for the facility based on the following factors:~~

~~"(A) the amount of hazardous substances contributed by each allocation party;~~

~~"(B) the degree of toxicity of hazardous substances contributed by each allocation party;~~

~~"(C) the mobility of hazardous substances contributed by each allocation party;~~

~~"(D) the degree of involvement of each allocation party in the generation, transportation,~~

~~treatment, storage, or disposal of the hazardous substance;~~

~~''(E) the degree of care exercised by each allocation party with respect to the hazardous substance, taking into account the characteristics of the hazardous substance;~~

~~''(F) the cooperation of each allocation party in contributing to the response action and in providing complete and timely information during the allocation process; and~~

~~''(G) such other factors that the Administrator determines are appropriate by published regulation or guidance, including guidance with respect to the identification of orphan shares pursuant to paragraph (3) of this subsection~~

~~''(4) IDENTIFICATION OF ORPHAN SHARES.—The allocator may determine that a percentage share for the facility is specifically attributable to an ''orphan share''. The orphan share may only consist of the following:~~

~~''(A) shares attributable to hazardous substances that the allocator determines, on the basis of information presented, to be specifically attributable to identified but insolvent or de-~~

~~funct responsible parties who are not affiliated with any allocation party;~~

~~"(B) the difference between the aggregate shares that the allocator determines, on the basis of the information presented, are specifically attributable to contributors of municipal solid waste subject to the limitations in section 107(a)(5)(D) of this title, and the share actually assumed by those parties in any settlements with the United States pursuant to subsection 122(g) of this title, including the fair market value of in-kind services provided by a municipality; and~~

~~"(C) the difference between the aggregate share that the allocator determines, on the basis of information presented, is specifically attributable to parties with a limited ability to pay response costs and the share actually assumed by those parties in any settlements with the United States pursuant to subsection 122(b) of this title.~~

~~The orphan share shall not include shares attributable to hazardous substances that the allocator cannot attribute to any identified party. Such shares shall be distributed among the allocation parties.~~

~~"(e) FUNDING OF ORPHAN SHARES.—From funds available in the Fund in any given fiscal year, and without further appropriation action, the President shall make reimbursements from the Fund, to eligible parties for costs incurred and equitably attributable to orphan shares determined pursuant to this section, provided that Fund financing of orphan shares shall not exceed $300,000,000 in any fiscal year. Reimbursements made under this subsection shall be subject to such terms and conditions as the President may prescribe.~~

~~"(f) TIMING.—The allocator shall provide the report required by subsection (d)(1) of this section to the allocation parties and the Administrator within 180 days of the issuance of the list of parties pursuant to subsection (c)(4)(B) of this section. Upon request, for good cause shown, the Administrator may grant the allocator additional time to complete the allocation, not to exceed 90 days.~~

~~"(g) SETTLEMENT FOLLOWING ALLOCATION.—~~

~~"(1) OBLIGATIONS OF THE UNITED STATES.—The President will accept a timely offer of settlement from a party based on the share determined by the allocator, if it includes appropriate premia and other terms and conditions of settlement, unless the Administrator, with the concurrence of the Attorney~~

~~General of the United States, determines that a settlement based on the allocator's determinations would not be fair, reasonable, and in the public interest. The Administrator and the Attorney General shall seek to make any such determination within 60 days from the date of issuance of the allocator's report. The determinations of the Administrator and the Attorney General shall not be judicially reviewable.~~

~~"(2) If the Administrator and the Attorney General determine not to settle on the basis of the allocation, they shall provide the allocation parties and members of the affected community with a written explanation of the Administrator's determination. If the Administrator and the Attorney General make such a determination, the parties who are willing to settle on the basis of the allocation are entitled to a consultation with an official appointed by the President, to present any objections to the determination, within 60 days after the determination.~~

~~"(3) Settlements based on allocated shares shall include—~~

~~"(A) a waiver of contribution rights against all parties who are potentially responsible parties for the response action;~~

~~''(B) covenants not to sue, consistent with the provisions of section 122(f) of this title, and provisions regarding performance or adequate assurance of performance of response actions addressed in the settlement;~~

~~''(C) a premium that compensates for the United States' litigation risk with respect to potentially responsible parties who have not resolved their liability to the United States, except that no such premium shall apply if all parties settle or the settlement covers one 100 percent of response costs;~~

~~''(D) contribution protection, consistent with sections 113(f) and 122(g) of this title, regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement; and~~

~~''(E) provisions through which the settling parties shall receive reimbursement from the Fund for any response costs incurred by such parties in excess of the aggregate of their allocated share and any premia required by the set-~~

~~tlement. Such right to reimbursement shall not be contingent on the United States' recovery of response costs from any responsible person not a party to any settlement with the United States.~~

~~''(4) The President shall report annually to Congress on the administration of the allocation scheme, and provide information comparing allocation results with actual settlements at multiparty facilities.~~

~~''(5) The provisions of this section shall not apply to any offer of settlement made after commencement of litigation by the United States against the offering party under section 107 of this title.~~

~~''(h) AUTHORIZATION OF REIMBURSEMENT.—In any settlement in which a party agrees to perform response work in excess of its share, the Administrator shall have authority in entering the settlement to confer a right of reimbursement on the settling party pursuant to such procedures as the Administrator may prescribe.~~

~~''(i) POST-SETTLEMENT LITIGATION.—~~

~~''(1) IN GENERAL.—The United States may commence an action under section 107 against any person who has not resolved its liability to the United States following allocation, on or after 60 days~~

~~following issuance of the allocator's report. In any such action, the potentially responsible parties shall be liable for all unrecovered response costs, including any federally-funded orphan share identified in accordance with subsection (d)(4). Defendants in any such action may implead any allocation party who did not resolve its liability to the United States. The Administrator and the Attorney General shall issue guidelines to ensure that the relief sought against de minimis parties under principles of joint and several liability will not be grossly disproportionate to their contribution to the facility. The application of such guidelines is committed to the discretion of the Administrator and the Attorney General.~~

~~"(2) In commencing any action under section 107 following allocation, the Attorney General must certify, in the complaint, that the United States has been unable to reach a settlement that would be in the best interests of the United States.~~

~~"(3) ADMISSIBILITY OF ALLOCATOR'S REPORT.—The allocator's report shall not be admissible in any court with respect to a claim brought by or against the United States, except in its capacity as a nonsettling potentially responsible party, or for the determination of liability. The allocator's report,~~

~~subject to the rules and discretion of the court, may be admissible solely for the purpose of assisting the court in making an equitable allocation of response costs among the relative shares of nonsettling liable parties.~~

~~"(4) OTHER AUTHORITIES UNAFFECTED.—Nothing in this section limits or in any way affects the exercise of the President's authority pursuant to sections 103, 104, 105, or 106.~~

~~"(5) COSTS.—~~

~~"(A) The costs of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator, shall be considered necessary costs of response.~~

~~"(B) The costs attributable to any funding of orphan shares identified by the allocator pursuant to subsection (d)(4) also shall be considered necessary costs of response, and shall be recoverable from liable parties who do not resolve their liability on the basis of the allocation.~~

~~"(6) REJECTION OF SHARE DETERMINATION.—In any action by the United States under this title, if the United States has rejected an offer of settle-~~

~~ment that is consistent with subsections (g)(1) and (g)(3) of this section and was presented to the United States prior to the commencement of the action, the offeror shall be entitled to recover from the United States the offeror's reasonable costs of defending the action after the making of the offer, including reasonable attorneys' fees, if the ultimate resolution of liability or allocation of costs with respect to the offeror, taking into account all settlements and reimbursements with respect to the facility other than those attributable to insurance or indemnification, is as or more favorable to the offeror than the offer based on the allocation.~~

~~''(j) PROCEDURES.—The Administrator shall further define the procedures of this section by regulation or guidance, after consultation with the Attorney General.''.~~

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

~~SEC. 501. PURPOSES AND OBJECTIVES.~~

~~The purposes and objectives of this title are to—~~

~~(a) ensure that remedial actions under the Act are protective of human health and the environment;~~

~~(b) provide consistent and equivalent protection to all communities affected by facilities subject to remedial action; and,~~

~~(c) ensure that the national goals, national generic cleanup levels, and the national risk protocol required by this title are developed through a process based on substantial public input and, where appropriate, on consensual decisionmaking.~~

~~SEC. 502. CLEANUP STANDARDS AND LEVELS.~~

~~Section 121(d)(1)–(2)(C)(i) of the Act (42 U.S.C. 9621(d)) is amended to read as follows:~~

~~''(d) DEGREE OF CLEANUP.—~~

~~''(1) PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT.—A remedial action selected under this section or otherwise required or agreed to by the President under this Act shall be protective of human health and the environment. In order to provide consistent protection to all communities, the Administrator shall promulgate national goals to be applied at all facilities subject to remedial action under this Act.~~

~~''(2) GENERIC CLEANUP LEVELS.—The Administrator shall promulgate, as appropriate, national generic cleanup levels for specific hazardous substances, pollutants, or contaminants, based on the national goals established in paragraph (1). A cleanup level shall—~~

~~"(A) reflect reasonably anticipated future land uses,~~

~~"(B) reflect other variables which can be easily measured at a facility and whose effects are scientifically well-understood to vary on a site-specific basis, and~~

~~"(C) represent concentration levels below which a response action is not required.~~

~~"(3) SITE-SPECIFIC METHODS TO ESTABLISH CLEANUP LEVELS.—Notwithstanding the promulgation of national generic cleanup levels under subsection (d)(2) and nationally-approved generic remedies under subsection (b)(4) of this section, the Administrator may, as appropriate, rely on a site-specific risk assessment to determine the proper level of cleanup at a facility, based on the national goals established in paragraph (1) and the reasonably anticipated future land uses at the facility. This may occur if a national generic cleanup level has not been developed or to account for particular characteristics of a facility or its surroundings. In establishing site-specific cleanup levels, the President shall consider the views of the affected community in accordance with section 117 of this Act.~~

~~"(4) RISK ASSESSMENT.—The Administrator shall promulgate a national risk protocol for conducting risk assessments based on realistic assumptions. After promulgation, risk assessments underlying the degree of cleanup and remedy selection processes shall use the national risk protocol.~~

~~"(5) FEDERAL AND STATE LAWS.—~~

~~"(A) A remedial action shall be required to comply with the substantive requirements of—~~

~~"(i) any standard, requirement, criterion, or limitation under any federal environmental or facility siting law that the President determines is suitable for application to the remedial action at the facility; and~~

~~"(ii) any promulgated standard, requirement, criterion, or limitation under any state environmental law specifically addressing remedial action that is adopted for the purpose of protecting human health or the environment with the best available scientific evidence through a public process where such a law is more stringent than any such federal cleanup standard, requirement, criterion, or limitation, or the clean-~~

~~up level determined in accordance with the requirements of this section.~~

~~''(B) Procedural requirements of federal and state standards, requirements, criteria, or limitations, including but not limited to permitting requirements, shall not apply to response actions conducted on-site. In addition, compliance with such laws shall not be required with respect to return, replacement, or redisposal of contaminated media or residuals of contaminated media into the same medium in or very near existing areas of contamination on-site.~~

~~''(C) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to the federal or State standards, requirements, criteria, or limitations as required by paragraph (A), if the President finds that—~~

~~''(i) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;~~

~~''(ii) compliance with such requirement at that facility will result in greater~~

~~risk to human health and the environment than alternative options;~~

~~''(iii) compliance with such requirements is technically impracticable from an engineering perspective;~~

~~''(iv) a generic remedy under section (b)(4) has been selected for the facility;~~

~~''(v) the remedial action selected will attain a standard of performance that is equivalent to that required under the standard, requirement, criterion, or limitation identified under (A)(i) and (A)(ii) through use of another approach;~~

~~''(vi) with respect to a State standard, requirement, criterion, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criterion, or limitation in similar circumstances at other remedial actions within the State; or~~

~~''(vii) in the case of a remedial action to be undertaken solely under section 104 using the Fund, a selection of a remedial action that attains such level or standard of control will not provide a balance be-~~

~~tween the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other facilities which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threat.~~

~~The President shall publish such findings, together with an explanation and appropriate documentation.''.~~

~~SEC. 503. REMEDY SELECTION.~~

~~Section 121(b) of the Act (42 U.S.C. 9621(b) is amended to read as follows:~~

~~''(b) GENERAL RULES.—~~

~~''(1) SELECTION OF PROTECTIVE REMEDIES.—~~ ~~Remedies selected at individual facilities shall be protective of human health and the environment. Whether a response action requires remediation through treatment, containment, a combination of treatment and containment, or other means, shall be determined through the evaluation of remedial alternatives.~~

~~"(2) LAND USE.—In selecting a remedy, the President shall take into account the reasonably anticipated future uses of land at a facility as required by this Act.~~

~~"(3) APPROPRIATE REMEDIAL ACTION.—~~

~~"(A) The President shall identify and select an appropriate remedy utilizing treatment, containment, other remedial measures, or any combination thereof, that is protective of human health and the environment and achieves the degree of cleanup determined under section 121(d), taking into account the following factors—~~

~~"(i) the effectiveness of the remedy;~~

~~"(ii) the long-term reliability of the remedy, that is, its capability to achieve long-term protection of human health and the environment;~~

~~"(iii) any risk posed by the remedy to the affected community, to those engaged in the cleanup effort, and to the environment;~~

~~"(iv) the acceptability of the remedy to the affected community; and~~

~~"(v) the reasonableness of the cost of the remedy in relation to the preceding factors (i) and (iv).~~

~~"(B) INNOVATIVE REMEDIES.—If an otherwise appropriate treatment remedy is available only at a disproportionate cost and the President determines that an appropriate treatment remedy is likely to become available within a reasonable period of time, the President may select an interim containment remedy. A selected interim containment remedy shall include adequate monitoring to ensure the continued integrity of the containment system. If an appropriate treatment remedy becomes available within that period of time, that remedy shall be required.~~

~~"(C) HOT SPOTS.—In evaluating a facility for a permanent containment remedy, if the President determines, based on standard site investigation, that a discrete area within a facility is a "hot spot" (as defined in this paragraph), the President shall select a remedy for the hot spot with a preference for treatment, unless he determines, based on treatability studies and other information, that no treat-~~

~~ment technology exists or such technology is only available at a disproportionate cost. In such instances, the President shall select an interim containment remedy for a hot spot subject to adequate monitoring to ensure its continued integrity and shall review the interim containment remedy within five years to determine whether an appropriate treatment remedy for the hot spot is available. For purposes of this paragraph, the term ''hot spot'' means a discrete area within a facility that contains hazardous substances that are highly toxic or highly mobile, cannot be reliably contained, and present a significant risk to human health or the environment should exposure occur.~~

~~''(4) GENERIC REMEDIES.—In order to streamline the remedy selection process, and to facilitate rapid voluntary action, the President shall establish, taking into account the factors enumerated in subsection (b)(3)(A), cost-effective generic remedies for categories of facilities, and expedited procedures that include community involvement for selecting generic remedies at an individual facility. To be eligible for selection at a facility, a generic remedy shall be protective of human health and the environment at that~~

~~facility. When appropriate, the President may select a generic remedy without considering alternative remedies.''.~~

~~SEC. 504. MISCELLANEOUS AMENDMENTS TO SECTION 121.~~

~~(a) Section 121(c) of the Act (42 U.S.C. 9621(c)) is amended by striking out the word ''initiation'', and inserting in lieu thereof the phrase ''completion of all physical on-site construction''.~~

~~(b) Section 121(d) of the Act is further amended by—~~

~~(1) redesignating paragraph (2)(C)(ii) as paragraph ''(6)(A)'';~~

~~(2) redesignating paragraph (2)(C)(iii) as paragraph ''(6)(B)'';~~

~~(3) striking ''clauses (iii) and (iv)'' in redesignated paragraph (6)(A) and inserting ''subparagraph (B)'';~~

~~(4) striking paragraph (2)(C)(iv);~~

~~(5) redesignating paragraph (3) as paragraph ''(7)'' and amending it to read as follows:~~

~~''(7) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant off-site, such hazardous substance or pollutant or contaminant and shall be transferred to a facility which is authorized under applicable Federal and~~

~~State law to receive such hazardous substance or pollutant or contaminant and is in compliance with such applicable Federal and State law. Such substance or pollutant or contaminant may be transferred to a land disposal facility permitted under subtitle C of the Solid Waste Disposal Act only if the President determines that both of the following requirements are met:~~

~~''(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.~~

~~''(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.~~

~~The President shall notify the owner or operator of such facility of determinations made under this paragraph.''; and~~

~~(6) striking paragraph (4).~~

~~(c) Section 121(e) of the Act (42 U.S.C. 9621(e)) is amended by—~~

~~(1) in paragraph (1) inserting in the first sentence ''or permit application'' before ''shall be required''; and by adding at the end thereof the follow-~~

~~ing: ''Furthermore, no Federal, State or local permit or permit application shall be required for one-site or off-site activities conducted under section 311(b),''; and~~

~~(2) striking paragraph (2).~~

~~(d) Section 121(f) of the Act (42 U.S.C. 9621(f)) is amended by adding after paragraph (3) (as amended by this Act) the following new paragraph:~~

~~''(4) A State may enforce only those Federal or State legally applicable standards, requirements, criterion, or limitations to which the Administrator has determined the remedial action is required to conform under this Act. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.''.~~

~~SEC. 505. RESPONSE AUTHORITIES.~~

~~(a) Section 104(b)(1) of the Act (42 U.S.C. 9604(b)(1)) is amended by—~~

~~(1) inserting ''actions,'' before ''studies'';~~

~~(2) striking '', to recover the costs thereof, and'' and inserting ''or''; and~~

(3) striking the ''.'' after ''Act'' and inserting ''and shall be entitled to recover the costs thereof.''.

(b) Section 104(j) of the Act (42 U.S.C. 9604(j)) is amended by—

(1) in paragraph (1) by striking ''remedial'', and inserting ''response'';

(2) striking paragraph (2);

(3) redesignating paragraph (3) as paragraph ''(2)'' and striking ''estate'' and inserting ''property''; and

(4) by inserting after paragraph (2) (as redesignated by this Act) the following new paragraph:

''(4) DISPOSAL AUTHORITY.—The President is authorized to dispose of any interest in real property acquired for use by the Administrator under this subsection by sale, exchange, donation or otherwise and any such interest in real property shall not be subject to any of the provisions of section 120 except the notice provisions of section 120(h)(1). Any moneys received by the President pursuant to this subparagraph shall be deposited in the Fund.''.

SEC. 506. REMOVAL ACTIONS.

(a) Section 104(c)(1) of the Act is amended in subparagraph (C) as follows:

~~(1) strike ''$2,000,000'' and insert ''$6,000,000'';~~

~~(2) strike ''12 months'' and insert ''three years''; and~~

~~(3) strike ''consistent with the remedial action to be taken'' and insert ''not inconsistent with any remedial action that has been selected or is anticipated at the time of the removal action.'';~~

~~(b) Section 117 of the Act is amended by adding after subsection (k) (as added by this Act) the following new subsection:~~

~~''(1) REMOVAL ACTIONS.—Whenever the planning period for a removal action is expected to be greater than six months, the Administrator shall provide the community with notice of the anticipated removal action and a public comment period of no less than thirty days.''.~~

~~SEC. 507. TRANSITION.~~

~~The provisions of this title shall become effective on the date of enactment of this Act and shall apply to all response actions for which a Record of Decision or other decision document is signed after the date of enactment of the Act.~~

~~TITLE VI—MISCELLANEOUS~~

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

~~Section 120(e) of the Act (42 U.S.C. 9620(e)) is amended by—~~

~~(a) inserting after paragraph (3) the following new paragraph:~~

~~"(4) A provision allowing for the participation of other responsible parties in the response action.; and~~

~~(b) inserting after paragraph (6) the following new paragraphs:~~

~~"(7) EXCEPTION TO REQUIRED ACTION.—No department, agency, and instrumentality of the United States that owns or operates a facility over which the department, agency, or instrumentality exercised no regulatory or other control over activities that directly or indirectly resulted in a release or threat of a release of a hazardous substance shall be subject to the requirements of paragraphs (1) through (6) except (5)(F) and (G) of this subsection if the department, agency, or instrumentality demonstrates to the satisfaction of the Administrator that—~~

~~"(A) no department, agency, or instrumentality was the primary or sole source or cause of a release or threat of release of a hazardous substance at the facility;~~

~~"(B) the activities either directly or indirectly resulting in a release or threat of a release of a hazardous substance at the facility were pursuant to a statutory authority and occurred prior to 1976; and~~

~~"(C) the person or persons primarily or solely responsible for such release or threat of release are financially viable, and capable of performing or financing the response action at the facility.~~

~~In the event the above conditions are not met, the applicable terms of section 120(e) apply to the department, agency, or instrumentality of the United States at the facility. Upon determination by the Administrator that a department, agency, or instrumentality qualifies for the exception provided by this paragraph, the head of such department, agency, or instrumentality may exercise enforcement authority pursuant under section 106 (in addition to any other delegated authorities). To the extent a person who has been issued an order under the authority of this~~

~~paragraph seeks reimbursement under the provisions of section 106, the relevant department, agency, or instrumentality, and not the Fund, shall be the source of any appropriate reimbursement. If the Administrator determines that the relevant department, agency, or instrumentality has failed to seek the performance of response actions by responsible parties within 12 months after the facility has been listed on the National Priorities List, the Administrator may void the exception provided by this paragraph and the applicable provisions or section 120(e) would apply to the department, agency or instrumentality at the facility.~~

~~SEC. 602. TRANSFERS OF UNCONTAMINATED PROPERTY.~~

~~Section 120(h)(4)(A) of the Act (42 U.S.C. 9620(h)(4)(A)) is amended by striking the words ''stored for one year or more,''.~~

~~SEC. 603. AGREEMENTS TO TRANSFER BY DEED.~~

~~Section 120(h) of the Act (42 U.S.C. 9620(h)) is amended by adding after paragraph (5) the following new paragraph:~~

~~''(6) AGREEMENTS TO TRANSFER BY DEED.—Nothing in this subsection shall be construed to prohibit the head of the department, agency, or instrumentality of the United States from entering into an~~

agreement to transfer by deed real property or facilities prior to the entering of such deed.''.

SEC. 604. ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.

Section 111(a) of the Act of 1980 is amended by adding after paragraph (6) the following new paragraph:

''(7) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.—

''(A) When a party potentially liable under this Act undertakes a response action pursuant to an administrative order or consent decree, and employs an alternative or innovative technology that fails to achieve a level of response required under this Act, the Administrator may use the Fund to reimburse no more than 50 percent of response costs incurred by the potentially liable party in taking other actions approved by the Administrator to achieve these required levels of response. The Administrator shall issue guidance on the procedures and criteria to be used in determining whether a remedial technology constitutes an alternative or innovative technology for purposes of this subsection, and the appropriate level of funding for response activities that are necessary to achieve

~~a level of response required under this Act. The Administrator shall review and update such guidance, as appropriate.''.~~

~~SEC. 605. DEFINITIONS.~~

~~Section 101 of the Act (42 U.S.C. 9601)) is amended by—~~

~~(a) in paragraph (1) striking the ''.'' after ''Act'' and inserting ''and includes the cost of enforcement activities related thereto.'';~~

~~(b) in paragraph (10)(H) striking ''subject to'' and inserting ''in compliance with'';.~~

~~(c) in paragraph (14)) inserting after ''Congress'' the phrase '', unless such waste contains a substance that is listed under any other subparagraph of this paragraph'';~~

~~(d) in paragraph (20) by—~~

~~(1) in subparagraph (A) inserting after ''similar means to'' the phrase ''the United States (or any department, agency, or instrumentality thereof), or'';~~

~~(2) in subparagraph (D) by inserting—~~

~~(A) after ''does not include'' the phrase ''the United States (or any department, agency, or instrumentality thereof), or'';~~ ~~and,~~

~~(B) before ''any State'' the phrase ''any department, agency, or instrumentality of the United States, or''; and~~

~~(3) in subparagraph (D) by striking ''a'' after ''such'' and inserting ''department, agency, or instrumentality of the United States, or'';~~

~~(4) by adding after subparagraph (D) the following new subparagraphs:~~

~~''(E) The term 'owner or operator' shall include a trust or estate, but does not include a person who holds title to a vessel or facility solely in the capacity as a fiduciary, provided that such person—~~

~~''(i) does not participate in the management of a vessel or facility operations that result in a release or threat of release of hazardous substances; and~~

~~''(ii) complies with such other requirements as the Administrator may set forth by regulation.~~

~~''(F) The term 'owner or operator' shall not include the United States or any department, agency or instrumentality of the United States or a conservator or receiver appointed by a department, agency or instrumentality of the~~

~~United States, which acquired ownership or control of a vessel or facility (or any right or interest therein)—~~

~~''(i) in connection with the exercise of receivership or conservatorship authority or the liquidation or winding up of the affairs of any entity subject to a receivership or conservatorship, including any subsidiary thereof; or~~

~~''(ii) in connection with the exercise of any seizure or forfeiture authority; or~~

~~''(iii) pursuant to an act of Congress specifying the property to be acquired:~~

~~*Provided*, That the United States, or conservator or receiver appointed by the United States does not participate in the management of the vessel or facility operations that result in a release or threat of release of hazardous substances and complies with such other requirements as the Administrator may set forth by regulation.'';~~

~~(e) in paragraph (23) adding at the end of the paragraph the following ''The terms 'remove' or 'removal' are not limited to emergency situations and include actions to address future or potential expo-~~

~~sures and, provided such actions are consistent with the requirements of this Act, actions obviating the need for a remedial action.'';~~

~~(f) in paragraph (25) striking ''related thereto'', and inserting ''and oversight activities related thereto when such activities are undertaken by the President.'';~~

~~(g) in paragraph (29) striking the ''.'' after ''Act'' and inserting '', except that the term ''hazardous substance'' shall be substituted for the term ''hazardous waste'' in the definitions of ''disposal'' and ''treatment.'';~~

~~(h) in paragraph (33) striking ''; except that the'', and inserting ''. The'';~~

~~(i) adding after paragraph (38) the following new paragraphs:~~

~~''(39) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person who acquires ownership of a facility after enactment of this provision, and who can establish by a preponderance of the evidence that—~~

~~''(A) all active disposal of hazardous substances at the facility occurred before that person acquired the facility;~~

~~"(B) the person conducted a site audit of the facility in accordance with commercially reasonable and generally accepted standards and practices. The Administrator shall have authority to develop standards by guidance or regulation, or to designate standards promulgated or developed by others, that satisfy this subparagraph. In the case of property for residential or other similar use, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph;~~

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

~~"(D) the person exercised due care with respect to hazardous substances found at the facility and took reasonably necessary steps to address any release or threat of release of hazardous substances and to protect human health and the environment. The requirements of due care and reasonably necessary steps with respect to hazardous substances discovered at the facility shall be conclusively established where~~

the person successfully completes a response action pursuant to a State voluntary response program, as defined in section 127 of this title; and

"(E) the person provides full cooperation, assistance, and facility access to those responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility; and

"(F) the person is not affiliated with any other person liable for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.

"(40) FIDUCIARY.—

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

"(i) as a fiduciary within the meaning of section 3(31) of the Employee Retirement Income Security Act of 1974, or as

~~a trustee, executor, administrator, custodian, guardian, conservator, or receiver acting for the exclusive benefit of another person; and~~

~~"(ii) who has not previously owned or operated the property in a non-fiduciary capacity.~~

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

~~"(i) who acquires ownership or control of property to avoid the liability of such person or any other person under this Act; or~~

~~"(ii) who owns or controls property on behalf of or for the benefit of a holder of a security interest.~~

~~"(41) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households or (B) were collected and disposed of with other municipal solid~~

~~waste or sewage sludge as part of normal municipal solid waste collection services, and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under section 3001(d) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)). Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste (such as painting, cleaning, gardening, and automotive supplies). The term 'municipal solid waste' does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.~~

~~''(42) MUNICIPALITY.—The term 'municipality' means a political subdivision of a State, including cities, counties, villages, towns, townships, boroughs, parishes, school districts, sanitation districts, water districts, and other public entities performing local governmental functions. The term also includes a natural person acting in the capacity of an official,~~

~~employee, or agent of a municipality in the performance of governmental functions.~~

~~"(43) QUALIFIED HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.—The term 'qualified household hazardous waste collection program' means a program established by an entity of the federal government, a state, municipality, or Indian tribe that provides, at a minimum, for semiannual collection of household hazardous wastes at accessible, well-publicized collection points within the relevant jurisdiction.~~

~~"(44) SEWAGE SLUDGE.—The term 'sewage sludge' means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly-owned or federally-owned treatment works.~~

~~"(45) SITE CHARACTERIZATION.—The term 'site characterization' means an investigation that determines the nature and extent of a release or potential release of a hazardous substance, pollutant or contaminant, and that includes an on-site evaluation and sufficient testing, sampling and other field data gathering activities to analyze whether there has been a release or threat of a release of a hazardous~~

substance, pollutant or contaminant, and the health and environmental risks posed by such a release or threat of release. The investigation also may include review of existing information (available at the time of the review), an off-site evaluation, or other measures as the Administrator deems appropriate.

''(46) VOLUNTARY RESPONSE.—The term 'voluntary response' means a response action—

''(A) undertaken and financed by a current owner or prospective purchaser under a voluntary response program; and

''(B) with respect to which the current owner or prospective purchaser agrees to pay all State oversight costs.''.

SEC. 606. CONFORMING AMENDMENT.

Section 126(a) of the Act (42 U.S.C. 9626(a)) is amended by adding, after ''section 104(i) (regarding health authorities),'' the phrase ''section 127 (regarding State authority), section 120 (regarding voluntary response actions),''.

TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 111(a) of the Act is amended by striking ''$8,500,000,000 for the 5-year period beginning on October 17, 1986, and not more than $5,100,000,000 for the

period commencing October 1, 1991, and ending September 30, 1994'' and inserting ''$9,600,000,000 for the period commencing October 1, 1994 and ending September 30, 1999''.

SEC. 702. ORPHAN SHARE FUNDING.

Section 111(a) is amended by adding after paragraph (7) (as added by this Act) the following new paragraph:

''(8) ORPHAN SHARE FUNDING.—Payment of orphan shares pursuant to section 122a(e) of this Act.''.

SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

Section 111(m) of the Act is amended to read as follow:

''(m) There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) of this section and section 104(i) of this Act not less than $80,000,000 per fiscal year for each of fiscal years 1995, 1996, 1997, 1998, and 1999. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.''.

~~SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.~~

~~Section 111(n) of the Act is amended to read as follows:~~

~~"(1) SECTION 311(b). For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) of this title (relating to research, development, demonstration) other than basic research. Such amounts shall remain available until expended.~~

~~"(2) SECTION 311(a). From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) of this title (relating to hazardous substance research, demonstration, and training activities)—~~

~~"(A) For fiscal year 1995 $40,000,000,~~

~~"(B) For fiscal year 1996 $50,000,000,~~

~~"(C) For fiscal year 1997 $55,000,000,~~

~~"(D) For fiscal year 1998 $55,000,000,~~

~~"(E) For fiscal year 1999 $55,000,000,~~

~~No more than 10 percent of such amounts shall be used for training under section 311(a) of this title for any fiscal year.~~

~~''(3) SECTION 311(d).—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) of this title (relating to university hazardous substance research centers).''.~~

~~SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.~~

~~Section 111(p)(1) of the Act is amended to read as follows:~~

~~''(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:~~

~~''(A) For fiscal year 1995 $250,000,000,~~

~~''(B) For fiscal year 1996 $250,000,000,~~

~~''(C) For fiscal year 1997 $250,000,000,~~

~~''(D) For fiscal year 1998 $250,000,000,~~

~~''(E) For fiscal year 1999 $250,000,000,~~

~~In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate~~

~~amount authorized to be appropriated under this subsection (and paragraph (2) of section 131(b) of this title) as has not been appropriated before the beginning of the fiscal year involved.''.~~

~~SEC. 706. ADDITIONAL LIMITATIONS.~~

~~Section 111 of the Act is amended by adding after subsection (p) the following new subsections:~~

~~''(q) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $40,000,000 of the amounts available in the Fund may be used for the purposes of subsection (a)(7) of this section (relating to alternative or innovative treatment technologies).~~

~~''(r) CITIZEN INFORMATION AND ACCESS OFFICES.—For each of the fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $50,000,000 of the amounts available in the Fund may be used for the purposes of section 117(j) of this Act (relating to citizen information and access offices).~~

~~''(s) MULTIPLE SOURCES OF RISK DEMONSTRATION PROJECTS.—For the period commencing October 1, 1994 and ending September 30, 1999, not more than $30,000,000 of the amounts available in the Fund may be used for the purposes of section 117(k) of this Act (re-~~

~~lating to multiple sources of risk demonstration projects).''.~~

~~TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND~~

~~SEC. 801. SHORT TITLE.~~

~~This title may be cited as the ''Environmental Insurance Resolution and Equity Act of 1994''.~~

~~SEC. 802. ENVIRONMENTAL INSURANCE RESOLUTION FUND.~~

~~(a) ENVIRONMENTAL INSURANCE RESOLUTION FUND ESTABLISHED.—There is hereby established the Environmental Insurance Resolution Fund (hereinafter referred to as the ''Resolution Fund'').~~

~~(b) OFFICES.—The principal office of the Resolution Fund shall be in the District of Columbia or at such other place as the Resolution Fund may from time to time prescribe.~~

~~(c) STATUS OF RESOLUTION FUND.—Except as expressly provided in this title, the Resolution Fund shall not be considered an agency or establishment of the United States. The members of the Board of Trustees shall not, by reason of such membership, be deemed to be officers or employees of the United States.~~

~~(d) BOARD OF TRUSTEES.—~~

~~(1) IN GENERAL.—The Resolution Fund shall be administered by a Board of Trustees (Board).~~

~~(2) MEMBERSHIP.—The Board shall consist of—~~

~~(A) GOVERNMENTAL MEMBERS.—~~

~~(i) The Administrator of the Environmental Protection Agency.~~

~~(ii) The Attorney General of the United States.~~

~~(B) PUBLIC MEMBERS.—Five public members appointed by the President not later than 60 days after the date of enactment of this title, not less than two of whom shall represent insurers subject to section of the Internal Revenue Code of 1986, and not less than two of whom shall represent eligible persons defined in subsection (g)(2)(A). The public members shall be citizens of the United States.~~

~~(C) EX-OFFICIO MEMBER.—The Secretary of the Treasury shall serve as an ex officio member of the Board.~~

~~(3) CHAIR.—The Chair of the Board shall be designated by the President from time to time from among the members described in paragraph (2)(A). No expenditure may be made, or other action taken,~~

~~by the Resolution Fund without the concurrence of the Chair of the Board.~~

~~(4) COMPENSATION. Governmental members of the Board shall serve without additional compensation. Public members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this title, be entitled to receive compensation at the rate of $200 per day, including travel time. While away from their homes or regular places of business, members of the Board shall be allowed travel and actual, reasonable and necessary expenses to the same extent as officers of the United States.~~

~~(5) TERM OF PUBLIC MEMBERS. Public members of the Board shall serve for a term of 5 years, except that such members may be removed by the President for any reason at any time. A public member whose term has expired may continue to serve on the Board until such time as the President appoints a successor. The President may reappoint a public member of the Board, but no such member may consecutively serve more than two terms.~~

~~(6) VACANCIES. A vacancy on the Board shall be filled in the same manner as the original appoint-~~

~~ment, except that such appointment shall be for the balance of the unexpired term of the vacant position.~~

~~(7) QUORUM.—Four members of the Board shall constitute a quorum for the conduct of business.~~

~~(8) MEETINGS.—The Board shall meet not less than quarterly at the call of the Chair. Meetings of the Board shall be open to the public unless the Board, by a majority vote of members present in open session, determines that it is necessary or appropriate to close a meeting. The Chair shall provide at least 10 days notice of a meeting by publishing a notice in the Federal Register and such notice shall indicate whether it is expected that the Board will consider closing all or a portion of the meeting. Nothing in this paragraph shall be construed to apply to informal discussions or meetings among Board members.~~

~~(e) OFFICERS AND EMPLOYEES.—~~

~~(1) CHIEF EXECUTIVE OFFICER; CHIEF FINANCIAL OFFICER.—~~

~~(A) The Resolution Fund shall have a Chief Executive Officer appointed by the Board who shall exercise any authority of the Resolu-~~

~~tion Fund under such terms and conditions as the Board may prescribe.~~

~~(B) The Resolution Fund shall have a Chief Financial Officer appointed by the Board.~~

~~(2) COMPENSATION.—No officer or employee of the Resolution Fund may be compensated by the Resolution Fund at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code. No officer or employee of the Resolution Fund, other than a member of the Board, may receive any salary or other compensation from any source other than the Resolution Fund for services rendered during the period of employment by the Resolution Fund.~~

~~(3) POLITICAL TEST OR QUALIFICATION.—No political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, and employees of the Resolution Fund.~~

~~(4) ASSISTANCE BY FEDERAL AGENCIES.—The Attorney General, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, may to the extent practicable and feasible, and in their sole discretion, make personnel~~

~~and other resources available to the Resolution Fund. Such personnel and resources may be provided on a reimbursable basis, and any personnel so provided shall not be considered employees of the Resolution Fund for purposes of paragraph (2).~~

~~(f) POWERS OF RESOLUTION FUND.—Notwithstanding any other provision of law, except as provided in this title or as may be hereafter enacted by the Congress expressly in limitation of the provisions of this paragraph, the Resolution Fund shall have power—~~

~~(1) to have succession until dissolved by Act of Congress;~~

~~(2) to make and enforce such bylaws, rules and regulations as may be necessary or appropriate to carry out the purposes of this title;~~

~~(3) to make and perform contracts, agreements, and commitments;~~

~~(4) to settle, adjust, and compromise, and with or without consideration or benefit to the Resolution Fund release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Resolution Fund;~~

~~(5) to sue and be sued, complain and defend, in any State, Federal or other court;~~

~~(6) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the duties, compensation and benefits of officers, employees, attorneys, and agents, all of whom shall serve at the pleasure of the Board;~~

~~(7) to invest funds, through the Secretary of the Treasury, in interest bearing securities of the United States suitable to the needs of the Resolution Fund: *Provided*, That interest earned on such investments shall be retained by the Resolution Fund and used consistent with the purposes of this title;~~

~~(8) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Resolution Fund in carrying out the purposes of this title; and~~

~~(9) to take such other actions as may be necessary to carry out the responsibilities of the Resolution Fund under this title. Nothing in this subsection or any other provision of this title shall be construed to permit the Resolution Fund to issue any evidence of indebtedness or otherwise borrow money.~~

~~(g) RESOLUTION OF DISPUTES BETWEEN INSUREDS AND INSURERS.—~~

~~(1) IN GENERAL.—The Resolution Fund shall offer a comprehensive resolution described in this subsection with respect to all eligible costs of an eligible person at eligible sites.~~

~~(2) DEFINITIONS.—~~

~~(A) ELIGIBLE PERSON.—For purposes of this subsection, the term ''eligible person'' means any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity or governmental unit (including any predecessor in interest or any subsidiary thereof) that satisfies the following criteria:~~

~~(i) STATUS AS POTENTIALLY RESPONSIBLE PARTY.—An eligible person—~~

~~(I) shall have been named at any time as a potentially responsible party pursuant to the Comprehensive Environmental Response, Compensation and Liability Act with respect to an eligible site on the National Priority List in connection with a hazardous substance that was disposed of on or before December 31, 1985; or~~

~~(II) is or was liable, or alleged to be liable, at any time for removal (as~~

~~defined in section 101(23) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(23)) at any eligible site in connection with a hazardous substance that was disposed of on or before December 31, 1985.~~

~~(ii) INSURANCE COVERAGE.—An eligible person shall have demonstrated, to the satisfaction of the Resolution Fund, that such person had entered into a valid contract for comprehensive general liability (including broad form liability, general liability, commercial general liability, and excess or umbrella coverage) or commercial multi-peril (including broad form property, commercial package, special multi-peril, and excess or umbrella coverage) insurance coverage—~~

~~(I) for any seven years in any consecutive 14 year period prior to January 1, 1986; or~~

~~(II) in the case of a person that has been in existence for less than 14 years prior to January 1, 1986, for at~~

~~least one-half of such years of existence.~~

~~For purposes of this clause, a valid contract for insurance shall not include any contract for insurance with respect to which a person has entered into a settlement with an insurer providing, or where a judgment has provided, that the contract has been satisfied and that such person has no right to make any further claims under such contract.~~

~~(B) ELIGIBLE COSTS.—~~

~~(i) IN GENERAL.—For purposes of this subsection, the term ''eligible costs'' means costs described in clause (ii) or (iii) incurred with respect to a hazardous substance that was disposed of on or before December 31, 1985—~~

~~(I) for which an eligible person has not been reimbursed; or~~

~~(II) for which an eligible person has been reimbursed and that are the subject of a dispute between the eligible person and an insurer.~~

~~(ii) NPL SITES.—With respect to an eligible site described in subparagraph (C)(i), eligible costs means costs described in clause (i)—~~

~~(I) of response (as defined in section 101(25) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(25));~~

~~(II) for natural resources damages; or~~

~~(III) to defend potential liability (including, but not limited to, attorney's fees, costs of suit, consultant and expert fees and costs, and expenses for testing and monitoring).~~

~~(iii) NON-NPL SITES.—With respect to an eligible site described in subparagraph (C)(ii), eligible costs means costs described in clause (i)—~~

~~(I) of removal (as defined in section 101(23) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(23)); or~~

~~(II) to defend potential liability (including, but not limited to, attorney's fees, costs of suit, consultant and expert fees and costs, and expenses for testing and monitoring).~~

~~(iv) LIMIT ON ELIGIBLE COSTS.—~~

~~(I) Except as provided in subclause (II), the eligible costs of an eligible person may not exceed—~~

~~(aa) $15,000,000 in the case of an eligible person that has demonstrated insurance coverage pursuant to subparagraph (A)(ii))(I); or~~

~~(bb) an amount equal to one-seventh of $15,000,000 for each year of insurance coverage, in the case of an eligible person that has demonstrated insurance coverage pursuant to subparagraph (A)(ii)(II).~~

~~(II) The limitation on eligible costs provided in subclause (I) shall not apply to an eligible person that, when filing a request for a resolution~~

~~offer with the Resolution Fund, presents evidence to the satisfaction of the Resolution Fund that the limits on valid contracts of insurance (including per occurrence, aggregate, primary, excess or other limits) of such eligible person prior to January 1, 1986, cumulatively exceed the amount determined pursuant to subclause (I) without reference to any time period. For purposes of this clause, a valid contract for insurance shall not include any contract for insurance with respect to which an eligible person has entered into a settlement with an insurer providing, or where a judgment has provided, that the contract has been satisfied and that such eligible person has no right to make any further claims under such contract.~~

~~(C) ELIGIBLE SITE.—For purposes of this subsection, the term ''eligible site'' means—~~

~~(i) any site or facility placed on the National Priority List at any time, at~~

which a hazardous substance was disposed of on or before December 31, 1985; or

(ii) any site or facility subject to a removal (as defined in section 101(23) of the Act (42 U.S.C. 9601(23)) conducted pursuant to such Act at any time, at which a hazardous substance was disposed of on or before December 31, 1985.

For purposes of this subparagraph, the term ''facility'' shall have the same meaning as provided in section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(9)).

(D) STATE.—For purposes of this subsection, the term ''State'' shall have the same meaning as provided in section 101(27) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601(27)).

(3) RESOLUTION OFFERS.—

(A) IN GENERAL.—The Resolution Fund shall offer one comprehensive resolution to each eligible person. The offer shall—

(i) be for a percentage of all of the eligible costs of such eligible person incurred

~~in connection with all eligible sites, determined pursuant to paragraph (4); and~~

~~(ii) state the limitation on eligible costs, if any, applicable to the eligible person pursuant to paragraph (2)(B)(ii).~~

~~(B) REQUESTS FOR RESOLUTION OFFERS.—An eligible person shall file a request for resolution from the Resolution Fund in such form and manner as the Resolution Fund shall prescribe. No such request shall be deemed received by the Resolution Fund before the date final regulations concerning State percentage categories are published in the Federal Register pursuant to paragraph 4(B)(iii). The Resolution Fund shall make an offer of resolution, determined pursuant to paragraph (4), to each eligible person that has filed a request for an offer of resolution not later than 180 days after the receipt of a complete request as determined by the Resolution Fund.~~

~~(C) REVIEW OF RESOLUTION OFFERS.—No resolution offer made by the Resolution Fund shall be subject to review by any court.~~

~~(4) DETERMINATION OF RESOLUTION OFFERS.—~~

~~(A) IN GENERAL.—The Resolution Fund shall determine a resolution offer—~~

~~(i) in the case of an eligible person that has established only one State litigation venue pursuant to subparagraph (C), by applying the State percentage determined pursuant to subparagraph (B)(iii) to the established State litigation venue;~~

~~(ii) in the case of an eligible person that has established two or more State litigation venues pursuant to subparagraph (C), each site with respect to which a State litigation venue has been established shall be accorded equal value and the applicable percentage shall be the weighted average of all established State litigation venues; or~~

~~(iii) in the case of an eligible person that has not established any State litigation venue pursuant to subparagraph (C)—~~

~~(I) if the eligible person has potential liability in connection with only one hazardous waste site, by applying the State percentage determined pur-~~

~~suant to subparagraph (B)(iii) to the State in which the site is located; or~~

~~(II) if the eligible person has potential liability in connection with more than one hazardous waste site, each site shall be accorded equal value and the applicable percentage shall be the weighted average of all States in which the sites are located;~~

~~(B) STATE PERCENTAGE.—~~

~~(i) IN GENERAL.—The Congress finds that as of January 1, 1994, State law generally is more favorable to eligible persons that pursue claims concerning eligible costs against insurers in some States, that State law generally is more favorable to insurers with respect to such claims in some States, and that in some States the law generally favors neither insurers nor eligible persons with respect to such claims or that there is insufficient information to determine whether such law generally favors insurers or eligible persons with respect to such claims. The Congress further finds that considerations of equity and fairness re-~~

~~quire that resolution offers made by the Resolution Fund must vary to reflect the relative state of the law among the several States.~~

~~(ii) PROPOSED REGULATIONS.—The Resolution Fund shall examine the law in each State as of January 1, 1994. Not later than 120 days after the date of enactment of this title, the Resolution Fund shall publish in the Federal Register a notice of proposed rulemaking soliciting public comment for 60 days and classifying States into the following percentage categories:~~

~~(I) 20 percent, in the case of the ten States in which the Resolution Fund determines that State law generally is most favorable to insurers relative to the other States;~~

~~(II) 60 percent, in the case of the ten States in which the Resolution Fund determines that State law generally is most favorable to eligible persons relative to the other States; and~~

~~(III) 40 percent, in the case of all other States.~~

~~(iii) FINAL REGULATIONS.—~~

~~(I) Not later than 60 days after the close of the public comment period, the Resolution Fund shall publish in the Federal Register final regulations providing State classifications.~~

~~(II) The State classifications provided in the final rule shall govern all resolution offers made by the Resolution Fund and shall not be subject to amendment by the Resolution Fund.~~

~~(III) Notwithstanding any other provision of law, the final regulations promulgated by the Resolution Fund pursuant to this clause shall not be subject to review by any court.~~

~~(C) LITIGATION VENUE.—For purposes of this subsection, litigation venue is considered established with respect to an eligible person if—~~

~~(i) on or before December 31, 1993, the eligible person had pending in a court~~

of competent jurisdiction a complaint or cross complaint against an insurer with respect to eligible costs at an eligible site; and

(ii) no motion to change venue with respect to such complaint was pending on or before January 31, 1994.

(5) ACCEPTANCE OR REJECTION OF RESOLUTION OFFER.—

(A) IN GENERAL.—

(i) An eligible person may, when submitting a request for a resolution to the Resolution Fund, make a written irrevocable election to accept any resolution to be made by the Resolution Fund.

(ii) An eligible person that does not make an election pursuant to clause (i) shall, within 60 days of the receipt of a resolution offer from the Resolution Fund, notify the Resolution Fund in writing of its irrevocable acceptance or rejection of such offer. An eligible person who does not accept or reject a resolution offer within 60 days shall be deemed to have made an irrevocable election to reject the offer and

~~the provisions of subparagraph (C) shall apply.~~

~~(B) RESOLUTION OFFER ACCEPTED.—An eligible person that accepts a resolution offered by the Resolution Fund shall be subject to the provisions of this paragraph.~~

~~(i) WAIVER OF INSURANCE CLAIMS.—The Resolution Fund shall not make payments to an eligible person unless the eligible person agrees in writing, subject to reinstatement described in clause (ii)—~~

~~(I) to waive any existing and future claims against any insurer for eligible costs; and~~

~~(II) to stay or dismiss each claim pending against an insurer for eligible costs.~~

~~(ii) REINSTATEMENT OF INSURANCE CLAIMS.—~~

~~(I) If the Resolution Fund fails to timely fulfill its obligations to an eligible person under the terms of an accepted resolution offer, such eligible person shall be entitled to reinstate~~

any claim under a contract for insurance with respect to eligible costs.

(II) STATUTE OF LIMITATION TOLLED.—Notwithstanding any other provision of Federal or State law, any Federal or State statute of limitation concerning the filing or prosecution of an action by an eligible person against an insurer, or by an insurer against an eligible person, with respect to eligible costs shall be tolled during the pendency of the stay of pending litigation established by section 804(a).

(iii) PAYMENT OF RESOLUTION OFFERS.—

(I) PRE-RESOLUTION COSTS.—The Resolution Fund shall make equal annual payments over a period of eight years for eligible costs incurred by an eligible person on or before the date such person accepts a resolution offer pursuant to subparagraph (A) (i) or (ii), and interest shall not accrue with respect to such eligible costs. The Resolution Fund may,

~~in its sole discretion, make such payments over a shorter period if the aggregate eligible costs do not exceed $50,000. An eligible person shall submit to the Resolution Fund documentation of such costs as the Resolution Fund may require. The initial payment to an eligible person under this subclause shall be made not later than 60 days after the receipt of documentation satisfactory to the Resolution Fund.~~

~~(II) POST-RESOLUTION COSTS.—The Resolution Fund shall make payments for eligible costs incurred by an eligible person after the date such person accepts a resolution offer pursuant to subparagraph (A) (i) or (ii) to the eligible person, or to a contractor or other person designated by the eligible person, subject to such documentation as the Resolution Fund may require. Payments under this subclause shall be made not later than 60 days after the receipt of docu-~~

~~mentation satisfactory to the Resolution Fund.~~

~~(III) ADJUSTMENT FOR DEDUCTIBLE OR SELF INSURANCE.—In the case of an eligible person that has submitted to the Resolution Fund, as proof of status as an eligible person, a contract for insurance described in paragraph (2)(A)(ii) that is subject to a self-insured retention or a deductible, payment to such eligible person pursuant to a resolution shall be reduced by the amount of such self-insured retention or deductible, except that such reduction shall not exceed the amount of one self-insured retention or one deductible that the eligible person would have been required to pay with respect to one claim for eligible costs under the terms of the contracts for insurance submitted. In the event that the eligible person submitted more than one contract for insurance, any such reduction shall be made with respect to the lowest of the~~

~~amounts of self-insured retentions and deductibles.~~

~~(IV) ADJUSTMENT FOR CERTAIN DUTY-TO-DEFEND COSTS.—If an insurer has incurred and paid costs pursuant to a duty-to-defend clause contained in a contract for insurance described in paragraph (2)(B), and such costs are the subject of a dispute between the eligible person and an insurer, the payment of a resolution to an eligible person shall be reduced by such amount, and the Resolution Fund shall pay such amount to the insurer. If such costs were paid by the insurer on or before the date the eligible person accepted a resolution offer made by the Resolution Fund, payment to an insurer under this subclause shall be made in equal annual installments over a period of eight years, and interest shall not accrue with respect to such costs. The Resolution Fund may, in its sole discretion, make such payments over a~~

shorter period if the aggregate costs do not exceed $50,000.

(C) RESOLUTION OFFER REJECTED; LITIGATION OF INSURANCE CLAIMS.—

(i) ADMISSIBILITY OF RESOLUTION OFFER.—No resolution offered by the Resolution Fund shall be admissible in any legal action brought by an eligible person against an insurer or by an insurer against an eligible person.

(ii) INSURER ACTION AGAINST ELIGIBLE PERSON.—Any eligible person that rejects a resolution offer, litigates a claim with respect to eligible costs against an insurer, and obtains a final judgment that is less favorable than the resolution offered by the Resolution Fund, shall be liable to such insurer for 20 percent of the reasonable costs and legal fees incurred by the insurer in connection with such litigation after the resolution was offered to the eligible person. The district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value. The court shall reduce

any award to an insurer in any such action by the amount, if any, of such costs and legal fees recovered by the insurer pursuant to State law or court rule. Nothing in this clause shall be construed to limit or affect in any way the application of State law, or the rule of any court, to such costs or legal fees.

(iii) REIMBURSEMENT TO INSURER.—In the case of an eligible person that rejects a resolution offer, litigates a claim with respect to eligible costs against one or more insurers, and obtains a final judgment against any such insurer, the Resolution Fund—

(I) shall reimburse to such insurer or insurers the lesser of the amount of the resolution offer made to the eligible person or the final judgment; and

(II) may, if the resolution offer exceeded the final judgment, reimburse the insurer or insurers for unrecovered reasonable costs and legal fees, except that the total reimburse-

~~ment under this subclause may not exceed the amount of the resolution offer to the eligible person.~~

~~Reimbursements pursuant to this clause shall be subject to such documentation as the Resolution Fund may require and shall be made by the Resolution Fund not later than 60 days after receipt by the Resolution Fund of a complete request for reimbursement as determined by the Resolution Fund.~~

~~(6) PAYMENTS CONSIDERED PURSUANT TO INSURANCE CONTRACT.—Payments made by the Resolution Fund pursuant to a resolution offer shall be deemed payments made by an insurer under the terms and conditions of a contract of insurance or in settlement thereof. Nothing in this paragraph shall be construed to affect in any way the issue of whether the liability limits of a contract of insurance has been satisfied.~~

~~(7) RESOLUTION PROCESS NOT ADMISSION OF LIABILITY.—No provision of this title, and no action by an eligible person undertaken in connection with any provision of this title shall in any way constitute~~

~~an admission of liability in connection with the disposal of a hazardous substance.~~

~~(8) REGULATIONS.—~~

~~(A) PROCEDURES AND DOCUMENTATION.—Not later than 120 days after the date of enactment of this title, the Resolution Fund shall publish in the Federal Register for public comment of not more than 60 days interim final regulations concerning procedures and documentation for the submission of requests for resolution offers and the payment of accepted resolution offers. Not later than 60 days after the close of the public comment period, the Resolution Fund shall publish in the Federal Register final regulations concerning such procedures and documentation, which may be amended by the Resolution Fund from time to time.~~

~~(B) OTHER REGULATIONS.—The Resolution Fund may prescribe such other regulations, rules and procedures as the Resolution Fund deems appropriate from time to time.~~

~~(C) JUDICIAL REVIEW.—No regulation, rule or procedure prescribed by the Resolution Fund pursuant to this paragraph shall be sub-~~

~~ject to review by any court except to the extent such regulation, rule or procedure is not consistent with a provision of this title.~~

~~(h) JURISDICTION OF FEDERAL COURTS.—Notwithstanding section 1349 of title 28, United States Code:~~

~~(1) The Resolution Fund shall be deemed to be an agency of the United States for purposes of sections 1345 and 1442 of title 28, United States Code.~~

~~(2) All civil actions to which the Resolution Fund is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value.~~

~~(3) Any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which the Resolution Fund is a party may at any time before the trial thereof be removed by the Resolution Fund, without the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending, or, if there is no such district court, to the district court of the United States for the district in which the principal office of the Resolution Fund is located, by following any procedure~~

~~for removal of causes in effect at the time of such removal.~~

~~(4) No attachment or execution shall be issued against the Resolution Fund or any of its property before final judgment in any State, Federal, or other court.~~

~~(i) REPORTS.—~~

~~(1) ANNUAL REPORTS.—The Resolution Fund shall report annually to the President and the Congress not later than January 15 of each year on its activities for the prior fiscal year. The report shall include—~~

~~(A) a financial statement audited by an independent auditor; and~~

~~(B) a determination of whether the fees and assessments imposed by section of the Internal Revenue Code of 1986 will be sufficient to meet the anticipated obligations of the Resolution Fund.~~

~~(2) SPECIAL REPORTS.—The Resolution Fund shall promptly report to the President and the Congress at any time the Resolution Fund determines that the fees and assessments imposed by section of the Internal Revenue Code of 1986 will be~~

~~insufficient to meet the anticipated obligations of the Resolution Fund.~~

~~(j) FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.—~~

~~(1) CRIMINAL PENALTIES.—~~

~~(A) For purposes of section 287 of title 18, United States Code (relating to false claims), the Resolution Fund shall be considered an agency of the United States and any officer or employee of the Resolution Fund shall be considered a person in the civil service of the United States.~~

~~(B) For purposes of section 1001 of title 18, United States Code (relating to false statements or entries), the Resolution Fund shall be considered an agency of the United States.~~

~~(2) CIVIL PENALTIES.—Officers and employees of the Resolution Fund shall be considered officers and employees of the United States for purposes of section 3729 of title 31, United States Code (relating to false claims).~~

~~SEC. 803. FINANCIAL STATEMENTS, AUDITS, INVESTIGATIONS AND INSPECTIONS.~~

~~(a) IN GENERAL.—The financial statements of the Resolution Fund shall be prepared in accordance with gen-~~

~~erally accepted accounting principles and shall be audited annually by an independent certified public accountant in accordance with the auditing standards issued by the Comptroller General. Such auditing standards shall be consistent with the private sector's generally accepted auditing standards.~~

~~(b) INVESTIGATIONS AND OTHER AUDITS.—The Inspector General of the Environmental Protection Agency is authorized to conduct such audits and investigations as the Inspector General deems necessary or appropriate. For purposes of the preceding sentence, the provisions of the Inspector General Act of 1978 shall apply to the Resolution Fund and to the Inspector General to the same extent as they apply to the Environmental Protection Agency.~~

~~SEC. 804. STAY OF PENDING LITIGATION.~~

~~(a) IN GENERAL.—~~

~~(1) Except as provided in this section, enactment of this title operates as a stay, applicable to all persons other than the United States, of the commencement or continuation, including the issuance or employment of process or service of any pleading, motion, or notice, of any judicial, administrative, or other action with respect to claims for indemnity or other claims arising from a contract for insurance~~

~~described in section 802(g)(2)(A)(ii) concerning insurance coverage for eligible costs as defined in section 802(g)(2)(B)(i).~~

~~(2) Nothing in paragraph (1) shall be construed to apply to the extent the issuance or employment of process or service of any pleading, motion, or notice, of any judicial, administrative, or other action with respect to claims for indemnity or other claims does not concern eligible costs (as defined in section 802(g)(2)(B)(i)) or a contract for insurance described in section 802(g)(2)(A)(ii). An eligible person (as defined in section 802(g)(2)(A)) may move to sever claims not involving eligible costs from claims involving eligible costs and may proceed with the prosecution of claims not involving eligible costs.~~

~~(b) TERMINATION OF STAY.—~~

~~(1) PENDING OFFER OF RESOLUTION.—The stay established by subsection (a) shall terminate with respect to an eligible person upon the earlier of—~~

~~(A) the rejection of a resolution offer by such eligible person pursuant to section 802(g)(5)(A); or~~

~~(B) the failure of the Resolution Fund to timely fulfill the terms of a resolution offer accepted by such eligible person.~~

~~(2) EXPIRATION OF RESOLUTION OFFERS.—No stay established by subsection (a) shall be effective after May 31, 2000.~~

~~(c) OTHER STAYS.—Nothing in this section shall be construed to limit or affect in any way the discretion of any judicial, administrative, or other entity to maintain or impose a stay that is not required by subsection (a) but that will otherwise serve the ends of justice by staying a judicial, administrative or other action pending the acceptance or rejection of a resolution offer pursuant to section 802(g)(5)(A).~~

~~(d) AUTHORITY OF UNITED STATES UNAFFECTED.—Nothing in this section shall be construed to limit or affect in any way the discretion or authority of the United States or any party to commence or continue an allocation process, cost recovery, or other action pursuant to the authority of sections 101–122a of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601–9622a).~~

~~SEC. 805. SUNSET PROVISIONS.~~

~~(a) AUTHORITY TO ACCEPT REQUESTS FOR RESOLUTION.—The authority of the Resolution Fund to accept~~

~~requests for resolution shall terminate after September 30, 1999.~~

~~(b) AUTHORITY TO OFFER RESOLUTIONS.—The authority of the Resolution Fund to offer resolutions to eligible persons shall terminate after March 31, 2000.~~

~~(c) CONTINUING OBLIGATIONS.—Nothing in this section shall be construed to limit or affect in any way the authority of the Resolution Fund—~~

~~(1) to make payments pursuant to resolution offers made on or before March 31, 2000; or~~

~~(2) to reimburse insurers with respect to litigation commenced or continued in connection with a resolution offer made on or before March 31, 2000, that was rejected by an eligible person or not acted upon by an eligible person as provided in section 802(g)(5)(A).~~

~~SEC. 806. SOVEREIGN IMMUNITY OF THE UNITED STATES.~~

~~No obligation or liability of the Resolution Fund shall constitute an obligation or liability of the United States, or of any department, agency, instrumentality, officer, or employee thereof. No person shall have a cause of action of any kind against the United States, or any department, agency, instrumentality, officer, or employee thereof with respect to any obligation, liability, or activity of the Resolution Fund.~~

~~**SEC. 807. EFFECTIVE DATE.**~~

~~The provisions of this title shall become effective on the date of enactment of this title.~~

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

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. Health authorities.
Sec. 105. Determining health effects.
Sec. 106. Community health programs.
Sec. 107. Public health recommendations in remedial actions.
Sec. 108. Rights to participate.
Sec. 109. Transition.

TITLE II—STATE ROLES

Sec. 201. Delegated State response actions and authorized State response programs.
Sec. 202. State cost share.
Sec. 203. Siting.
Sec. 204. State Registry.
Sec. 205. Conforming and miscellaneous amendments.
Sec. 206. State role at Federal facilities.

TITLE III—VOLUNTARY ENVIRONMENTAL CLEANUP

Sec. 301. Short title.
Sec. 302. Findings and purpose.
Sec. 303. Definitions.
Sec. 304. Voluntary Cleanup Grant Program.
Sec. 305. Economic Redevelopment Credit Assistance Program.
Sec. 306. Regulations.
Sec. 307. Economic Redevelopment Revolving Fund.
Sec. 308. Authorizations of appropriations.
Sec. 309. Reports.
Sec. 310. Funding.

Sec. 311. Statutory construction.

TITLE IV—LIABILITY AND ALLOCATION

Sec. 401. Information gathering and access.
Sec. 402. Compliance with administrative orders.
Sec. 403. Limitations on 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. Enhancement of settlement authorities.
Sec. 409. Allocation procedures.
Sec. 410. Clarification of liability for recycling transactions.
Sec. 411. Lender and fiduciary liability.
Sec. 412. Religious, charitable, scientific, or educational organizations.
Sec. 413. Working group.
Sec. 414. Indirect costs.
Sec. 415. Release of evidence.
Sec. 416. Contiguous properties.

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. Transition.

TITLE VI—MISCELLANEOUS

Sec. 601. Interagency agreements at mixed ownership and mixed responsibility facilities.
Sec. 602. Transfers of uncontaminated property.
Sec. 603. Agreements to transfer by deed.
Sec. 604. Alternative or innovative treatment technologies.
Sec. 605. Definitions.
Sec. 606. Conforming amendment.
Sec. 607. Response claims procedures.
Sec. 608. Small business ombudsman.
Sec. 609. Consideration of local government cleanup priorities in allocation of oversight resources.
Sec. 610. Severability.
Sec. 611. Results-oriented cleanups.
Sec. 612. Innovative technologies for remedial action at Federal facilities.
Sec. 613. Notification.
Sec. 614. Certification of environmental training and certification organizations.
Sec. 615. Sense of the Committee concerning offsets from the corporate environmental income tax to pay for welfare reform.

TITLE VII—FUNDING

Sec. 701. Authorization of appropriations.
Sec. 702. Orphan share funding.
Sec. 703. Department of Health and Human Services.
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.
Sec. 708. Technical and conforming amendments.

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 controls; 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 of*
6 *an amendment to, or repeal of, a section or other provision,*
7 *the reference shall be considered to be made to a section or*
8 *other provision of the Comprehensive Environmental Re-*
9 *sponse, Compensation, and Liability Act of 1980 (com-*
10 *monly known as the ''Superfund Act'') (42 U.S.C. 9601 et*
11 *seq.).*

TITLE I—COMMUNITY PARTICIPATION AND HUMAN HEALTH

SEC. 101. PUBLIC PARTICIPATION.

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

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—In accordance with rules promulgated by the Administrator, the Administrator may make grants available to any group of individuals that may be affected by the release or threatened release of hazardous substances or pollutants or contaminants at any facility on the State Registry or the National Priorities List (referred to in this subsection as 'affected citizens'). Such grants shall be known as Technical Assistance Grants. To ensure that the application process for such grants is accessible to all affected citizens, the Administrator shall periodically review such process and, based on such review, shall implement appropriate changes to the application process to improve access.

"(2) SPECIAL RULES.—No matching contribution shall be required for a Technical Assistance Grant. The Administrator shall make all or a portion of the grant amount available to the grant recipient in advance of the total expenditures to be covered by

the grant. Such portion shall be not less than $5,000 or 10 percent of the grant amount, whichever is greater.

"(3) LIMIT PER FACILITY.—Not more than 1 grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action. Limits shall be established with respect to the number of years for which the grants may be made available based on the duration, type, and extent of response activity at a facility.

"(4) FUNDING AVAILABILITY.—Subject to the limitations provided in paragraph (5), 1 or more of the grants shall be made available to affected citizens who live in communities containing facilities on the State Registry not yet listed on the National Priorities List as of the date on which the grant is awarded.

"(5) FUNDING LIMIT.—Not more than 4 percent of the funds made available for carrying out this Act for any fiscal year may be used for grants under this subsection in that fiscal year and not more than ⅛ of the funds used under this subsection for a fiscal year may be used for grants with respect to facilities not listed on the National Priorities List. If such ⅛

portion is not needed for such facilities, such portion may be used for grants with respect to facilities listed on the National Priorities List.

"(6) FUNDING AMOUNT.—The initial amount of any grant made under this subsection may not exceed $50,000 for a single grant recipient. The Administrator shall increase the initial amount of the grant, as appropriate, to reflect the complexity of the response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other sources.

"(7) AUTHORIZED GRANT ACTIVITIES.—

"(A) INTERPRETATION OF INFORMATION.—A grant awarded under this subsection may be used to obtain technical assistance in interpreting information with regard to—

"(i) the nature of the hazard;

"(ii) the remedial investigation and feasibility study;

"(iii) the record of decision;

"(iv) the selection, design, and construction of the remedial action;

"(v) operation and maintenance; or

"(vi) the removal activities;

at such facility.

"(B) ADDITIONAL ACTIVITIES.—A grant awarded under this subsection also may be used—

"(i) to obtain technical assistance in gathering and interpreting information used to rank facilities according to the hazard ranking system;

"(ii) for gathering information to assess a remedy selection decision;

"(iii) to hire health and safety experts to advise affected citizens on health assessment and contamination data gathering efforts and response activities;

"(iv) to hire a community liaison to potentially responsible parties and government agencies;

"(v) to hire experts to file comments with governmental agencies and generate other documents as necessary to ensure full participation by the grant recipient;

"(vi) to hire experts to provide input into the design of any health studies that a government agency performs; and

"(vii) for training funds for interested affected citizens to enable them to more effectively participate in the remedy selection process.

"(C) LIMITATION.—Grants awarded under this subsection may not be used for the purpose of collecting field sampling data.

"(8) GRANT GUIDELINES.—Not later than 90 days after the date of enactment of the Superfund Reform Act of 1994, the Administrator shall develop and publish guidelines concerning management of grants awarded under this subsection. Technical or other experts hired by recipients of such grants shall be hired by such recipients under the guidelines.

"(f) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—

"(1) IN GENERAL.—

"(A) MEETINGS AND NOTICE.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the President shall provide the opportunity for public meetings

and publish a notice of such meetings before or during performance of each of the following:

"(i) A health assessment and a preliminary assessment and site inspection, as appropriate. If a citizen requests such a public meeting and the President determines that such a meeting is not appropriate at the preliminary assessment and site inspection stage, the President shall provide adequate public notice of that determination.

"(ii) A remedial investigation and feasibility study.

"(iii) An announcement of the preferred remedial alternative.

"(iv) The completion of a work plan for a remedial investigation and feasibility study, for a remedial design, or for a remedial action.

"(B) INFORMATION.—The public meetings shall be designed to obtain information from the community, and disseminate information to the community, with respect to the facility involved concerning the President's facility activities and pending decisions.

"(2) PARTICIPANTS AND SUBJECT.—The President also shall provide reasonable notice of an opportunity for public participation in meetings in which—

"(A) the participants include Federal officials (or State officials, where the State is conducting response activities under an authorized program or through facility referral) with authority to make significant decisions affecting a response action, and any other person or persons, unless the other person or persons are all coregulators that are not potentially responsible parties, or are government contractors; and

"(B) the subject of the meeting involves discussions directly affecting either—

"(i) a legally enforceable work plan document, or any amendment to the document, for a removal, remedial investigation, feasibility study, remedial design, or remedial action, for a facility on the National Priorities List; or

"(ii) the final package of information on which the Administrator will base a hazard ranking system score for a facility.

"(3) LIMITATION.—Nothing in this subsection shall be construed—

"(A) to provide for public participation in, or otherwise affect, any negotiation, meeting, or other discussion, solely concerning potential liability or settlement of potential liability, whether prior to or following the commencement of litigation or administrative enforcement action;

"(B) to provide for public participation in, or otherwise affect, any negotiation, meeting, or other discussion, attended exclusively by representatives of the United States or any of the departments, agencies, or instrumentalities of the United States, with attorneys representing the United States, or any of the departments, agencies, or instrumentalities of the United States; or

"(C) to waive, compromise, or affect any privilege that may be applicable to a communication related to an activity described in subparagraph (A) or (B).

"(4) EVALUATION.—To the extent practicable, before and during the health assessment and site inspection, the President shall solicit and evaluate concerns, interests, and information from the community. The evaluation shall include, as appropriate—

"(A) face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community;

"(B) a public meeting;

"(C) written responses to significant concerns; and

"(D) other appropriate participatory activities.

"(5) VIEWS AND PREFERENCES.—During the remedial investigation and feasibility study, the President shall solicit the views and preferences of the community on the remediation and disposition of hazardous substances or pollutants or contaminants at the facility. The views and preferences of the community shall be described in the remedial investigation and feasibility study and considered in the screening of remedial alternatives for the facility.

"(6) ALTERNATIVES.—Members of the community may propose remedial alternatives to the President, and the President shall consider such alternatives in the same manner as the President considers alternatives proposed by potentially responsible parties.

"(7) INFORMATION.—The President, with the assistance of the Citizen Information and Access Office (as provided for in subsection (h)) and a Community Working Group (referred to in this Act as a 'Community Working Group') (as provided for in subsection (g)) where a Community Working Group exists, shall provide information to the community and seek comment from the community throughout all significant phases of the response action at the facility. The President shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff in a timely and effective manner. The President also shall ensure reasonable written or other appropriate responses to such information.

"(8) NONPRIVILEGED INFORMATION.—The President shall make all nonprivileged information relating to the facility available to the public throughout all phases of response action at the facility. Such information shall be made available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate.

"(9) PRESENTATION.—

"(A) DOCUMENTS.—The President, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is complete and informative. To the extent feasible, documents made available to the general public that purport to describe the degree of risk to human health shall, at a minimum, state—

"(i) the upperbound and lowerbound estimates of the risk;

"(ii) the population or populations addressed by any estimates of the risk;

"(iii) the expected risk or central estimate of the risk for the specific population;

"(iv) the reasonable range or other description of uncertainties in the assessment process; and

"(v) the assumptions that form the basis for any estimates of such risk posed by the facility and a brief explanation of the assumptions.

"(B) COMPARISONS.—To the extent practical and appropriate, the President, in carrying out such responsibilities, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels

of risk from those hazardous substances ordinarily encountered by the general public through other sources of exposure.

"(10) REQUIREMENTS.—Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 that is expected to extend beyond 180 days, and in any case in which implementation of a removal action is expected to obviate or obviates the need to conduct a long-term remedial action, the removal action shall achieve the protective concentration levels and other standards specified in subsections (b) and (d) of section 121, and the Administrator shall, to the maximum extent practicable, allow for public participation in accordance with the requirements of this section. In the case of all other removal actions, the Administrator may provide the community with notice of the anticipated removal action and a public comment period, as appropriate.".

SEC. 102. COMMUNITY WORKING GROUPS.

Section 117 (42 U.S.C. 9617) is amended by adding after subsection (f) (as added by section 101) the following new subsections:

"(g) COMMUNITY WORKING GROUPS.—

"(1) CREATION AND RESPONSIBILITIES.—The President shall facilitate the establishment of a representative public forum in the form of a Community Working Group, to achieve direct, regular, and meaningful consultation with all interested parties throughout all stages of a response action whenever—

"(A) the President determines such a group will be helpful to achieve the purposes of this Act; or

"(B) at least 50 citizens, or at least 20 percent, of the population of the community petition for a Community Working Group to be established.

"(2) DUTIES.—Each Community Working Group shall provide information and views to the President, and, as appropriate, any or all of the following:

"(A) The Secretary of Health and Human Services.

"(B) State regulatory agencies.

"(C) Federal and State natural resource trustees.

"(D) Potentially responsible parties conducting response actions.

"(E) Local government and local public health agencies.

The information and views reported shall address the various subjects related to facility remediation, including facility health studies, potential remedial alternatives, and selection and implementation of remedial and removal actions. The Community Working Group shall attempt to achieve consensus among its members before reporting the views to agencies or potentially responsible parties. In cases in which consensus cannot be reached, the Community Working Group shall describe the divergent views of the members of the group.

"(3) LAND USE RECOMMENDATIONS.—To obtain greater community support for remedial decisions affecting future land use, the President shall consult with the Community Working Group and appropriate local governing entities and local planning entities on a regular basis throughout the remedy selection process regarding the reasonably anticipated future use of land at the facility and any institutional controls required to ensure that land use determinations remain in effect. The Community Working Group may offer recommendations on the reasonably anticipated future use of land at the facility to the President at any

time prior to the selection of a remedy at the facility. In making the land use recommendation, the Community Working Group shall consider, at a minimum, future facility waste management needs, applicable local zoning and land use plans, and the factors described in section 121(b)(2). The President shall not be bound by any recommendation of the Community Working Group. The President shall give substantial weight to the Community Working Group's land use recommendation when the Community Working Group achieves consensus on the reasonably anticipated future use of land at the facility. In cases in which there is substantive disagreement within the Community Working Group over a recommendation regarding the reasonably anticipated future use of land at the facility, the President shall make reasonable efforts to reconcile the differences. In the event of continued substantive disagreement, substantial weight shall be given to the views of local residents. Should the President make a determination that is inconsistent with a consensus Community Working Group recommendation on the reasonably expected future use of land at the facility, the President shall issue a written explanation for the inconsistency.

"(4) COMMUNITY WORKING GROUP INPUT.—With the exception of land use recommendations, input received from the Community Working Groups shall be considered by the President to be of equal weight with the advice received from the Technical Assistance Grant recipients and other community members.

"(5) COMMUNITY WORKING GROUP MEMBERS.—Members shall serve on the Community Working Group without pay. Membership on the Community Working Group shall not exceed 20 persons. The President shall solicit and accept nominations for the Community Working Group membership. Ultimate selection of Community Working Group members shall be made by the President after consultation with the Citizen Information and Access Office as provided for in subsection (h). The President shall also provide notice and opportunity to apply for membership in the Community Working Group to persons who are or historically have been disproportionately affected by facility contamination in the community. Each Community Working Group shall, to the extent practicable, reflect the composition of the community and the diversity of interest. Local residents shall, to the extent practicable, comprise no less than 50 percent of the total membership of the Community Working

Group. In general, the President shall allow members of each of the following groups representation on a Community Working Group:

"(A) Persons residing or owning residential property near a facility or persons who may be directly affected by the releases from the facility. At least 1 person in this group shall represent the Technical Assistance Grant recipient if such a grant has been awarded under subsection (e) with respect to the facility.

"(B) Persons who, although not residing or owning residential property near the facility, may be affected by releases from the facility.

"(C) Members of the local medical community practicing in the community.

"(D) Representatives of local Indian tribes or Indian communities.

"(E) Local representatives of citizen, environmental, or public interest groups with members residing in the community.

"(F) Local government, which may include pertinent city or county governments, or both, and any other governmental unit that regulates land use in the vicinity of the facility.

"(G) Workers at the facility who will be involved in response operations.

"(H) Workers employed at the facility during facility operation.

"(I) Facility owners and local representatives of the potentially responsible parties who represent, wherever practicable, a balance of potentially responsible party interests.

"(J) Members of the local business community.

"(6) SUPPORT FOR COMMUNITY WORKING GROUPS.—The President shall provide administrative services and meeting facilities for Community Working Groups. The President may make grants to Community Working Groups to assist the groups in carrying out activities that the Community Working Groups are authorized to carry out under this Act. The Environmental Protection Agency, the Secretary of Health and Human Services, and the State in which the facility is located, as appropriate, may participate, at the request of the Community Working Group, in Community Working Group meetings to provide information and technical expertise, but shall not be members of the Community Working Group.

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

"(h) CITIZEN INFORMATION AND ACCESS GRANT PROGRAM.—

"(1) ESTABLISHMENT OF CITIZEN INFORMATION AND ACCESS OMBUDSMAN OFFICE.—

"(A) OFFICE.—The Administrator shall establish a Citizen Information and Access Ombudsman Office in—

"(i) the Office of Environmental Justice in the national headquarters office of the Environmental Protection Agency; and

"(ii) each regional office of the agency.

"(B) OMBUDSMAN.—Each Citizen Information and Access Ombudsman Office described in subparagraph (A) shall be headed by a Citizen Information and Access Ombudsman (referred to in this subsection as an 'Ombudsman').

"(C) DUTIES.—Each Ombudsman in a regional office shall—

"(i) assist the Administrator in administering the grant program established

under this subsection with respect to each State in the region;

"(ii) carry out the functions described in paragraph (3) for each State in the region unless the Administrator awards a grant for the State under paragraph (2); and

"(iii) provide the information and descriptions specified in paragraph (3) to the Citizen Information and Access Offices in the region.

"(2) GRANTS.—

"(A) IN GENERAL.—Subject to such amounts as are provided in appropriations Acts, and in accordance with regulations established by the Administrator under subparagraph (D), the Administrator shall award grants to eligible groups within States to enable the groups to establish Citizen Information and Access Offices and carry out the functions described in paragraph (3) in the States in accordance with the requirements of this subsection.

"(B) ELIGIBLE GROUPS.—The Administrator shall award grants to groups that meet the

requirements specified in the regulations established under subparagraph (D).

"(C) APPLICATION.—To be eligible to receive a grant under this paragraph, a group shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require, including, at a minimum, a budget and work plan for the activities to be carried out under the grant.

"(D) REGULATIONS FOR AWARDING GRANTS.—

"(i) IN GENERAL.—The Administrator shall issue regulations establishing procedures and criteria for awarding grants under this paragraph.

"(ii) PROCEDURES.—Such regulations shall, at a minimum, require that the Administrator, prior to awarding a grant under this paragraph—

"(I) shall consult with the Governing Board; and

"(II) shall comply with public notification and participation procedures.

"(iii) ELIGIBLE GROUPS.—

"(I) IN GENERAL.—The regulations shall include criteria relating to the qualifications of groups eligible to receive grants under this paragraph.

"(II) NONGOVERNMENTAL EDUCATIONAL OR INFORMATIONAL ORGANIZATION.—The regulations shall require that, to be eligible to receive a grant under this paragraph, a group shall be a nongovernmental educational or informational organization.

"(III) COMMUNITIES AFFECTED BY NATIONAL PRIORITIES LIST OR STATE REGISTRY FACILITIES.—The regulations shall require that a group that receives a grant under this paragraph for a State shall include—

"(aa) participants that represent communities that, collectively, are affected by a variety of National Priorities List facilities in the State; and

"(bb) participants that represent communities that, collec-

tively, are affected by a variety of State Registry facilities in the State.

Each such class of participants shall have a demonstrated commitment to the needs of the citizens in the communities described in the preceding sentence, and shall reasonably reflect the racial and ethnic composition of the communities.

"(IV) PERSONS WHO ARE DISPROPORTIONATELY ADVERSELY AFFECTED BY FACILITY CONTAMINATION.—The regulations shall require special efforts to award grants to members of the communities who are or historically have been disproportionately adversely affected by facility contamination.

"(V) BACKGROUND.—The regulations shall require that, where possible, participants in a group that receives a grant under this paragraph shall have backgrounds in fields of study related to the scientific and technical issues

common to covered facilities, or have practical experience related to the program under this Act.

"(iv) FACILITIES.—The regulations shall require that in determining the amount of the grants, the Administrator shall consider factors to be established by the Administrator, including the number and complexity of covered facilities in each State.

"(E) STATE LIMIT ON GRANTS.—The Administrator may not award more than 1 grant under this paragraph for a State for the same fiscal year.

"(3) FUNCTIONS.—A Citizen Information and Access Office for a State shall assist the Administrator in the efforts of the Administrator to disseminate information, notify citizens of public meetings, and notify potential Community Working Group members, and shall serve as an information clearinghouse in the State by providing information and descriptions as described in paragraph (1)(C)(iii) or (4). In performing the functions described in the preceding sentence, a Citizen Information and Access Office shall carry out each of the following information

functions, as appropriate, with respect to the State in which such office is established:

"(A) INFORMATION ON EXISTENCE OF COVERED FACILITIES.—The Citizen Information and Access Office shall inform citizens of the existence of covered facilities in the State.

"(B) DESCRIPTION OF PROCESS.—The Citizen Information and Access Office shall provide citizens with a description of the process for identifying covered facilities and for undertaking response actions under this Act and of the legal rights of citizens within the process. The description may include identification of resources, including Technical Assistance Grants under subsection (e), that are available to assist a community that is affected by a covered facility in participating effectively in the process. The description shall be provided in a manner that is easily understood by the community, considering any unique cultural needs of the community, including presentation of information orally and distribution of information in languages other than English, as appropriate.

"(C) INFORMATION ON COMMUNITY WORKING GROUPS.—The Citizen Information and Ac-

cess Office shall provide to citizens information relating to the potential for establishing or existence of a Community Working Group.

"(D) INFORMATION ON COVERED FACILITIES.—The Citizen Information and Access Office shall provide to citizens, to the extent information becomes available, with respect to each covered facility in the State, a description of the location and characteristics of the facility, the hazardous substances, pollutants, and contaminants present, the known exposure pathways, and the steps being taken to assess the risk presented by the facility.

"(E) INFORMATION ON ALTERNATIVE WATER SUPPLIES OR RELOCATION ASSISTANCE.—The Citizen Information and Access Office shall provide to citizens information relating to the possibility, where relevant, that a community that is affected by a covered facility may qualify to receive an alternative water supply or relocation assistance under this Act.

"(F) INFORMATION ON RISKS.—The Citizen Information and Access Office shall disseminate information regarding the risks presented by a covered facility. In the event that the Citizen In-

formation and Access Office identifies any conflict in such information, or any apparent difference in such information, the Citizen Information and Access Office shall submit the information to the Administrator for review before distributing the information to citizens. On receipt of the information, the Administrator shall reconcile, where possible, the conflict or differences.

"(G) RECORDS.—The Citizen Information and Access Office shall maintain records of the status of each covered facility in the State and any health data generated concerning any National Priorities List facility in the State. The facility data maintained by the Citizen Information and Access Office shall also include—

"(i) a record of any institutional controls at covered facilities in the State;

"(ii) any annual health data generated in connection with each covered facility in the State;

"(iii) information on the location of each covered facility on the State Registry;

"(iv) to the extent available, information on the hazardous substances or pollutants or contaminants present at each cov-

ered facility in the State, including the volume of the hazardous substances or pollutants or contaminants;

"(v) information on the exposure pathways, current exposure (if any), potential future exposure, and risks to human health or the environment presented by each such facility, after submitting any conflicting information, or any apparent differences in information, to the Administrator for reconciliation as provided in subparagraph (F);

"(vi) information on protective concentration levels established for each such facility;

"(vii) the biennial report from the Environmental Justice Study prepared pursuant to subsection (i); and

"(viii) any report generated during the review conducted in accordance with section 121(c).

"(H) INFORMATION REGARDING EFFECTIVENESS OF RESPONSE ACTIONS.—The Citizen Information and Access Office shall collect available information from the Administrator or other

Federal or State agencies regarding the continued effectiveness of removal and remedial actions taken in the State.

"(4) REQUIREMENT.—If a Citizen Information and Access Office distributes information from a source other than the Federal Government, in carrying out activities under this subsection, the Citizen Information and Access Office shall clearly identify the source of the information.

"(5) REGULATIONS.—The Administrator shall promulgate regulations relating to carrying out Citizen Information and Access Offices, which regulations shall—

"(A) require the Citizen Information and Access Offices to conduct the activities of the Citizen Information and Access Offices in a manner consistent with State and Federal law, including open government laws and other public notice and participation requirements;

"(B) ensure that each Citizen Information and Access Office is accountable for the proper conduct of the functions of the office and the expenditure of the funds received through the grant awarded under paragraph (2); and

"(C) establish financial accountability requirements and termination procedures for the Citizen Information and Access Offices.

"(6) FEDERAL OVERSIGHT OF CITIZEN INFORMATION AND ACCESS OFFICES.—

"(A) EVALUATION.—No less often than annually, the Administrator shall conduct an evaluation of the performance of each Citizen Information and Access Office after consultation with the Governing Board as provided in paragraph (7)(C). Based on such evaluation, the Administrator shall require the Citizen Information and Access Office to implement improvements in the activities carried out by the Office, as appropriate.

"(B) REPORT.—Each Citizen Information and Access Office shall annually submit a report to the Administrator regarding the grant program established under paragraph (2) and shall certify in the report that all funds used under such paragraph by the Citizen Information and Access Office have been used in compliance with the requirements of this subsection.

"(C) VERIFICATION BY INSPECTOR GENERAL.—The Inspector General of the Environ-

mental Protection Agency shall periodically review the programs carried out under this subsection and reports made under this paragraph and shall verify the accuracy of the certifications contained in the reports.

"(D) CONSEQUENCES OF FAILURE.—If the Inspector General of the Environmental Protection Agency is unable to verify the certification provided in any 2 consecutive annual reports made under this paragraph for any particular grant, the Administrator shall terminate the grant.

"(7) CITIZEN INFORMATION AND ACCESS OFFICE NATIONAL GOVERNING BOARD.—

"(A) ESTABLISHMENT.—There is established a Citizen Information and Access Office National Governing Board.

"(B) MEMBERSHIP.—

"(i) IN GENERAL.—The Governing Board shall consist of 10 members, appointed by the Administrator.

"(ii) NOMINATIONS.—Any citizen who resides in a community affected by a covered facility may submit to the Adminis-

trator a nomination of 1 or more persons for membership on the Governing Board.

"(iii) APPOINTMENTS.—The Administrator shall appoint citizens from such communities to the Governing Board. The Administrator shall appoint 1 such citizen from each region served by a regional office of the Environmental Protection Agency to the Governing Board.

"(iv) MEMBER QUALIFICATION.—As appropriate, the Administrator shall ensure that the Governing Board shall include—

"(aa) appointees that represent communities that, collectively, are affected by a variety of National Priorities List facilities; and

"(bb) appointees that represent communities that, collectively, are affected by a variety of State Registry facilities.

Each such class of appointees shall have a demonstrated commitment to the needs of the citizens in the communities described in the preceding sentence, and shall reasonably

reflect the racial and ethnic composition of the communities.

"(v) PERSONS WHO ARE DISPROPORTIONATELY ADVERSELY AFFECTED BY FACILITY CONTAMINATION.—The Administrator shall make special efforts to appoint to the Governing Board 1 or more citizens who are or historically have been disproportionately adversely affected by facility contamination.

"(vi) BACKGROUND.—Where possible, the appointees shall have backgrounds in fields of study related to the scientific and technical issues common to covered facilities, or have practical experience related to the program under this Act.

"(vii) TERMS.—Members of the Governing Board shall serve for staggered terms, for a period determined by the Administrator.

"(viii) VACANCIES.—Any vacancy in the Governing Board shall not affect the powers of the Governing Board, but shall be filled in the same manner as the original appointment.

"(C) DUTIES.—The Governing Board shall—

"(i) nominate groups of citizens who reside in communities affected by covered facilities for grants under paragraph (2), in accordance with the regulations described in paragraph (2)(D);

"(ii) consult with the Administrator before the Administrator awards grants under paragraph (2);

"(iii) consult with the Administrator before the Administrator conducts evaluations described in paragraph (6)(A), receive information from the evaluations, and provide recommendations for the improvements described in paragraph (6)(A); and

"(iv) prepare and submit to the Administrator an annual report regarding the activities carried out by the Citizen Information and Access Offices.

"(D) ADMINISTRATION.—

"(i) COMPENSATION AND TRAVEL EXPENSES.—

"(I) COMPENSATION.—Each member of the Governing Board who is not

an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Governing Board. All members of the Governing Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(II) TRAVEL EXPENSES.—The members of the Governing Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the homes or regular places of business of the members in the per-

formance of services for the Governing Board.

"(ii) FACILITIES, SUPPLIES, AND PERSONNEL.—

"(I) IN GENERAL.—Upon the request of the Governing Board, the Administrator shall provide to the Governing Board any facilities, supplies, and personnel necessary for the Governing Board to carry out the responsibilities of the Governing Board under this paragraph.

"(II) DETAILS.—In the case of a detail of a Federal Government employee under subclause (I), the employee may be detailed to the Governing Board without reimbursement. The detail shall be without interruption or loss of civil service status or privilege.

"(iii) HEARINGS.—The Governing Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Governing Board considers advisable to carry out this paragraph.

"(iv) INFORMATION FROM FEDERAL AGENCIES.—The Governing Board may secure directly from any Federal department or agency such information as the Governing Board considers necessary to carry out this paragraph. Upon request of the Governing Board, the head of such department or agency shall furnish such information to the Governing Board.

"(v) POSTAL SERVICES.—The Governing Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(vi) TERMINATION.—The Governing Board shall terminate 5 years after the date of the establishment of the Governing Board.

"(8) CITIZEN INFORMATION AND ACCESS OMBUDSMEN AND COMMUNITY WORKING GROUPS FOR TRIBAL PEOPLES.—In awarding grants under paragraph (2), the Administrator may award a separate grant to members of an Indian tribe that are affected by a facility on the National Priorities List and that comply with the requirements of paragraph (2). Notwithstanding the receipt of such a grant by an Indian

tribe, the Citizen Information and Access Office for the State involved shall be responsible for carrying out the functions described in paragraph (3) for members of Indian tribes as well as other citizens in the State. Members of Indian tribes may establish Community Working Groups under subsection (g) regardless of whether a tribal Citizen Information and Access Office or other tribal program relating to this Act exists.

"(9) DEFINITIONS.—As used in this subsection:

"(A) EDUCATIONAL OR INFORMATIONAL ORGANIZATION.—The term 'educational or informational organization' means a group of individuals organized and operated exclusively for educational or informational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is attempting to influence legislation, and that does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

"(B) COVERED FACILITY.—As used in this subsection, the term 'covered facility' means a fa-

cility on the National Priorities List or a State Registry.

"(C) GOVERNING BOARD.—The term 'Governing Board' means the Citizen Information and Access Office National Governing Board established in paragraph (7).

"(i) ENVIRONMENTAL JUSTICE STUDY.—

"(1) REPORT BY THE ADMINISTRATOR.—The Administrator shall prepare an Environmental Justice Study and submit to Congress a report containing the results of the study within 2 years after the date of enactment of the Superfund Reform Act of 1994 and every 2 years thereafter. The report also shall be provided to the Citizen Information and Access Offices. The Administrator and Citizen Information and Access Offices shall ensure that copies of the report are made available to the public.

"(2) CONTENT OF THE REPORT.—The report shall include a comparative analysis of information on priority setting, response actions, and public participation conducted under this Act in light of the population, race, ethnicity, and income characteristics of the community involved with respect to each facility.

"(3) EVALUATION.—The Administrator shall evaluate the information in the report to determine whether the priority setting, response actions, and public participation were conducted in a fair and equitable manner and identify program areas that require improvements or modification.

"(4) ACTIONS BASED ON EVALUATION.—The Administrator shall institute the necessary improvements or modifications to address any deficiencies identified in the report prepared under this subsection.".

SEC. 103. HAZARD RANKING SYSTEM.

(a) SCORING.—Section 105 (42 U.S.C. 9605) is amended—

(1) by adding at the end the following new subsections:

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

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

"(2) may take into account, to the maximum extent technically feasible, any history of exposure to

hazardous substances in communities, regardless of the source of exposure, in placing facilities on the National Priorities List;

"(3) shall take into account the use of land or waterways for subsistence, religious, spiritual, or cultural practices that result in additional exposures, in placing facilities on the National Priorities List; and

"(4) shall conduct interviews with persons affected by the facilities and living in the communities likely to be affected by the facilities and solicit their input and information in the hazard ranking system evaluation.

"(i) ENVIRONMENTAL JUSTICE FACILITY SCORING.—The Administrator shall evaluate major urban areas and any other areas where environmental justice concerns may warrant special attention (such as tribal lands of Indian tribes or poor rural communities) and identify 5 facilities in each region served by a regional office of the Environmental Protection Agency that are, or that should be, on the State Registry and that are likely to warrant inclusion on the National Priorities List. These facilities shall be accorded a priority in evaluation for listing and scoring on the National Priorities List, and shall be evaluated for such listing within 2 years after the date of enactment of this subsection."; and

(2) in subsection (a)—

(A) by striking ''and'' at the end of paragraph (9);

(B) by striking the period at the end of paragraph (10) and inserting a semi colon; and

(C) by inserting the following new paragraph after paragraph (10):

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

(b) EXCEPTIONS TO LIMITATIONS ON RESPONSE ACTIONS.—Section 104(a)(4) (42 U.S.C. 9604(a)(4)) is amended—

(1) by striking ''section, the'' and inserting the following: ''section—

''(1) the''; and

(2) by striking the period at the end and inserting the following: ''; or

''(2) if a facility was placed on the National Priorities List solely because of a history of exposure of a community to 1 or more hazardous substances, as described in section 105(h)(2), the President may respond under this section to a release or threat of re-

lease, occurring outside the boundaries of the facility, of 1 or more of the hazardous substances from the source of the exposure, except that, for purposes of this paragraph, the President—

"(A) may not take any action under section 106, or any action relating to the recovery of response costs under section 107, with respect to the response; and

"(B) may not incur greater response costs in conducting response actions outside the boundaries of the facility than are incurred for response actions inside the boundaries of the facility.".

SEC. 104. HEALTH AUTHORITIES.

(a) IN GENERAL.—Section 104(i) (42 U.S.C. 9604(i)) is amended by striking all preceding subparagraph (A) of paragraph (1) and inserting the following:

"(i) HEALTH AUTHORITIES.—

"(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') shall, in cooperation with the Administrator, the Commissioner of Food and Drugs, the Administrator of Occupational Safety and Health, the Secretary of Transportation, and appropriate State and local health officials, implement the health au-

thorities of this Act. The Secretary shall be the successor to the Agency for Toxic Substances and Disease Registry. The Secretary shall—''.

(b) PREPARATION OF LIST OF HAZARDOUS SUBSTANCES.—Section 104(i)(2)(A) (42 U.S.C. 9604(i)(2)(A)) is amended by striking ''the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR)'' and inserting ''the Secretary''.

(c) CONFORMING AMENDMENTS.—Section 104(i) (42 U.S.C. 9604(i)) is amended—

(1) in paragraphs (2)(B), (3), (5), (7), (8), (9), (10), (12), (13), (14), (15), (17), and (18) by striking ''Administrator of ATSDR'' each place it appears and inserting ''Secretary'';

(2) in paragraph (3), by striking ''Administrator of ATSDR's'' and inserting ''Secretary's'';

(3) in the first sentence of paragraph (4), by striking ''Administrator of the ATSDR'' and inserting ''Secretary'';

(4) in paragraph (10), by striking ''the activities of ATSDR'' and inserting ''the activities of the Secretary''; and

(5) in the last sentence of paragraph (13), by striking ''the Agency for Toxic Substances and Disease Registry'' and inserting ''the Secretary''.

(d) USES OF FUND.—Section 111(c)(4) (42 U.S.C. 9611(c)(4)) is amended by striking ''(relating to ATSDR)''.

(e) CITIZENS SUITS.—Section 310(a)(2) (42 U.S.C. 9659(a)(2)) is amended by striking ''Administrator of the ATSDR'' and inserting ''Secretary of Health and Human Services''.

(f) NATIONAL REGISTRY.—Section 104(i)(1) (42 U.S.C. 9604(i)(1)) is amended by striking subparagraph (A) and inserting the following new subparagraph:

''(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;''.

(g) TOXICOLOGICAL PROFILES.—The penultimate sentence of section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended by striking '', but no less often than once every 3 years''.

(h) HEALTH ASSESSMENTS.—Section 104(i)(6) (42 U.S.C. 9604(i)(6)) is amended—

(1) in subparagraph (A)—

(A) by striking ''Administrator of ATSDR'' and inserting ''Administrator''; and

(B) by adding at the end the following new sentence: ''The Administrator may enter into contracts or cooperative agreements with the Secretary or with appropriate State or local public

health officials to conduct any health assessment required or authorized under this paragraph.'';

(2) in subparagraph (B), by striking ''Administrator of ATSDR'' each place it appears and inserting ''Administrator or the Secretary'';

(3) in subparagraph (C)—

(A) in the first sentence, by striking ''the Administrator of ATSDR, in consultation with the Administrator of EPA,'' and inserting ''the Administrator''; and

(B) except as provided in subparagraph (A), by striking ''the Administrator of ATSDR'' each place it appears and inserting ''the Administrator'';

(4) in subparagraph (D)—

(A) by striking ''of ATSDR''; and

(B) by striking ''promptly and, to the maximum extent practicable, before the'' and inserting ''prior to'';

(5) in subparagraph (E)—

(A) in the first sentence, by striking ''the Administrator of ATSDR and''; and

(B) except as provided in subparagraph (A), by striking ''of ATSDR'' each place it appears;

(6) in subparagraph (F), by striking the last sentence;

(7) in the second sentence of subparagraph (G), by striking ''of ATSDR'';

(8) in subparagraph (H)—

(A) in the first sentence, by striking ''the Administrator of ATSDR shall provide the Administrator of EPA'' and inserting ''the Administrator shall provide the Secretary''; and

(B) in the second sentence—

(i) by striking ''the Administrator of ATSDR shall so notify the Administrator of EPA who'' and inserting ''the Administrator''; and

(ii) by striking ''of ATSDR may recommend to the Administrator of EPA that the site be accorded'' and inserting ''may accord the site''; and

(9) by adding at the end the following new subparagraphs:

''(I) DATA COLLECTION.—In preparing health assessments under this paragraph, the Administrator shall actively collect data from Community Working Groups and from other sources in communities affected or potentially affected by

releases of hazardous substances or pollutants or contaminants regarding exposure, relevant human activities, and other factors.

"(J) DESIGN OF HEALTH ASSESSMENTS.—The Administrator shall design health assessments that take into account the needs and conditions of communities described in subparagraph (I). Community-based research models and local health resources shall be used for the health assessments, where practicable. Each Community Working Group (or, where no Community Working Group exists, community described in subparagraph (I)) shall be permitted to play an active and early role in reviewing health assessment designs. In preparing the designs, emphasis shall be placed on collection of actual exposure data, and sources of multiple exposure shall be considered.".

(i) REDUCTION AND MITIGATION OF RISKS.—The last sentence of section 104(i)(11) (42 U.S.C. 9604(i)(11)) is amended by striking "of ATSDR".

(j) PERSONNEL FOR HEALTH ASSESSMENTS.—Section 104(i) (42 U.S.C. 9604(i)) is amended by striking paragraph (16) and inserting the following new paragraph:

"(16) PERSONNEL FOR HEALTH ASSESSMENTS.—The President shall provide adequate personnel for the Environmental Protection Agency to conduct health assessments under paragraph (6), which shall consist of not fewer than 20 employees.".

SEC. 105. DETERMINING HEALTH EFFECTS.

Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is amended by striking "designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance" and inserting "conducted directly or by means such as cooperative agreements with and grants to appropriate public and nonprofit institutions. The research shall be designed to determine the health effects (and techniques for development of methods to determine such health effects) of the substance".

SEC. 106. COMMUNITY HEALTH PROGRAMS.

Section 104(i) (42 U.S.C. 9604(i)) is amended by adding at the end the following new paragraph:

"(19) COORDINATION WITH SECRETARY OF HEALTH AND HUMAN SERVICES ON HEALTH-RELATED ACTIVITIES.—

"(A) IN GENERAL.—The Secretary of Health and Human Services (referred to in this paragraph as the 'Secretary') shall coordinate with the Administrator to improve the availabil-

ity of environmental health services in communities that may have been, or may be, subject to exposure to a release of hazardous substances or pollutants or contaminants from a facility that is listed or proposed for listing on the National Priorities List, or listed on a State Registry, and that have a medically underserved population (as designated under section 330 of the Public Health Service Act (42 U.S.C. 254c)) (referred to in this paragraph as 'medically underserved communities'). Coordinated activities carried out under this paragraph shall include—

"(i) facilitating the provision of environmental health services to medically underserved communities;

"(ii) developing and implementing a training program to educate health care providers in the field of environmental health;

"(iii) collecting environmental health data; and

"(iv) enhancing the exchange of information among individuals involved in the field of environmental health.

"(B) COORDINATION OF ENVIRONMENTAL HEALTH SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.—The Administrator shall provide information to the Secretary to assist the Secretary in identifying medically underserved communities. The Secretary shall provide environmental health services to the communities using existing medical clinics and health care delivery systems, or establishing additional clinics and health care delivery systems, as appropriate, using authority and funding provided under the Public Health Service Act (42 U.S.C. 201 et seq.). Environmental health services may include testing, diagnosis, counseling, and treatment of individuals in the communities.

"(C) TRAINING PROGRAM.—The Secretary shall coordinate with the Administrator to develop and implement a program designed to train health care providers in the field of environmental health. The program shall be designed to build capability and expertise in the medical care community with respect to environmental health. The program shall include educating health care providers in the testing, diagnosis, counseling, and treatment of individuals poten-

tially exposed to toxic substances and the prevention of illnesses potentially linked to the exposure.

"(D) ENVIRONMENTAL HEALTH DATA.—

"(i) COLLECTION.—The Secretary shall collect environmental health data related to exposure to releases of hazardous substances or pollutants or contaminants from a facility that is listed or proposed for listing on the National Priorities List, or listed on a State Registry. The Secretary shall promulgate standards for maintaining the confidentiality of the data, and shall, at a minimum, ensure that the data is presented in a manner that does not identify by name the individual with respect to whom the information is collected. The Secretary shall provide all nonconfidential data to the public.

"(ii) ASSESSING RISK FROM MULTIPLE CONTAMINANTS.—The Administrator, in coordination with the Secretary, shall, as appropriate, evaluate data collected under clause (i) to improve methodologies, standards, and procedures for evaluating risk as-

sociated with exposure to multiple contaminants.

''(E) DISSEMINATION OF INFORMATION.—The Secretary, in consultation with the Administrator, shall design a system that shall be implemented by the Secretary to enhance the exchange of information among individuals involved in the field of environmental health. The system shall include a publicly available database containing toxicological and epidemiological data, including results of health effect studies and information repositories (such as Citizen Information and Access Offices as provided for in section 117(h)).''.

SEC. 107. PUBLIC HEALTH RECOMMENDATIONS IN REMEDIAL ACTIONS.

Section 121(c) (42 U.S.C. 9621(c)) is amended in the first sentence by inserting after ''remedial action'' the second time it appears the following: '', including public health recommendations and decisions resulting from activities under section 104(i),''.

SEC. 108. RIGHTS TO PARTICIPATE.

Section 113 (42 U.S.C. 9613) is amended by adding at the end of subsection (h) the following:

"(6) Notwithstanding the limitations on timing in paragraph (4), an action under section 310 by any person who is a member of the community but has not been identified by the Administrator as a potentially responsible party with respect to a facility, to compel compliance with a nondiscretionary act or duty set forth in section 117(f) with respect to the facility, which action shall be subject to each of the following requirements:

"(A) Wherever practicable, such an action shall be heard by the court involved, and any relief shall be granted, within 30 days after the date on which the Administrator files an answer or other response in such action.

"(B) In such an action, the court shall have no jurisdiction—

"(i) to grant any relief other than to order performance of the nondiscretionary act or duty concerned;

"(ii) to grant any relief that delays or modifies a response action;

"(iii) to grant any relief if the asserted noncompliance is minor or without prejudice to the person bringing the action; and

''(iv) to grant any relief unless the person bringing the action—

''(I) provides notice to the Administrator of the alleged failure to comply with section 117(f), in such form as the Administrator shall prescribe, within 30 days after the person knew or should have known about the alleged failure to comply; and

''(II) commences the action no less than 60 days and no more than 70 days after providing the notice to the Administrator in accordance with subclause (I).

Nothing in paragraphs (1) through (6) shall authorize relief except to the extent available under, and relevant to, the actions referred to in such paragraphs.''.

SEC. 109. TRANSITION.

(a) EFFECTIVE DATE IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall become effective upon the enactment of this Act.

(b) SPECIAL RULE.—The requirements of paragraphs (1) through (5) of section 117(f) and paragraph (1) of section 117(g), of the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980 (42 U.S.C. 9617 (f) and (g)), as added by sections 101 and 102, shall become effective 180 days after the date of enactment of this Act.

TITLE II—STATE ROLES

SEC. 201. DELEGATED STATE RESPONSE ACTIONS AND AUTHORIZED STATE RESPONSE PROGRAMS.

(a) IN GENERAL.—Title I (42 U.S.C. 9601 et seq.) is amended by adding after section 126 the following new sections:

"SEC. 127. DELEGATED STATE RESPONSE ACTIONS.

"(a) IN GENERAL.—

"(1) APPLICATION FOR FUNDING TO TAKE PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A State may apply to the Administrator to take or require any of the preremedial actions described in clauses (i), (ii), and (iv) of paragraph (3)(A), under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is not listed or proposed for listing on the National Priorities List.

"(2) APPLICATION FOR AUTHORITY TO TAKE RESPONSE ACTION AT NPL FACILITIES.—A State may apply to the Administrator for a delegation of authority to take or require any of the response actions de-

scribed in paragraph (3) under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is listed or proposed for listing on the National Priorities List.

"(3) RESPONSIBILITIES AND AUTHORITIES.—

"(A) IN GENERAL.—Subject to section 201(b) of the Superfund Reform Act of 1994, the Administrator may enter into such a contract or cooperative agreement with a qualified State to delegate to the State the authority, to the extent provided in the contract or agreement—

"(i) to perform site characterization including a preliminary assessment or site inspection, perform a search for potentially responsible parties, or conduct information collection under section 104(e), for a facility described in paragraph (1) or (2);

"(ii) to conduct hazard ranking system scoring for the facility in preparation for a determination regarding whether the facility shall be listed on the National Priorities List;

"(iii) to conduct, or to ensure the conduct of and provide oversight with respect

to the conduct of, a remedial investigation and feasibility study for the facility;

''(iv) to conduct, or to ensure the conduct of and provide oversight with respect to the conduct of, a non-time critical removal action at the facility;

''(v) to select a remedial action for the facility and issue a record of decision;

''(vi) to conduct, or to ensure the conduct of and provide oversight with respect to the conduct of, a remedial design for the facility;

''(vii) to implement, or to ensure the implementation of and provide oversight with respect to the implementation of, a remedial action at the facility;

''(viii) to conduct, or to ensure the conduct of and provide oversight with respect to the conduct of, operation and maintenance at the facility;

''(ix) to conduct enforcement activities, in accordance with subsection (e), with respect to the facility;

"(x) to initiate and apply allocation procedures under section 129 with respect to response costs relating to the facility; and

"(xi) to take such other response action under this Act, other than a response action prohibited under subparagraph (B), as the Administrator may determine to be appropriate.

"(B) LIMITATION.—The Administrator may not enter into such a contract or agreement to delegate to a State the authority described in section 106, or to make a final determination with respect to listing a facility on, or deleting a facility from, the National Priorities List.

"(4) APPROVAL OF APPLICATION.—The Administrator shall enter into such a contract or cooperative agreement if the Administrator determines that the State—

"(A) meets the qualification requirements set forth in the regulations promulgated pursuant to subsection (b); and

"(B) with respect to authority to select remedial actions and apply allocation procedures, meets the qualification requirements set forth in subsection (c).

"(5) NOTICE AND COMMENT.—The Administrator shall enter into such a contract or cooperative agreement for the State to perform or ensure the performance of all or substantially all the response action described in paragraph (3)(A) at a site after providing notice and an opportunity for public comment.

"(b) REGULATIONS.—The Administrator, in consultation with the States and not later than 1 year after the date of enactment of this section, shall promulgate regulations to implement this section. The regulations shall provide such additional qualifications for a contract or cooperative agreement under this section as the Administrator considers reasonable, including qualifications applicable to particular types of response actions. The regulations shall include a requirement that, in order for a State to qualify for a contract or cooperative agreement with respect to a facility under this section, the State may not be a major potentially responsible party with respect to that facility.

"(c) QUALIFICATION REQUIREMENTS WITH RESPECT TO SELECTION OF REMEDIAL ACTION AND APPLICATION OF ALLOCATION PROCEDURES.—For purposes of subsection (a)(4)(B), with respect to a contract or cooperative agreement under this section for authority to select a remedial action or to apply the allocation procedures under section 129, the Administrator shall enter into the contract or coop-

erative agreement if the Administrator also determines each of the following:

"(1) The State has the capability to select remedial actions or to apply the allocation procedures, respectively, including adequate legal authority to enter into the contract or cooperative agreement, financial and personnel resources, organization, and expertise.

"(2) The State demonstrates experience in adequately performing or ensuring the adequate performance of similar response actions.

"(d) REQUIREMENTS FOR SELECTION OF REMEDIAL ACTION.—In any contract or cooperative agreement under this section that provides for a State to select remedial actions, the State shall agree to select such remedial actions in accordance with all of the procedures and requirements set forth in sections 113, 117, and 121, the national contingency plan, and any other relevant regulations issued and guidelines adopted by the Administrator.

"(e) STATE AUTHORITY REGARDING ENFORCEMENT OF SELECTED REMEDIAL ACTION.—

"(1) IN GENERAL.—A State that selects a remedial action pursuant to a contract or cooperative agreement entered into under this section shall have the authority to enforce the requirements of such remedial action pursuant to section 121(f)(4).

"(2) STATE ENFORCEMENT.—Such State also shall have the authority to enforce compliance with any standard, regulation, condition, requirement, order, or final determination that was issued or made by the State under the administrative process of the State with respect to the remedial action selected pursuant to a contract or agreement entered into under this section. Where the remedial action addresses an imminent and substantial danger to human health or the environment, and a responsible party, without sufficient cause, willfully violates, or fails or refuses to comply with, such a standard, regulation, condition, requirement, order, or final determination, such State also may seek civil penalties not to exceed $25,000 per day. Such penalties shall accrue from the date of the violation after the State issues its final determination or directs a responsible party to perform a response action. Such State may commence an action seeking such penalties pursuant to section 121(f)(4). The court with jurisdiction over the action may grant such penalties unless the standard, regulation, condition, requirement, order, or final determination is arbitrary, capricious, or contrary to law when reviewed upon the administrative record presented by the State. Judicial review of any response

action taken, secured, or selected by a State under this section shall be limited with respect to timing, standard and scope of review, and availability of remedies, in the same manner, and to the same extent, as judicial review of response actions taken, secured, or selected by the President is limited under subsections (h) and (j) of section 113. There shall be no such limitation on the authority of the President to bring an action to ensure performance of a response action under subsection (g).

"(3) WAIVER.—In addition, if expressly provided in the contract or cooperative agreement, such State may waive a Federal requirement applicable to the remedial action in accordance with section 121(d)(7)(D).

"(f) REQUIREMENTS FOR ENFORCEMENT AND ALLOCATION.—

"(1) ENFORCEMENT.—In the case of a contract or cooperative agreement entered into under this section providing for a State to conduct an enforcement action with respect to a facility, the contract or cooperative agreement shall require the State to provide for expedited settlements under section 122.

"(2) APPLICATION OF ALLOCATION PROCEDURES.—

"(A) IN GENERAL.—In the case of a contract or cooperative agreement entered into under this section providing for a State to initiate an enforcement action with respect to a facility subject to mandatory allocation pursuant to section 129(a)(1), the contract or cooperative agreement shall require the State to apply allocation procedures with respect to the facility, in accordance with the requirements of paragraphs (2) through (7) of section 129(a). The contract or cooperative agreement shall require the State to certify each of the following with respect to the facility:

"(i) POTENTIALLY RESPONSIBLE PARTY SEARCH.—The State has completed a potentially responsible party search substantially consistent with section 129(c) and will make the results of that search available to the allocator and the parties.

"(ii) NOTIFICATION TO TRUSTEES.—The State has notified Federal, State, and tribal natural resource trustees of the commencement of the allocation process and, pursuant to sections 104(b)(2) and

122(j)(1), of potential damages to natural resources.

"(iii) SUBJECT TO MANDATORY ALLOCATION.—The facility would be subject to mandatory allocation under section 129(a)(1) if the President were conducting the response action.

"(B) RESPONSIBILITIES.—After the State has made the certifications under subparagraph (A), the Administrator shall initiate an allocation in accordance with the terms of section 129. The Administrator may assign to the State, by cooperative agreement or otherwise, any responsibilities to conduct the allocation, except that the Administrator and Attorney General shall retain their authority relating to orphan share funding as provided by this paragraph and in section 129, including the timing and terms of payment.

"(C) ALLOCATOR'S REPORT.—The State may accept or reject the allocator's report on the same basis as provided in section 129(l). If the State does not reject the allocation, the State shall use the allocator's report as the basis of State settlements under this Act. The State may

recover the costs of the allocation pursuant to State law or the provisions of this Act.

"(D) FEDERAL PARTICIPATION.—The President, through either the Administrator or the Attorney General, or both, may participate in any phase of an allocation proceeding where an orphan share is identified according to the standards set forth in section 129(h)(4).

"(E) ORPHAN SHARE FUNDING.—If the State accepts an allocator's report as the basis for its settlements, and the allocator's report identifies an orphan share subject to Federal funding, the State shall apply for such funding by certifying each of the following to the Administrator and the Attorney General:

"(i) The allocation presents a reasonable basis for resolving responsibility for the facility.

"(ii) The assignment of an orphan share is consistent with the standards that are applicable under section 129(h)(4).

"(F) DETERMINATION.—The Administrator and the Attorney General shall accept a State's request for orphan share funding supported by an allocator's report and the certifications de-

scribed in subparagraph (E), unless the Administrator and Attorney General determine, within 120 days after the request by the State, that the allocation does not meet the standards set forth in section 129. Such determination shall be made in the same manner, and shall be subject to the same limitations, as set forth in section 129.

"(G) CONTENTS.—The contract or cooperative agreement shall provide that the State may use the orphan share funding only to fund response actions through settlement or to reimburse parties performing work in excess of the share assigned to the parties in allocation, in accordance with section 129. The level and scope of such reimbursement may not exceed the reimbursement level and scope available under section 129(o).

"(H) RECOVERY.—The State may recover funds provided through the orphan share funding, from nonsettling responsible parties pursuant to State law or the provisions of this Act. Seventy-five percent of such recovered funds provided by the President through such a contract or cooperative agreement shall be returned to the

Fund. The remaining 25 percent shall be used for any other response action under this Act by the recovering State, including cost sharing requirements under section 104(c)(11), or shall be returned to the Fund. The State may recover any reasonable attorney's fees and costs from nonsettling responsible parties pursuant to State law or the provisions of this Act.

"(I) CERTIFICATION.—Not later than 1 year after receipt of funds provided through the orphan share funding, and annually thereafter until 1 year after the last day of the period for which the State receives a delegation of authority under this section, the Governor of the State shall submit to the Administrator—

"(i) a certification that states that the State used the funds in accordance with the requirements of subparagraph (H); and

"(ii) information describing the manner in which the State used the funds.

"(3) COVENANTS.—In a case in which either the President, acting under the authority of this Act, or a State, acting pursuant to a contract or cooperative agreement under this section, has responsibility for selecting a response action at a facility listed or pro-

posed for listing on the National Priorities List and enters an administrative or judicial settlement to resolve the liability of responsible parties at the facility, the President or the State may confer, in accordance with requirements relating to covenants of sections 122 and 129, a covenant that will preclude some or all administrative or judicial action by both the President and the State to recover response costs or to compel response actions at the facility with respect to matters addressed in the settlement. Notwithstanding the preceding sentence, such covenants shall not be binding on the governmental entity that did not confer the covenant to the extent that—

"(A) the covenant purports to address natural resource damages;

"(B) the President or the State has not been provided notice of, and an opportunity to participate in, the settlement concerning the response action; or

"(C) the President or the State objects to the settlement within 120 days after the date of signature for the record of decision or receipt of notice of the settlement, whichever is later.

"(g) TERMS AND CONDITIONS; ENFORCEMENT.—

"(1) IN GENERAL.—A contract or cooperative agreement under this section shall be subject to such terms and conditions as the Administrator may prescribe. If a State fails to comply with a requirement of a contract or cooperative agreement, the Administrator, after 90 days notice to the affected State, may bring an action in the appropriate United States district court seeking to ensure performance of the response action, or to recover any funds advanced or any costs incurred because of the breach.

"(2) SPECIFIC TERMS.—A contract or cooperative agreement under this section shall include each of the following requirements:

"(A) A requirement that the State shall exercise any authority conferred by this section or the contract or cooperative agreement on behalf of the State, and not on behalf of or in the name of the Administrator, the President, or the United States.

"(B) A requirement that the State shall have and maintain sufficient legal authority under applicable State law to enter into the contract or cooperative agreement.

"(C) A requirement that the Administrator shall retain authority to terminate and recoup

funding, and to terminate the contract or cooperative agreement, if the State fails to perform the contract or cooperative agreement in a manner consistent with this Act. At least 90 days before terminating any such contract or cooperative agreement with a State, the Administrator shall provide to the State a written explanation of the reasons for the proposed termination and afford an opportunity to the State to discuss the termination and to propose actions to correct any deficiencies.

"(D) A requirement imposing a nondiscretionary duty on the Administrator to perform or compel expeditious performance of response actions under the contract or cooperative agreement if the State fails to comply with the terms of the contract or cooperative agreement.

"(h) EFFECT OF SECTION.—

"(1) LISTED AND PROPOSED FACILITIES.—This section shall not affect the authority of the President to take response actions at facilities listed or proposed for listing on the National Priorities List with respect to which the State has not received a delegation of authority pursuant to this section. At facilities listed or proposed for listing on the National Priorities List

with respect to which the State has received such a delegation, the President may take response actions that the President determines to be necessary to prevent an imminent and substantial endangerment to public health, welfare, or the environment, if the State fails, after a written request by the Administrator, to take such response actions in a timely manner, as determined by the Administrator.

"(2) FEDERAL FACILITIES.—This section shall not affect the authority of the United States under this Act to seek recovery of costs incurred by the United States, subject to any covenant that is binding on the United States in accordance with subsection (f)(3), or implement response actions at facilities owned or operated by or under the jurisdiction, custody, or control of any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of the Federal Government).

"(i) INTERVENTION.—The President may intervene as a matter of right in any civil action brought by or against a State with respect to the authorities delegated under this section, for the purpose of representing the Federal interest with respect to the authorities.

"(j) DEFINITIONS.—As used in this section:

''(1) NON-FEDERALLY OWNED OR OPERATED FACILITY.—The term 'non-federally owned or operated facility' means a facility that is not owned or operated by or under the jurisdiction, custody, or control of any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of the Federal Government).

''(2) TIME CRITICAL AND NON-TIME CRITICAL REMOVAL ACTIONS.—The terms 'time critical removal action' and 'non-time critical removal action' mean actions described in paragraphs (2) and (4), respectively, of section 300.415(m) of title 40, Code of Federal Regulations (as in effect on July 1, 1993).

''SEC. 128. STUDY OF AUTHORIZATION OF STATES TO CARRY OUT SUPERFUND.

''The Administrator shall conduct a study of the feasibility of authorizing States to use their own laws to carry out the provisions of this Act in lieu of the Federal program established under this Act.''.

(b) DELEGATION TRANSITION RULES.—

(1) RECORD OF DECISION.—

(A) STATE LEAD.—If, on the date of enactment of this Act, a record of decision has been signed for a non-federally owned or operated facility on the National Priorities List, and a

State has served as the lead agency for the facility, the Administrator shall, on application of the State, delegate the authority described in section 127 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as added by subsection (a)) to the State with respect to the facility. The Administrator shall not make such a delegation if the Administrator determines that the State has not demonstrated the qualifications required by section 127(a)(4) of such Act.

(B) FEDERAL LEAD.—If, on such date, a record of decision has been signed for a non-federally owned or operated facility on the National Priorities List, and the Environmental Protection Agency has served as the lead agency for the facility, the Administrator shall not delegate such authority to a State with respect to the facility, unless the Administrator determines that the delegation will not significantly delay completion of a response action at the facility.

(2) PRIOR TO RECORD OF DECISION.—

(A) STATE LEAD.—If, on such date—

(i) a non-federally owned or operated facility has been listed on the National Pri-

orities List but no record of decision has been signed for the facility;

(ii) a State has served as the lead agency for the facility; and

(iii) the State can demonstrate the qualifications required by section 127(a)(4) of such Act;

the Administrator shall, on application of the State, delegate such authority to the State with respect to the facility, unless the Administrator determines that the delegation will significantly delay completion of a response action at the facility.

(B) FEDERAL LEAD.—

(i) PRESUMPTION.—If, on the date of enactment of this Act—

(I) a non-federally owned or operated facility has been listed on the National Priorities List but no record of decision has been signed for the facility; and

(II) the Environmental Protection Agency has served as the lead agency for the facility;

the Administrator shall not delegate such authority to the State with respect to the facility, unless the State demonstrates to the Administrator that the delegation will not significantly delay completion of a response action at the facility and demonstrates the qualifications required by section 127(a)(4) of such Act.

(ii) RELIANCE ON EXISTING RESPONSE ACTION ACTIVITIES.—Any State that receives such a delegation for a facility as described in this subparagraph shall, in conducting a response action at the facility, rely on the remedial investigation and feasibility study and any related studies or activities conducted with respect to the site by the Environmental Protection Agency prior to the date of the delegation.

(3) DEFINITIONS.—As used in this subsection:

(A) ADMINISTRATOR; FACILITY; RESPONSE.—The terms ''Administrator'', ''facility'', and ''response'' have the meanings given the terms in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(B) LEAD AGENCY.—The term ''lead agency'' means a lead agency, as used within the national contingency plan.

(C) NON-FEDERALLY OWNED OR OPERATED FACILITY.—The term ''non-federally owned or operated facility'' has the meaning given the term in section 127(j)(1) of the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980.

(c) APPLICATION OF STATE INVOLVEMENT AUTHORITIES.—Section 121(f) (42 U.S.C. 9621(f)) is amended by adding at the end the following new paragraph:

''(5) APPLICATION.—This subsection shall apply with respect to remedial actions at a facility if the Administrator has not delegated the authority described in section 127 to the State with respect to the facility.''.

SEC. 202. STATE COST SHARE.

Section 104(c) (42 U.S.C. 9604(c)) is amended by adding at the end the following new paragraphs:

''(10) EXISTING CONTRACTS AND COOPERATIVE AGREEMENTS.—The requirements of paragraphs (3), (6), and (7) shall apply only to contracts and cooperative agreements pursuant to subsection (d) entered

into prior to the date of enactment of the Superfund Reform Act of 1994.

"(11) STATE COST SHARE.—After the date of enactment of the Superfund Reform Act of 1994, the Administrator may reject any request for funding under this section or section 127, except for an emergency removal action, unless the State in which the release or threatened release occurs has entered into a contract or cooperative agreement pursuant to this subsection or section 127, as appropriate, that provides assurances, considered adequate by the Administrator, that—

"(A) the State will pay, or ensure payment of, 15 percent of the cost incurred by the Fund of such response action or funding, including 15 percent of the operation and maintenance costs; and

"(B) the State will ensure oversight of any operation and maintenance of the funded response action.

Nothing in this Act shall be construed to require any State to contribute to orphan share funding.".

SEC. 203. SITING.

Section 104(c)(9) (42 U.S.C. 9604(c)(9)) is amended to read as follows:

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

SEC. 204. STATE REGISTRY.

Section 105(a)(8) (42 U.S.C. 9605(a)(8)) is amended—

(1) by adding ''and'' at the end of subparagraph (B); and

(2) by inserting after subparagraph (B) the following new subparagraph:

''(C) a requirement that each State shall maintain and make available to the public a list of facilities in the State that are known to present a risk to human health or the environment due to the release or threatened release of hazardous substances or pollutants or contaminants, and that each State, in consultation with the Administrator and other appropriate Federal agencies, shall update such listing on an annual basis;''.

SEC. 205. CONFORMING AND MISCELLANEOUS AMENDMENTS.

(a) TRANSFER OF SECTION 121(e)(2).—

(1) ACTION.—Section 121(f) (42 U.S.C. 9621(f)) is amended by inserting after paragraph (3) the following new paragraph:

''(4) ACTION TO ENFORCE.—A State may bring an action to enforce any Federal or State standard, requirement, criterion, or limitation to which the remedial action is required to conform, including any operation and maintenance requirement or other action necessary to ensure the integrity of a remedy, under this Act in the United States district court for the district in which the facility is located.''.

(2) COMPLIANCE.—Section 122(d)(1) (42 U.S.C. 9622(d)(1)) is amended by adding at the end the following new subparagraph:

''(D) COMPLIANCE.—Any such consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. If the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to

exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.''.

(b) SECTION 126(a).—Section 126(a) (42 U.S.C. 9626(a)) is amended by inserting after ''List)'' the following: '', section 127 (regarding delegation of authority under contracts and cooperative agreements), and the Voluntary Environmental Cleanup and Economic Redevelopment Act of 1994''.

(c) SECTION 310(a).—Section 310(a) (42 U.S.C. 9659(a)) is amended, in the matter preceding paragraph (1)—

(1) by inserting ''(including any State)'' after ''person''; and

(2) by striking ''his'' and inserting ''the person's''.

(d) TRANSITION.—Section 104(d) (42 U.S.C. 9604(d)) is amended by adding at the end the following new paragraph:

''(5) STATE REGISTRIES.—

''(A) ESTABLISHMENT OF GRANT PROGRAM.—The Administrator shall establish a pro-

gram to provide grants to assist States in establishing State Registries.

"(B) GRANTS.—In carrying out the program established under subparagraph (A), the Administrator shall, subject to the availability of appropriations, make a grant to the Governor of each State that submits to the Administrator, and obtains approval of, an application that meets such requirements as the Administrator may establish.".

SEC. 206. STATE ROLE AT FEDERAL FACILITIES.

(a) TRANSFER OF AUTHORITIES.—Section 120(g) (42 U.S.C. 9620(g)) is amended to read as follows:

"(g) TRANSFER OF AUTHORITIES.—

"(1) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this section at any or all facilities owned or operated by or under the jurisdiction, custody, or control of any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of the Federal Government), including the authority—

"(A) to publish a timetable and deadlines for completion of any remedial investigation and feasibility study;

"(B) to review and approve all documents prepared in connection with any such investigation and study;

"(C) to select and approve remedies; and

"(D) to enter into and enforce, through judicial or administrative means, agreements, orders, and consent decrees entered into pursuant to this Act.

"(2) TRANSFER OF AUTHORITIES.—The Administrator shall enter into a contract or cooperative agreement to transfer the authorities described in paragraph (1) to a State if the Administrator determines each of the following:

"(A) The State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise.

"(B) The State demonstrates experience in adequately exercising, or ensuring the adequate exercise of, similar authorities.

"(3) EFFECT OF AUTHORIZATION UNDER SOLID WASTE DISPOSAL ACT.—In the review by the Admin-

istrator of an application of a State for transfer of authorities under this subsection, if the State is authorized to implement a State hazardous waste program pursuant to section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), each of the following provisions shall apply:

"(A) SIGNATORIES TO INTERAGENCY AGREEMENTS.—With respect to a State that is a signatory to an interagency agreement under subsection (e)(2) that is in effect on the date of enactment of the Superfund Reform Act of 1994, the Administrator, in making the determinations referred to in paragraph (2), shall accord substantial weight to the State's hazardous waste program authorization and the Administrator's findings in approving such authorization.

"(B) STATES AUTHORIZED TO IMPLEMENT CORRECTIVE ACTIONS.—With respect to a State whose authorization under such section 3006 includes authorization to implement the corrective action provisions of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Administrator shall approve the application and provide for the orderly transfer of authorities as expeditiously as practicable, but in no case later than 6 months

after the date of receipt of the application, unless the parties agree to another deadline.

"(4) EFFECT OF TRANSFER.—Any State to which authorities are transferred under this subsection shall not be deemed to be an agent of the President but shall exercise such authorities in its own name.

"(5) DEADLINES.—Except as provided in paragraph (3)(B), the Administrator shall make a determination on an application from a State under this subsection not later than 90 days after the date the Administrator receives the application.

"(6) WITHDRAWAL OF AUTHORITIES.—

"(A) DETERMINATION.—The Administrator may withdraw the authorities transferred under this subsection in whole or in part if the Administrator determines—

"(i) that the State, in whole or in part, is exercising such authorities in a manner clearly inconsistent with the requirements of this Act; or

"(ii) in the case of a State that was approved under paragraph (3)(B), that the State is no longer authorized to implement

the corrective action provisions of the Solid Waste Disposal Act.

"(B) EXPLANATION.—At least 90 days before withdrawing any such transferred authorities from a State, the Administrator shall provide to the State a written explanation of the reasons for the proposed withdrawal and afford an opportunity to the State to discuss the withdrawal and to propose actions to correct any deficiencies.

"(7) LIMITATION.—Except for authorities that are transferred by the Administrator to a State pursuant to this subsection, or that are transferred by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person. Except as necessary to implement the transfer of the Administrator's authorities to a State pursuant to this subsection, nothing in this subsection shall be construed as altering, modifying, or impairing in any manner any agreement, permit, administrative or judicial order, decree, or interagency agreement existing on the date of en-

actment of the Superfund Reform Act of 1994. Nothing in this subsection shall affect the exercise by a State of any other authorities that may be applicable to facilities in such State.''.

(b) ARBITRATION OF DISPUTES INVOLVING INTERAGENCY AGREEMENTS.—Section 120(g) (as amended by subsection (a)) is further amended by adding at the end the following new paragraph:

''(8) RESOLUTION OF DISPUTES RELATING TO INTERAGENCY AGREEMENTS.—

''(A) APPLICATION.—In the event that authority is transferred to a State under this subsection, the parties to any dispute relating to the implementation of an interagency agreement described in subsection (e)(2) shall resolve the dispute in accordance with the provisions of subparagraph (B).

''(B) PROCESS.—

''(i) INFORMAL DISPUTE RESOLUTION PROCESS.—If a dispute arises among 2 or more signatories to the interagency agreement concerning the agreement, except as provided in clause (iii), the signatories involved in the dispute shall participate in any informal dispute resolution process re-

quired by the agreement to attempt to resolve the dispute. Not later than 20 days after the commencement of the informal dispute resolution process, the signatories involved in the dispute shall provide notice of the process to the other signatories to the agreement.

"(ii) SELECTION OF NOMINATING ARBITRATORS.—If the signatories involved in the dispute do not resolve the dispute involving the interagency agreement through the informal dispute resolution process, not later than 15 days after notice is provided under clause (i), each signatory to the agreement shall select a nominating arbitrator, from a list of available arbitrators obtained from the American Arbitration Association, in accordance with the Rules of the Association.

"(iii) SELECTION OF FINAL ARBITRATOR.—The nominating arbitrators selected under clause (ii) shall jointly select a final arbitrator to resolve the dispute, from a list of available arbitrators obtained from the

American Arbitration Association, in accordance with the Rules of the Association.

"(iv) DUTIES OF FINAL ARBITRATOR.—Except as otherwise provided in this clause, the arbitrator selected under clause (iii) shall perform the duties of the Administrator in resolving the dispute under the interagency agreement. Not later than 120 days after the arbitrator is selected under clause (iii), a final decision to resolve the dispute shall be issued by the arbitrator.

"(v) JUDICIAL REVIEW.—A party to the dispute may, not sooner than 120 days after the arbitrator is selected under clause (iii), bring an action seeking resolution of the dispute. The action shall be subject to the applicable provisions of section 113 (including subsections (b) and (h) of section 113).

"(vi) COSTS.—The costs of actions incurred under this subparagraph to resolve a dispute involving an interagency agreement shall be borne equally by signatories to the agreement.".

TITLE III—VOLUNTARY ENVIRONMENTAL CLEANUP

SEC. 301. SHORT TITLE.

This title may be cited as the ''Voluntary Environmental Cleanup and Economic Redevelopment Act of 1994''.

SEC. 302. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) past uses of land in the United States for industrial and commercial purposes have created many sites throughout the United States that have environmental contamination;

(2) Congress and the governments of States and political subdivisions of States have enacted laws to—

(A) prevent environmental contamination; and

(B) carry out response actions to correct past instances of environmental contamination;

(3) many sites are minimally contaminated, do not pose serious threats to human health or the environment, and can be satisfactorily remediated expeditiously with little government oversight;

(4) promoting the cleanup and redevelopment of contaminated sites could lead to significant environmental and economic benefits, particularly in any

case in which a cleanup can be completed quickly and during a period of time that meets short-term business needs;

(5) the private market demand for sites affected by environmental contamination frequently is reduced or eliminated, often due to uncertainties regarding liability or potential cleanup costs of current owners and prospective purchasers under Federal and State law;

(6) the abandonment or underutilization of affected sites impairs the ability of the Federal Government and the governments of States and political subdivisions of States to provide economic opportunities for the people of the United States, particularly the poor and unemployed;

(7) the abandonment or underutilization of affected sites also results in the inefficient use of public facilities and services, as well as land and other natural resources, and extends conditions of blight in local communities;

(8) cooperation among Federal agencies, departments and agencies of States and political subdivisions of States, local community development organizations, and current owners and prospective purchasers of affected sites is required to accomplish

timely response actions and the redevelopment or reuse of affected sites;

(9) there is a need for a program to—

(A) encourage voluntary cleanups of affected sites; and

(B) facilitate the establishment of programs by States to foster voluntary cleanups of affected sites; and

(10) there is a need to provide financial incentives and assistance to characterize certain affected sites and facilitate the cleanup of the sites so that the sites may be redeveloped for economically beneficial uses.

(b) PURPOSE.—The purpose of this title is to create new business and employment opportunities through the economic redevelopment of affected sites that do not pose a serious threat to human health or the environment by—

(1) encouraging States to adopt and develop a program for sites that would not be remediated under other environmental laws (including regulations) in effect on the date of enactment of this Act;

(2) encouraging local governments and private parties, including local community development organizations, to participate in State voluntary cleanup programs that facilitate expedited response actions

that are consistent with business needs at affected sites;

(3) directing the Secretary and the Administrator to establish programs that provide financial assistance to—

(A) encourage the development of State voluntary cleanup programs;

(B) facilitate site characterizations of certain affected sites; and

(C) encourage cleanup of appropriate sites; and

(4) reducing transaction costs and paperwork, and preventing needless duplication of effort and delay at all levels of government.

SEC. 303. DEFINITIONS.

As used in this title (unless the context clearly requires otherwise):

(1) ADMINISTRATIVE COSTS.—The term ''administrative costs'' means eligible costs that are not nonadministrative costs.

(2) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(3) AFFECTED SITE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''affected site'' means a facility that has environmental contamination that—

(i) could prevent the timely use, development, reuse, or redevelopment of the facility; and

(ii) is limited in scope or severity and can be comprehensively characterized and readily analyzed.

(B) EXCEPTIONS.—The term does not include—

(i) any facility that is the subject of a planned or an ongoing response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), except that the term includes a facility for which a preliminary assessment has been completed and with respect to which the Administrator has decided not to take further response action;

(ii) any facility included, or proposed for inclusion, on the National Priorities

List maintained by the Administrator under such Act;

(iii) any facility with respect to which a record of decision has been issued by the President under section 104 of such Act (42 U.S.C. 9604);

(iv) any facility that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) at the time that an application for loan assistance with respect to the facility is submitted under this title, including any facility with respect to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(v) any land disposal unit with respect to which a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted and closure requirements have been specified in a closure plan or permit;

(vi) any facility at which there has been a release of polychlorinated biphenyls and that is subject to the requirements of

the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(vii) any facility with respect to which an administrative order on consent or a judicial consent decree requiring cleanup has been entered into by the President under—

(I) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(II) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

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

(IV) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(V) title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300f et seq.); and

(viii) any facility at which assistance for response activities may be obtained pursuant to subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust

Fund established by section 9508 of the Internal Revenue Code of 1986.

(4) CHARGE OFF.—The term ''charge off'', with respect to a loan of a lender, means to recognize a loss on the loan on the books of the lender in accordance with applicable bank regulatory accounting principles, or, if the lender is not a federally regulated lender, generally accepted accounting principles.

(5) CONTAMINANT.—The term ''contaminant'' includes any hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14))) and oil (as defined in section 1001(23) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(23))).

(6) CURRENT OWNER.—The term ''current owner'' means, with respect to a voluntary cleanup, an owner at the time of the cleanup.

(7) DISPOSAL.—The term ''disposal'' has the meaning provided the term in section 1004(3) of the Solid Waste Disposal Act (42 U.S.C. 6903(3)).

(8) ELIGIBLE COSTS.—The term ''eligible costs'' means administrative and nonadministrative costs.

(9) ENVIRONMENT.—The term ''environment'' has the meaning provided the term in section 101(8)

of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(10) ENVIRONMENTAL CONTAMINATION.—The term ''environmental contamination'' means the existence at a facility of 1 or more contaminants that may pose a risk to human health or the environment.

(11) FACILITY.—The term ''facility'' has the meaning provided the term in section 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(9)).

(12) GROUND WATER.—The term ''ground water'' has the meaning provided the term in section 101(12) of such Act (42 U.S.C. 9601(12)).

(13) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning provided the term in section 101(36) of such Act (42 U.S.C. 9601(36)).

(14) INITIATE.—The term ''initiate'', with respect to a cleanup action, means to commence onsite construction activities at an affected site.

(15) LENDER.—The term ''lender'' means—

(A) a private depository lender;

(B) a private nondepository lender; or

(C) a State agency or a local public agency that has the authority under State or local law to make loans.

(16) LOCAL APPLICANT.—The term ''local applicant'' means a local community development organization or local government.

(17) LOCAL COMMUNITY DEVELOPMENT ORGANIZATION.—The term ''local community development organization'' means a nonprofit organization that—

(A) has a history of serving the needs of residents of the local community affected by an affected site;

(B) maintains accountability to persons of low income in the local community through significant representation on the governing board of the organization, and such other means as are appropriate; and

(C) has the institutional and administrative capacity for carrying out activities assisted under this title (as determined by the Secretary).

(18) LOCAL GOVERNMENT.—The term ''local government'' has the meaning provided the term ''unit of general local government'' in the first sentence of section 102(a)(1) of the Housing and Community Devel-

opment Act of 1974 (42 U.S.C. 5302(a)(1)), except that the term includes an Indian tribe.

(19) NATURAL RESOURCES.—The term ''natural resources'' has the meaning provided the term in section 101(16) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(16)).

(20) NONADMINISTRATIVE COSTS.—The term ''nonadministrative costs'' includes the costs of—

(A) oversight for a cleanup at an affected site by a contractor, current owner, or prospective purchaser;

(B) identifying the probable extent and nature of environmental contamination at the affected site, and the preferred manner of carrying out a cleanup at the affected site;

(C) the cleanup, including onsite and offsite treatment of contaminants; and

(D) monitoring ground water or other natural resources at the affected site.

(21) NONPROFIT ORGANIZATION.—The term ''nonprofit organization'' means any private, nonprofit organization (including a State or locally chartered, nonprofit organization)—

(A) that is organized under State or local laws;

(B) with respect to which no portion of the net earnings inure to the benefit of a member, founder, contributor, or individual associated with the organization;

(C) that complies with standards of financial accountability that the Secretary determines to be acceptable; and

(D) that carries out activities related to the retention or expansion of employment opportunities for, and improvement of economic and social conditions of, persons of low income.

(22) OWNER.—The term ''owner'' has the meaning provided the term in section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)), except that the term also includes a unit of State or local government that acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of the functions of the government as a sovereign.

(23) PARTICIPATING LENDER.—The term ''participating lender'' means a lender that—

(A) under State or local law has the authority to make loans that are assisted under section 305; and

(B) has entered into a participation agreement with a participating State agency in accordance with such section.

(24) PARTICIPATING STATE AGENCY.—The term ''participating State agency'' means a State agency that has been selected for participation in the program established under section 305 in accordance with section 305(d).

(25) PERSON.—The term ''person'' has the meaning provided the term in section 101(21) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(21)).

(26) PERSONS OF LOW INCOME.—The term ''persons of low income'' has the meaning provided the term in section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)).

(27) PROSPECTIVE PURCHASER.—The term ''prospective purchaser'' means a prospective purchaser of an affected site.

(28) RELEASE.—The term ''release'' has the meaning provided the term in section 101(22) of the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(22)).

(29) RESPONSE ACTION.—The term ''response action'' has the meaning provided the term ''response'' in section 102(25) of such Act (42 U.S.C. 9601(25)).

(30) REVOLVING FUND.—The term ''Revolving Fund'' means the Economic Redevelopment Revolving Fund established under section 307.

(31) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(32) SITE CHARACTERIZATION.—

(A) IN GENERAL.—The term ''site characterization'' means an investigation that determines the nature and extent of a release or potential release of a hazardous substance at a site and meets the requirements referred to in subparagraph (B).

(B) INVESTIGATION.—For the purposes of this paragraph, an investigation that meets the requirements of this subparagraph—

(i) shall include—

(I) an onsite evaluation; and

(II) sufficient testing, sampling, and other field data gathering activi-

ties to accurately analyze whether the site is contaminated and the risks to human health and the environment posed by the release of contaminants at the site; and

(ii) may also include—

(I) review of existing information (available at the time of the review); and

(II) an offsite evaluation, if appropriate.

(33) STATE.—The term ''State'' has the meaning provided the term under section 101(27) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(27)).

(34) VOLUNTARY CLEANUP.—The term ''voluntary cleanup'' means a response action at an affected site—

(A) undertaken and financed by a current owner or prospective purchaser subject to oversight and approval by a State; and

(B) with respect to which the current owner or prospective purchaser agrees to pay all costs of oversight by the State.

SEC. 304. VOLUNTARY CLEANUP GRANT PROGRAM.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF GRANT PROGRAM.—The Administrator shall establish a program to provide a grant to any State that submits an application that is approved by the Administrator to establish or expand a State voluntary cleanup program that meets the requirements of paragraph (3).

(2) CERTIFICATION.—In an application for a grant under this section, a State shall be required to certify that the voluntary cleanup program of the State will meet the requirements of paragraph (3).

(3) REQUIREMENTS FOR STATE VOLUNTARY CLEANUP PROGRAM.—A State voluntary cleanup program meets the requirements of this paragraph if the State—

(A) provides adequate opportunities for public participation, including prior notice and opportunity for comment, in selecting response actions;

(B) provides technical assistance throughout each voluntary cleanup;

(C) has the capability, through enforcement or other mechanisms, of assuming the responsibility for undertaking a cleanup if the current

owner or prospective purchaser fails or refuses to complete the necessary cleanup;

(D) provides adequate oversight and has adequate enforcement authorities to ensure that voluntary cleanups are completed in accordance with Federal and State laws, including any ongoing operation and maintenance or long-term monitoring activities;

(E) provides written approval of work plans for response actions to current owners and prospective purchasers before affected sites are acquired, and provides written certification of completions for voluntary cleanups to current owners and prospective purchasers; and

(F) provides streamlined procedures to ensure expeditious voluntary cleanups.

(b) GRANTS.—

(1) IN GENERAL.—In carrying out the program established under subsection (a), the Administrator shall, subject to the availability of appropriations, make a grant to the Governor of each State that submits an application to the Administrator that meets the requirements of this section to conduct a State voluntary cleanup program that the Administrator approves.

(2) GRANT AMOUNT.—The amount of a grant made to a State under subsection (a) shall be—

(A) determined by the Administrator on the basis of the financial need of the State for establishing or expanding a voluntary cleanup program; and

(B) in an amount not less than $200,000, and not more than $500,000, for each fiscal year.

(3) REPORTING.—Each State that receives a grant under subsection (a) shall submit to the Administrator, not later than 2 years after receipt of the grant, a progress report that includes a description of the cleanups made in accordance with the voluntary cleanup program of the State.

(4) TERMINATION OF GRANTS.—If the Administrator determines that a State voluntary cleanup program no longer meets the requirements of subsection (a)(3), the Administrator may terminate a grant made to the State and require full or partial repayment of the grant.

(c) STATE CERTIFICATION.—Not later than 1 year after receipt of an initial grant, and annually thereafter, each Governor of a State that receives a grant under this section shall submit to the Administrator a certification that states that—

(1) the State voluntary cleanup program meets the requirements of subsection (a)(3);

(2) all cleanups achieved or undertaken pursuant to the State voluntary cleanup program fully comply with Federal and State laws;

(3) public participation opportunities have been adequate during the process of selecting a cleanup method for each voluntary cleanup;

(4) voluntary cleanups achieved or undertaken pursuant to the State voluntary cleanup program have been undertaken in a manner that has reduced or eliminated risks to human health and the environment to the satisfaction of the State; and

(5) for any voluntary cleanup initiated pursuant to the State voluntary cleanup program that has increased risks to human health and the environment, the State has taken timely and appropriate steps to reduce or eliminate the risks.

(d) VOLUNTARY RESPONSE PROGRAM.—

(1) APPLICABILITY.—This subsection shall apply to any facility, including a facility that has been scored by the Administrator, or by a State scoring the facility pursuant to a contract or cooperative agreement, under the hazard ranking system referred to in section 105(a)(8)(A) of the Comprehensive Environ-

mental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)(8)(A)) and that has received a score of 28.5 or greater.

(2) NPL LISTING.—No facility addressed by a work plan for a voluntary cleanup approved under a program of a State approved under this section shall be proposed for listing or listed on the National Priorities List established under section 105 of such Act (42 U.S.C. 9605) so long as substantial and continual response actions are being undertaken to complete the work plan for the voluntary cleanup in a timely manner, as set forth in the work plan.

(3) COMPLETION OF CLEANUP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator may not list a facility addressed by a work plan for a voluntary cleanup approved under a program of a State approved under this section on the National Priorities List if—

(i) a potentially responsible party completes all work required by the work plan for a voluntary cleanup approved under the program of the State at the facility;

(ii) the facility has achieved the protective concentration levels and other stand-

ards specified in section 121 of such Act (42 U.S.C. 9621); and

(iii) public participation requirements equivalent to the requirements in sections 113 and 117 of such Act (42 U.S.C. 9613 and 9617) have been complied with for the cleanup action.

(B) RESCORING.—If a significant new release or threat of release occurs at the facility, after completion of all work specified in subparagraph (A)(i), the Administrator may—

(i) when performing the scoring, rescore the facility based on conditions at the facility at the time of the scoring; and

(ii) list the facility if warranted by the rescoring.

(4) NONCOMPLETION OF WORK.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the Administrator may list a facility addressed by a work plan for a voluntary cleanup approved under a program of a State approved under this section on the National Priorities List if—

(i) a potentially responsible party has completed the work required by the work

plan at the facility and public participation requirements equivalent to the requirements in sections 113 and 117 of such Act (42 U.S.C. 9613 and 9617) have been complied with for the work; and

(ii) the facility has not achieved the protective concentration levels and other standards specified in section 121 of such Act (42 U.S.C. 9621).

(B) SCORING PURSUANT TO AGREEMENTS.—If the Administrator or a State scores the facility pursuant to a contract or cooperative agreement, the Administrator or the State shall take into account conditions at the facility at the time of the scoring when performing the scoring.

(C) CHANGE IN QUALIFICATION FOR LISTING.—If the facility prior to the work required by the work plan would have qualified for listing on the National Priorities List, but after the completion of the work is no longer qualified for listing on the National Priorities List, the Administrator may utilize the Fund (as defined in section 101(11) of such Act (42 U.S.C. 9601(11)) and other authorities of such Act (42 U.S.C. 9601 et seq.) to ensure achievement of the protec-

tive concentration levels and other standards specified in section 121 of such Act (42 U.S.C. 9621).

(D) RELATIONSHIP TO OTHER AUTHORITY.—Nothing in this section shall affect the ability of the Administrator to use the authority provided by section 104, 106, or 107 of such Act (42 U.S.C. 9604, 9606, and 9607) with respect to a facility.

(e) EFFECT OF CLEANUP.—The performance of a voluntary cleanup under a State program approved under this section shall not constitute an admission of liability under any Federal, State, or local law (including a regulation) or in any citizens suit or other private action.

(f) CONSISTENCY WITH NATIONAL CONTINGENCY PLAN.—A voluntary cleanup carried out under a State program approved under this section shall be presumed to be consistent with the national contingency plan (as defined in section 101(31) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(31))) for the purposes of private cost recovery claims under such Act (42 U.S.C. 9601 et seq.).

(g) EFFECT ON LIABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this section is intended to affect

the liability of any person or to affect any other response authority provided under any law or regulation relating to environmental contamination, including—

(A) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

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

(C) title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300f et seq.);

(D) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); and

(E) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) EXCEPTION.—The successful completion of a voluntary cleanup at a facility pursuant to a State voluntary cleanup program approved under this section shall be considered for the purpose of section 107(n)(1)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as added by section 403(a)(2)) as evidence that a person that acquires ownership of the facility is a bona fide prospective purchaser of the facility within

the meaning of section 101(39)(D) of such Act (42 U.S.C. 9601(39)(D)).

(3) EFFECT ON STATUS AS BONA FIDE PROSPECTIVE PURCHASER.—Nothing in this section is intended to require any person to participate in a State voluntary cleanup program approved under this section or in any other voluntary cleanup program in order to qualify as a bona fide prospective purchaser for the purpose of section 107(n)(1)(C) of such Act (as added by section 403(a)(2)).

(h) STATUTORY CONSTRUCTION.—Nothing in this title is intended—

(1) to impose any requirement on a State voluntary cleanup program existing on or after the date of enactment of this Act if a grant under this section has not been made to the Governor of a State; or

(2) to preclude a Governor of a State with a voluntary cleanup program referred to in paragraph (1) from submitting an application for a grant under this section.

SEC. 305. ECONOMIC REDEVELOPMENT CREDIT ASSISTANCE PROGRAM.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary, in consultation with the Administrator, shall

establish a program in accordance with this section (referred to in this section as the ''program'') to provide to an eligible applicant an interest subsidy under subsection (b)(1) or a credit enhancement under subsection (b)(2), or both.

(2) PURPOSES.—A loan assisted under this section shall be used only—

(A)(i) for the cleanup of an affected site at which a voluntary cleanup is being conducted, or is proposed to be conducted, under a State voluntary cleanup program that meets the requirements of section 304(a)(3); and

(ii) by an applicant who is a current owner or prospective purchaser of the affected site or a local applicant; or

(B)(i) to conduct a site characterization for an affected site at which a voluntary cleanup is being conducted, or is proposed to be conducted, under a State voluntary cleanup program that meets the requirements of section 304(a)(3); and

(ii) by an applicant who is a local applicant.

(3) MAXIMUM AMOUNT OF AGGREGATE ASSISTANCE.—

(A) SITE CHARACTERIZATIONS.—The aggregate amount of assistance under this section for a site characterization of an affected site may not exceed $100,000.

(B) CLEANUP ACTIONS.—The aggregate amount of assistance under this section for a cleanup action at an affected site may not exceed the lesser of—

(i) an amount equal to 75 percent of the total eligible costs of carrying out the cleanup action; and

(ii) $900,000.

(4) DISQUALIFICATION.—An applicant who has adequate resources to conduct a cleanup at the site, without financial assistance provided under the program, shall not be eligible for financial assistance with respect to the site under the program.

(b) FORMS OF ASSISTANCE.—

(1) INTEREST SUBSIDIES.—

(A) IN GENERAL.—The Secretary may provide assistance under the program in the form of interest subsidy payments on site characterization loans and cleanup loans that are made by participating lenders.

(B) AMOUNT OF SUBSIDIES.—

(i) IN GENERAL.—An interest subsidy under this paragraph shall be in an amount equal to the difference between—

(I) the market rate of interest that would otherwise apply to the loan (as determined by the Secretary); and

(II) the applicable rate of interest determined under clause (ii).

(ii) APPLICABLE RATES.—The applicable rate of interest referred to in clause (i)(II) is—

(I) in the case of a local government entity, 1 percentage point below the average current yield on marketable obligations of the United States Treasury having comparable maturities;

(II) in the case of a prospective purchaser of an affected site or a local community development organization, 1 percentage point above the average current yield on marketable obligations of the United States Treasury having comparable maturities; or

(III) in the case of a current owner of an affected site (other than a local applicant), 2 percentage points above the average current yield on marketable obligations of the United States Treasury having comparable maturities.

(C) PASS-THROUGH OF INTEREST SUBSIDY.—Each participating lender that receives an interest subsidy payment under this paragraph shall pass through to the loan applicant the full amount of the subsidy.

(2) CREDIT ENHANCEMENT.—

(A) IN GENERAL.—The Secretary may provide assistance under the program in the form of credit enhancement for site characterization loans and cleanup loans that are made by participating lenders. The credit enhancement shall consist of a pledge that funds in the Revolving Fund will be paid to the lender if all or part of a loan assisted under this paragraph is charged off.

(B) MAXIMUM AMOUNT OF CREDIT ENHANCEMENT.—

(i) IN GENERAL.—The total amount of credit enhancement provided under this paragraph with respect to a loan may not exceed the lesser of—

(I) an amount equal to 50 percent of the outstanding balance of the loan; and

(II) an amount equal to 50 percent of the net loss on the loan as calculated under clause (ii).

(ii) CALCULATION OF NET LOSS.—The net loss referred to in clause (i)(II) shall be equal to the difference between—

(I) the sum of the principal and the accrued, unpaid interest on the loan that the participating lender charges off; and

(II) the difference between—

(aa) the gross recovery on the loan; and

(bb) the out-of-pocket costs of the recovery.

(C) SPECIAL LOAN TERMS.—

(i) INTEREST RATE AND FEES.—A loan assisted under this paragraph may be

made with such an interest rate, and with such fees, as are agreed on by the participating lender and the applicant, consistent with applicable law. In determining the interest rate and fees, the participating lender shall take into account the amounts that the participating lender is required to deposit into the loss reserve fund of the lender under subparagraph (D).

(ii) LINES OF CREDIT.—If a loan to be assisted under this paragraph is in the form of a line of credit, the amount of the loan shall be considered to be the maximum amount that can be drawn by the applicant against the line of credit.

(D) LOSS RESERVE FUND.—

(i) IN GENERAL.—As a condition of assistance under this paragraph, each participating lender that receives a pledge of funds in the Revolving Fund shall establish a loss reserve fund with respect to the portfolio of loans made by the lender under this paragraph. Each loss reserve fund shall be established for the purposes of—

(I) receiving the amounts required to be deposited by the lender under clause (ii) and any interest earned under clause (iii); and

(II) disbursing funds, in order to cover losses sustained by the participating lender in connection with loans that are assisted under this paragraph.

(ii) DEPOSITS TO FUND.—

(I) INITIAL DEPOSIT.—As soon as practicable after receiving a notice of approval by the participating State agency of a request for credit enhancement assistance under this paragraph (but not later than 10 business days after the participating lender closes with the applicant a loan assisted under this paragraph), a participating lender shall deposit into the loss reserve fund such amount as is necessary to ensure that the loss reserve fund, together with the total amount of pledges of funds in the Revolving Fund made by the participating State agency to the participating lender under this

paragraph, would be expected to cover the full amount of losses on the portfolio of loans made by the lender under this paragraph, as determined under subclause (II).

(II) DETERMINATION OF LOSSES.—The amount of losses referred to in subclause (I) shall be determined in accordance with applicable bank regulatory accounting principles, or, if the lender is not a federally regulated lender, generally accepted accounting principles.

(III) ADJUSTMENT OF AMOUNTS IN FUND.—During the term of each loan assisted under this paragraph and held by a participating lender, and with respect to each loan, the participating lender shall make such additional deposits into the loss reserve fund of the lender as are necessary to ensure compliance with subclauses (I) and (II).

(iii) INVESTMENT AUTHORITY.—Subject to other applicable law, the participat-

ing lender may invest funds held in the loss reserve fund of the lender in a manner that the participating State agency determines is safe and liquid.

(E) CLAIMS.—

(i) FILING.—

(I) IN GENERAL.—If a participating lender charges off all or part of a loan assisted under this paragraph, the lender may file a claim for reimbursement with the participating State agency by submitting a form that—

(aa) includes a statement by the participating lender that the lender is filing the claim in accordance with the terms of the applicable participation agreement; and

(bb) contains such other information as is required by the participating State agency.

(II) TIMING.—A claim filed under subclause (I) shall be filed at the time the participating lender charges off all or part of the loan. The participating

lender shall determine when and how much to charge off on the loan, in a manner that is consistent with—

(aa) the usual method of the lender for making the determinations on business loans that are not loans assisted under this paragraph; and

(bb) the applicable accounting principles referred to in subparagraph (D)(ii)(II).

(III) AMOUNT OF CLAIMS.—The amount of a claim filed by a participating lender may include the amount of principal charged off, plus accrued, unpaid interest and out-of-pocket loan collection expenses.

(ii) PAYMENT OF CLAIMS.—

(I) DETERMINATION BY THE PARTICIPATING STATE AGENCY.—As soon as practicable after receipt of a claim filed under clause (i), the participating State agency shall determine whether the claim meets the requirements of this paragraph. Subject to subclause

(III), if the claim meets the requirements, the participating State agency shall—

(aa) permit the participating lender to withdraw funds from the loss reserve fund of the lender established under subparagraph (D) in an amount not to exceed the portion of the loss that is required to be paid by the lender under the participation agreement; and

(bb) if the amount referred to in item (aa) is not sufficient to pay the full amount of the claim, submit the balance of the claim to the Secretary for payment in accordance with subclause (II).

(II) PAYMENT BY THE SECRETARY.—Subject to subparagraph (B) and subsection (a)(3), the Secretary shall request the Secretary of the Treasury to pay, and the Secretary of the Treasury shall pay, to the participating State agency for payment to the participating lender from the Revolv-

ing Fund an amount equal to the difference between—

(aa) the full amount of the claim referred to in subclause (I)(bb); and

(bb) the amount withdrawn from the loss reserve fund of the lender under subclause (I)(aa).

(III) DENIAL OF CLAIMS.—A participating State agency or the Secretary may deny a claim if—

(aa) a statement or warranty made by the participating lender under the participation agreement to the participating State agency at the time that the request for assistance under this paragraph was made for the loan, or at the time that the claim was submitted, was known by the participating lender to be false; or

(bb) the claim otherwise does not comply with the participation agreement.

(IV) RESUBMISSION OF CLAIMS AFTER DENIAL.—If a claim is denied under subclause (III)(bb), the participating lender may resubmit the claim with additional information that addresses the reasons for the denial of the claim. A determination on the resubmitted claim shall be made in accordance with this clause.

(iii) SUBSEQUENT RECOVERY OF CLAIM AMOUNT.—

(I) REPAYMENT TO LOSS RESERVE FUND.—If, subsequent to payment of a claim by the participating State agency, the participating lender recovers from an applicant any amount for which payment of the claim was made under clause (ii), the participating lender shall promptly pay to the loss reserve fund of the lender established under subparagraph (D) an amount equal to the product of—

(aa) the applicable amount calculated under subclause (III); and

(bb) the percentage of the claim that was withdrawn from the loss reserve fund of the lender under clause (ii)(I)(aa).

(II) REPAYMENT TO PARTICIPATING STATE AGENCY.—If the participating lender makes a payment under subclause (I), the lender shall promptly pay to the participating State agency, for transfer to the Secretary of the Treasury for deposit into the general fund of the Treasury, an amount equal to the difference between—

(aa) the applicable amount calculated under subclause (III); and

(bb) the amount paid by the lender to the loss reserve fund of the lender under subclause (I).

(III) APPLICABLE AMOUNT.—The applicable amount referred to in subclauses (I) and (II) shall be equal to the difference between—

(aa) the amount recovered from the applicant referred to in subclause (I); and

(bb) any out-of-pocket expenses incurred by the participating lender in the collection of the amount referred to in item (aa).

(F) RETENTION OF PLEDGE AMOUNTS.—

(i) IN GENERAL.—Subject to subparagraph (B) and subsection (a)(3), if a participating lender makes, in each fiscal year of the Federal Government, at least 1 new loan assisted under this paragraph, the lender may retain all pledges of amounts in the Revolving Fund previously obtained by the lender under this paragraph.

(ii) RECAPTURE.—

(I) IN GENERAL.—If a participating lender does not meet the condition described in clause (i), the participating State agency shall annually notify the Secretary of the amount by which the total pledge of amounts in the Revolving Fund attributable to the lender should be reduced because of the reduc-

tion in the balances of the loans made by the lender assisted under this paragraph during the previous year. The Secretary shall make the reduction.

(II) USE OF AMOUNTS MADE AVAILABLE.—The Secretary may pledge amounts in the Revolving Fund made available under subclause (I) as credit enhancement assistance under this paragraph to any eligible participating lender.

(c) DISTRIBUTION OF ASSISTANCE.—

(1) ANNOUNCEMENT BY SECRETARY.—Not later than September 30, 1994, and each September 30 thereafter, the Secretary shall publish in the Federal Register, and in a newspaper of general circulation (such as the Commerce Business Daily), the amount of funds available for assistance under the program for the following fiscal year.

(2) ANNOUNCEMENT BY PARTICIPATING LENDERS.—Not later than 30 days after the date of publication under paragraph (1), each participating lender shall publicly announce, in the manner specified by the participating State agency, the offer of the

lender to make loans under the program to eligible applicants.

(3) REQUEST TO STATE AGENCIES.—

(A) IN GENERAL.—After the termination of a period (specified by the Secretary by regulation) that is sufficient to permit eligible applicants to apply for assistance under the program, the participating lender shall notify the participating State agency of the amount of assistance under the program that the lender determines is necessary in order to assist eligible applicants that have filed applications for loans assisted under the program with the lender.

(B) CERTIFICATION.—With respect to each loan for which the lender requests assistance under the program, the participating lender shall certify to the participating State agency under the participation agreement that—

(i) the lender would not make the loan without the requested assistance because the risk of underwriting the loan would not be acceptable to the lender; and

(ii) each loan meets the requirements of this section.

(4) REQUEST OF FUNDS BY STATE AGENCIES.—Based on the submissions to the participating State agency under paragraph (3), the participating State agency may request assistance from the Secretary under the program. The Secretary and the participating State agency shall allocate assistance in accordance with subsection (f).

(d) SELECTION OF PARTICIPATING STATE AGENCIES.—

(1) IN GENERAL.—

(A) SELECTION BY THE GOVERNOR.—Subject to subparagraph (B), the Governor of a State that has a voluntary cleanup program that meets the requirements of section 304(a)(3) may select a State agency to be the participating State agency under the program. The participating State agency shall distribute assistance provided by the Secretary under the program.

(B) DISAPPROVAL BY THE SECRETARY.—The Secretary may disapprove the selection of the Governor under subparagraph (A) if the Secretary determines that the agency is not capable of carrying out, or is in fact not carrying out, the duties of the agency under the program. If the selection is disapproved, whether before or

during participation by the agency in the program, the Governor may select another State agency to be the participating State agency. The Secretary may disapprove the new selection in accordance with this subparagraph.

(C) ASSUMPTION OF DUTIES BY THE SECRETARY.—

(i) IN GENERAL.—If, after disapproval of a selection of the Governor of a State under subparagraph (B), the Governor fails to select a participating State agency that is not disapproved by the Secretary, the Secretary shall assume the duties of the participating State agency of the State under the program until the earlier of—

(I) the selection by the Governor of a participating State agency that is not disapproved by the Secretary; and

(II) the repayment of all loans for which assistance is provided under the program in the State.

(ii) TERMINATION OF ASSISTANCE.—

(I) IN GENERAL.—Subject to subclause (II), the Secretary may not provide assistance under this title to or

through a State for any fiscal year of the Federal Government that is subsequent to a fiscal year during which the Governor of the State fails to select a participating State agency that is not disapproved by the Secretary.

(II) WAIVER OF TERMINATION.—If the Governor selects a participating State agency that is not disapproved by the Secretary prior to the end of a fiscal year, the Secretary may waive the termination of assistance under subclause (I) for the fiscal year and subsequent fiscal years.

(2) CONSULTATION WITH ENVIRONMENTAL AGENCY.—If the participating State agency selected under this subsection is not the primary agency of the State concerned with environmental regulation, the participating State agency shall carry out the duties of the agency under the program in consultation with the appropriate State environmental agency.

(3) TERMINATION BY THE PARTICIPATING STATE AGENCY.—

(A) IN GENERAL.—With the approval of the Governor of the State, the participating State

agency may terminate the participation of the State agency in the program. A termination shall be prospective only, and may not apply to loans assisted under the program prior to the termination.

(B) RESELECTION BY THE GOVERNOR.—If the participating State agency terminates participation in the program, the Governor of the State may select another State agency in accordance with paragraph (1).

(e) PARTICIPATION AGREEMENTS.—

(1) IN GENERAL.—A participating State agency may enter into a participation agreement under this subsection with a lender that is determined by the participating State agency to have sufficient commercial lending experience and financial and managerial capacity to participate in and comply with the requirements of the program.

(2) PARTICIPATING LENDERS.—Upon entering into the participation agreement with the participating State agency, the lender shall become a participating lender eligible to receive assistance for loans under the program.

(3) TERMS OF AGREEMENT.—The participation agreement between a participating State agency and

a participating lender shall incorporate appropriate provisions of this section and may not include any provision inconsistent with this section.

(4) ASSISTED LOAN TERMS.—

(A) LOANS.—A participating lender may make a loan with assistance under the program to an eligible applicant described in subsection (a) that submits an application to the participating lender that is approved by the lender.

(B) LOAN APPLICATION.—An application for a loan under the program shall be in such form as the participating State agency, in consultation with the Secretary, determines is appropriate, and shall include—

(i) a description of the affected site, including the nature and extent of any known or suspected environmental contamination at the affected site and the legal description of the real property associated with the affected site;

(ii) a complete description of the financial standing of the applicant that includes a description of the assets, cash flow, and liabilities of the applicant;

(iii) a written certification that the applicant has attempted in good faith, and has been unable, to secure financing not subject to assistance under the program from a private or public lending institution for the cleanup action that is the subject of the loan application, and specifying—

(I) the name of each lending institution to which the applicant submitted an application for a loan; and

(II) with respect to each application to a lending institution referred to in subclause (I)—

(aa) the date that the loan application was submitted and the date that the applicant was notified of the refusal;

(bb) the amount of the loan requested;

(cc) the term of the loan requested;

(dd) proof of the refusal of the loan by the lending institution; and

(ee) the reasons given, if any, by the lending institution for the refusal of the loan;

(iv) the proposed method, and anticipated period of time required, to clean up the environmental contamination at the affected site;

(v) an estimate of the proposed total cost of the site characterization or cleanup to be conducted at the site; and

(vi) an analysis that demonstrates the potential of the affected site for stimulating economic development on completion of the cleanup of the site.

(C) LOAN APPROVAL.—In determining whether to make a loan under the program, the participating lender shall—

(i) consider the need of the applicant for financial assistance, taking into consideration the financial resources available to the applicant;

(ii) consider the ability of the applicant to repay the loan in a timely manner; and

(iii) require that the affected site have demonstrable potential for stimulating new and continuing economic development on completion of the cleanup, in light of—

(I) the estimated fair market value of the affected site after cleanup;

(II) other economically viable, commercial activity on real property—

(aa) located in the immediate vicinity of the affected site on the date of the consideration of the application; or

(bb) projected to be located in the immediate vicinity of the affected site by the date that is 5 years after the date of the consideration of the application;

(III) the potential of the affected site for creating new, or expanding then existing, business and employment opportunities on completion of the cleanup of the site;

(IV) the estimated additional tax revenues expected to be generated at the site by the economic redevelopment;

(V) whether the site is located in an economically distressed community, including an enterprise zone (as defined by applicable law);

(VI) whether the cleanup and the proposed redevelopment is consistent with any applicable State or local community economic development plan; and

(VII) such other factors as the participating State agency, in consultation with the Secretary, considers relevant to carry out the purposes of the program.

(D) STATE AGENCY APPROVAL.—Each application for a loan assisted under the program shall include a written statement by the State agency under whose voluntary program the voluntary cleanup is being conducted, or is proposed to be conducted, that the estimated total cost of the voluntary cleanup is reasonable.

(E) LOAN AGREEMENTS.—

(i) IN GENERAL.—Each loan made by a participating lender under the program

shall be made pursuant to a loan agreement.

(ii) MATURITY PERIOD.—The maturity period of the loan (as determined by the participating lender) may not exceed 10 years.

(iii) COMPLIANCE WITH CLEANUP LAWS AND PROGRAMS.—The applicant shall comply with Federal and State laws (including regulations) applicable to the cleanup and shall proceed in accordance with any voluntary cleanup program in effect in the State.

(iv) USE OF LOAN.—The applicant shall—

(I) use the loan solely for the purpose of conducting a site characterization, or cleaning up the environmental contamination, at the affected site; and

(II) use any excess funds to repay to the participating lender the loan assisted under this section as soon as practicable after a determination by an appropriate official of the appropriate State environmental agency that

the site characterization or cleanup has been completed.

(v) PROHIBITION OF TRANSFER.—A loan under the program may be transferred by a participating lender to another participating lender only if the participating State agency agrees to the transfer in writing. An applicant may not transfer the right to receive a loan assisted under the program.

(vi) ACCELERATION OF LOAN UPON FAILURE TO INITIATE.—

(I) DECLARATION OF DEFAULT.—The participating State agency shall declare a loan assisted under the program in default if, with respect to the affected site that is the subject of the loan—

(aa) a site characterization or cleanup action has not been initiated by the date that is 1 year after the date on which the loan was made; or

(bb) the site characterization or cleanup has not been completed

in a timely manner (as determined by the participating State agency).

(II) ACCELERATION.—Subject to subclause (III), if the participating State agency declares a loan in default under subclause (I), the applicant shall pay to the participating lender, as soon as practicable after notice to the applicant by the participating State agency, the sum of—

(aa) the amount of the loan; and

(bb) the amount of interest accrued and unpaid on the amount referred to in item (aa) from the date the loan was made.

(III) WAIVER.—The participating State agency may waive the requirement for acceleration under subclause (II) if the participating State agency determines that—

(aa) the applicant acted in a manner consistent with the requirements of this section; and

(bb) exigent circumstances contributed to the delay.

(vii) OTHER TERMS AND CONDITIONS.—The loan agreement shall include such other terms and conditions as the participating State agency, in consultation with the Secretary and the Administrator, determines are necessary to protect the financial interests of the United States and meet the requirements of this title.

(5) OVERSIGHT BY STATE AGENCIES.—

(A) IN GENERAL.—The participating State agency shall have access to such records of each participating lender as the agency determines are necessary to ensure compliance with the agreement and to review certifications made under subsection (c)(3)(B).

(B) REVOCATION OF ASSISTANCE.—

(i) IN GENERAL.—If the participating State agency determines that a participating lender has knowingly and falsely made a certification under subsection (c)(3)(B), the participating State agency may revoke and recover assistance provided to or through the lender under the program.

(ii) PAYMENT TO THE SECRETARY OF THE TREASURY.—The participating State agency shall pay any recovery under clause (i) to the Secretary of the Treasury for deposit into the general fund of the Treasury.

(f) ALLOCATION OF ASSISTANCE.—

(1) BY THE SECRETARY.—Subject to subsection (d)(1)(C), the Secretary shall allocate assistance under the program among States that have voluntary cleanup programs that meet the requirements of section 304(a)(3) on an equitable basis, taking into account—

(A) the amount of assistance requested by each participating State agency under subsection (c)(4);

(B) the purpose of this title and the intended beneficiaries of the programs established under this title; and

(C) the needs for assistance throughout the United States.

(2) BY THE STATE AGENCIES.—

(A) IN GENERAL.—Each participating State agency shall allocate assistance under the program among participating lenders that re-

quest the assistance on an equitable basis, taking into account—

(i) the purpose of this title and the intended beneficiaries of the programs established under this title; and

(ii) the needs for assistance throughout the State.

(B) REPORT.—Not less often than annually, each participating State agency shall report to the Secretary on the allocation of assistance under the program within the State.

(g) ENFORCEMENT.—

(1) IN GENERAL.—If a person fails to comply with any condition of a participation agreement or a loan agreement entered into under this section, the Secretary may request the Attorney General of the United States to commence a civil action in an appropriate district court of the United States to enforce the participation agreement or loan agreement.

(2) JURISDICTION OF DISTRICT COURT.—The district court shall have jurisdiction to enforce the participation agreement or loan agreement and grant such relief as the public interest and the equities of the case may require.

SEC. 306. REGULATIONS.

(a) BY THE ADMINISTRATOR.—Subject to subsection (c), the Administrator shall issue such regulations as are necessary to carry out section 304.

(b) BY THE SECRETARY.—Subject to subsection (c), the Secretary shall issue such regulations as are necessary to carry out section 305.

(c) CONTENTS OF REGULATIONS.—The regulations shall include such procedures and standards as the Secretary or the Administrator, as appropriate, considers necessary, including procedures and standards for evaluating an application for a grant or credit assistance submitted under this title.

SEC. 307. ECONOMIC REDEVELOPMENT REVOLVING FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the ''Economic Redevelopment Revolving Fund'', consisting of such amounts as are appropriated to the Revolving Fund, or transferred or credited to the Revolving Fund pursuant to this section.

(b) TRANSFERS TO THE REVOLVING FUND.—There are transferred to the Revolving Fund amounts equivalent to the amounts received in the Treasury pursuant to subsections (b)(2)(E)(iii) and (e)(5)(B)(ii) of section 305.

(c) MANAGEMENT OF THE REVOLVING FUND.—

(1) INVESTMENT.—

(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Revolving Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. The investments may be made only in interest-bearing obligations of the United States. For the purpose of investments, obligations may be acquired—

(i) on original issue at the issue price; or

(ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Revolving Fund may be sold by the Secretary of the Treasury at the market price.

(C) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Revolving Fund shall be credited to and form a part of the Revolving Fund.

(2) MONTHLY TRANSFERS.—The amounts transferred by subsection (b) or required to be credited under paragraph (1)(C) shall be transferred at least monthly from the general fund of the Treasury to the

Revolving Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

(3) REPORT.—It shall be the duty of the Secretary of the Treasury to hold the Revolving Fund and (after consultation with the Secretary) to report to Congress each year concerning—

(A) the financial condition and the results of the operations of the Revolving Fund during the preceding fiscal year; and

(B) the expected condition and operations of the Revolving Fund for the 5 fiscal years following the preceding fiscal year.

(d) EXPENDITURES FROM THE REVOLVING FUND.—Amounts in the Revolving Fund shall be available, as provided by appropriation Acts, only to carry out the loan assistance program established under section 305.

(e) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Revolving Fund, as a repayable advance, an amount equal to $30,000,000 for each of fiscal years 1995 through 1998.

(2) REPAYMENT OF ADVANCES.—

(A) IN GENERAL.—If the Secretary of the Treasury determines that there are sufficient funds available in the Revolving Fund to repay a repayable advance, the Secretary of the Treasury shall transfer from the Revolving Fund to the general fund of the Treasury an amount equal to the amount of a repayment plus interest (as determined by the Secretary of the Treasury under subparagraph (B)).

(B) RATE OF INTEREST.—The amount of interest on an advance made under this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made).

SEC. 308. AUTHORIZATIONS OF APPROPRIATIONS.

(a) VOLUNTARY CLEANUP PROGRAM.—There are authorized to be appropriated to the Environmental Protection Agency, to carry out sections 304 and 305, an amount not to exceed $15,000,000 for fiscal year 1995, and $7,500,000 for each of fiscal years 1996 through 1998.

(b) SITE CHARACTERIZATION AND CLEANUP PROGRAMS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Housing and Urban

Development from the Revolving Fund, to provide site characterization credit assistance and cleanup credit assistance under section 305, an amount not to exceed $30,000,000 for each of fiscal years 1995 through 1998.

(2) ALLOCATION.—At the beginning of each fiscal year, the Secretary shall allocate—

(A) 50 percent of the amounts appropriated under paragraph (1) for site characterization; and

(B) 50 percent of the amounts appropriated under paragraph (1) for cleanup.

(c) AVAILABILITY OF FUNDS.—The amounts appropriated pursuant to this section shall remain available until expended.

SEC. 309. REPORTS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and not later than January 31 of each of the 3 calendar years thereafter, the Secretary and the Administrator shall prepare and submit a report describing the achievements of each grant or loan program established under this title to—

(1) the Committee on Environment and Public Works, and the Committee on Banking, Housing, and Urban Affairs, of the Senate; and

(2) the Committee on Energy and Commerce, and the Committee on Banking, Finance and Urban Affairs, of the House of Representatives.

(b) CONTENTS OF REPORT.—Each report shall, with respect to the programs established under this title, include a description of—

(1) the number of grant and credit assistance applications received by the Secretary during the preceding calendar year;

(2) the number of grant and credit assistance applications approved by the Secretary during the preceding calendar year;

(3) with respect to each voluntary cleanup program of a State that was the subject of a grant under section 304—

(A) the purposes to which the grant made to the State was applied; and

(B) the achievements of the program;

(4)(A) the affected sites identified by local applicants; and

(B) the status of the sites referred to in subparagraph (A) regarding subsequent cleanup and economic redevelopment;

(5)(A) the affected sites at which a site characterization or cleanup was initiated pursuant to the

economic redevelopment credit assistance program under section 305; and

(B) the status of the sites referred to in subparagraph (A) regarding ongoing or completed site characterizations, cleanup actions, and economic redevelopment activities;

(6) the grant and credit assistance applications disapproved during the preceding year, and the reasons for disapproval;

(7) the amount of grants and credit assistance made during the preceding year, and an estimate of the total costs incurred by parties receiving a loan assisted under the economic redevelopment credit assistance program under section 305;

(8) the number of applicants for grants and credit assistance that may be in need of financial assistance in establishing voluntary cleanup programs, performing site characterizations, and conducting cleanups to achieve economic redevelopment under this title; and

(9) the allocation of assistance under sections 304 and 305 among the States and among different types of applicants for assistance under this title.

SEC. 310. FUNDING.

(a) ADMINISTRATIVE COST LIMITATION.—Not more than 15 percent of the amount of a grant made or loan assisted pursuant to this title may be used for administrative costs. No grant or credit assistance made pursuant to this title may be used to pay for fines or penalties owed to a State or the Federal Government.

(b) OTHER LIMITATIONS.—Funds made available to a State pursuant to the grant program established under section 304 shall be used only for establishing or administering a voluntary cleanup program. Funds otherwise made available under this title may not be used to relieve a State of the commitment or responsibilities of the State under State law to assist or carry out cleanup actions at affected sites.

SEC. 311. STATUTORY CONSTRUCTION.

Nothing in this title is intended to affect the liability or response authorities for environmental contamination of any other law (including any regulation), including—

(1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

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

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

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

(5) title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300f et seq.).

TITLE IV—LIABILITY AND ALLOCATION

SEC. 401. INFORMATION GATHERING AND ACCESS.

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

(1) by striking ''cleanup'' in subparagraph (C) and inserting ''response action''; and

(2) by inserting after subparagraph (C) the following:

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

''(E) Information relating to the potential liability or responsibility of any person to perform or pay for a response action.

''(F) For a person conducting a response action, an accounting of direct and indirect costs

the person has incurred in conducting such response action.''.

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

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

(2) by inserting after paragraph (2) the following:

''(3) CERTIFICATION.—For a request made pursuant to this subsection, the President may require a respondent to certify that—

''(A) the response is true, accurate, and complete to the best of the respondent's knowledge;

''(B) the response is based on a diligent good faith search of records in the possession or control of the person to whom the request was directed;

''(C) the response is based on a reasonable inquiry of the current and former officers, directors, employees, and agents of the person to whom the request was directed;

"(D) the response accurately and completely reflects information obtained in the course of conducting such search and inquiry;

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

"(F) the respondent understands that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.".

(c) ADMINISTRATIVE SUBPOENAS.—Section 104(e) (42 U.S.C. 9604(e)) is further amended by inserting after paragraph (8) (as redesignated by subsection (b)) the following new paragraph:

"(9) ADMINISTRATIVE SUBPOENAS.—When it would assist in the collection of information authorized under paragraph (1), the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information listed in paragraph (2) that the President considers necessary. Such witnesses shall be paid the same fees

and mileage that are paid to witnesses in the courts of the United States under chapter 119 of title 28, United States Code. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.''.

(d) CONFIDENTIALITY OF INFORMATION.—Paragraph (8) of section 104(e) (as redesignated by subsection (b)) is amended by striking subparagraph (A) and inserting the following:

''(A) AVAILABILITY OF INFORMATION TO PUBLIC.—Any records, reports, documents, or information obtained from any person under this section (including records, reports, documents, or information obtained by representatives of the President and records, reports, documents, or information obtained pursuant to a contract, grant, or other agreement to perform work pursuant to this section) shall be made available to the public, except as follows:

''(i) INFORMATION NOT DISCLOSED BY FEDERAL OFFICERS OR EMPLOYEES.—Upon

a showing satisfactory to the President (or the State, as the case may be) by any person that such a record, report, document, or information, or any particular part thereof (other than health or safety effects data and data regarding the release involved), to which the President (or the State, as the case may be) or any officer, employee, or representative has access under this section, if made public, would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section. Notwithstanding the preceding sentence, such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act, or, if such records, reports, documents, or information are obtained or submitted to the United States (or the State, as the case may be) pursuant to a contract, grant, or

other agreement to perform work pursuant to this section, to persons from whom the President seeks to recover costs pursuant to this Act.

"(ii) INFORMATION NOT DISCLOSED UNDER FREEDOM OF INFORMATION ACT.—This section shall not be construed to require that information that is exempt, by reason of any of paragraphs (1) through (8) of subsection (b) of section 552 of title 5, United States Code, from disclosure pursuant to such section, be available to the public, nor shall the disclosure of any such information pursuant to this section authorize disclosure to other parties or be deemed to waive any confidentiality privilege available to the President under any Federal or State law.".

(e) CONFIDENTIALITY REQUIREMENTS FOR CONTRACTORS.—Such paragraph (8) of section 104(e) is further amended by adding at the end the following new subparagraph:

"(G) PROHIBITION ON DISCLOSURE WITHOUT PRESIDENTIAL PERMISSION.—

"(i) IN GENERAL.—No person described in clause (ii) may disclose such record, report, document, or other information described in subparagraph (A) without the permission of the President.

"(ii) COVERED PERSONS.—A person referred to in clause (i) is any person—

"(I) who is not an employee of the Federal Government; and

"(II) who, by virtue of the person's duties under a contract or cooperative agreement with the United States under this section to perform work for the Federal Government or implement the requirements of this Act, has received information obtained under this section (or any record, report, or document containing such information) that, if requested from the Federal Government pursuant to section 552 of title 5, United States Code, would be exempt from disclosure by reason of any of paragraphs (1) through (8) of subsection (b) of such section.

''(iii) CONSTRUCTION.—Nothing in this subparagraph shall be construed to authorize any person, including the allocator described in section 129, to withhold any records, reports, documents, or information from Congress, or any duly authorized committee thereof, or limit in any manner the right of Congress, or any duly authorized committee thereof, to obtain such records, reports, documents, or information.''.

(f) CONFORMING AMENDMENTS.—Section 104(e) (42 U.S.C. 9604(e)) is amended—

(1) in paragraph (1)—

(A) in the first sentence—

(i) by striking ''(2), (3), or (4)'' and inserting ''(2), (4), or (5)''; and

(ii) by striking ''(3) or (4)'' each place it appears and inserting ''(4) or (5)''; and

(B) in the third sentence, by striking ''(3) and (4)'' and inserting ''(4) and (5)'';

(2) in subparagraph (A) of paragraph (5) (as redesignated by subsection (b)(1)), by striking ''(3)'' and inserting ''(4)''; and

(3) in subparagraph (A) of paragraph (6) (as redesignated by subsection (b)(1)), by striking ''(2), (3), or (4)'' and inserting ''(2), (4), or (5)''.

SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.

(a) ADDITIONAL AUTHORITY TO ISSUE ORDERS.—Section 106(a) (42 U.S.C. 9606(a)) is amended by adding at the end the following: ''The President may amend such orders and issue additional orders relating to the facility, as appropriate, without a subsequent finding of such an imminent and substantial endangerment, to complete all response actions necessary to respond to such an actual or threatened release or to require additional response actions that are necessary or appropriate to respond to the actual or threatened release that was the subject of the original order.''.

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

(1) by striking ''(b)(1) Any'' and inserting the following:

''(b) VIOLATIONS.—

''(1) FINE.—

''(A) IN GENERAL.—Any'';

(2) by striking ''to enforce such order'';

(3) by inserting before the period at the end the following: '', or be required to comply with such order,

or both, even if another person has complied, or is complying, with the terms of the same order or another order pertaining to the same facility and release or threatened release''; and

(4) by adding at the end the following:

''(B) SUFFICIENT CAUSE.—For purposes of this subsection, the term 'sufficient cause' means—

''(i) an objectively reasonable belief by the person to whom the order is issued that the person is not liable for any response costs under section 107; or

''(ii) a determination, by a Federal court that has jurisdiction over the order in an enforcement action, that the action to be performed pursuant to the order is inconsistent with the national contingency plan.

''(C) DETERMINATION OF SUFFICIENT CAUSE.—The existence or results of an allocation process pursuant to section 129 shall not affect or constitute a basis for a determination of 'sufficient cause' under this paragraph or under section 107(c)(3).''.

(c) REIMBURSEMENT.—Subsection (b) of section 106 (42 U.S.C. 9606(b)) is further amended in the first sentence

of paragraph (2)(A) by striking ''completion of'' and inserting ''the President determines that such person has completed''.

SEC. 403. LIMITATIONS ON LIABILITY FOR RESPONSE COSTS.

(a) LIMITATIONS ON LIABILITY.—Section 107 (42 U.S.C. 9607) is amended—

(1) in subsection (a)(4), by striking ''by such person,'' and all that follows through ''shall be liable for—'' and inserting the following: ''by such person; from which there is a release, or a threatened release, that causes the incurring of response costs, of a hazardous substance, shall be liable for—''; and

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

''(n) LIMITATIONS ON LIABILITY.—

''(1) DE MICROMIS AND OTHER LIMITATIONS.—Notwithstanding paragraphs (1) through (4) of subsection (a), a person who does not impede the performance of response actions or natural resource restoration shall not be liable under this Act—

''(A)(i) to the extent liability is based solely on paragraph (3) or (4) of subsection (a), and the person arranged for disposal, treatment, or transport for disposal or treatment, or accepted

for transport for disposal or treatment, of only municipal solid waste owned or possessed by such person, and the person is—

''(I) the owner, operator, or lessee of residential property;

''(II) a small business; or

''(III) a small nonprofit organization; and

''(ii) this subparagraph shall have no effect on the liability of other parties;

''(B) to the extent liability is based solely on paragraph (3) or (4) of subsection (a), and the person can demonstrate that it arranged for disposal or treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, less than 55 gallons of liquid materials containing hazardous substances, or less than 100 pounds of solid materials containing hazardous substances, or such greater or lesser amount as the Administrator may determine by regulation, except in a case in which—

''(i) the Administrator has determined that such materials contributed or could contribute significantly to the costs of response at the facility; or

"(ii) the person has failed to respond fully and completely to information requests or administrative subpoenas by the United States;

"(C) to the extent liability is based solely on subsection (a)(1) for a release or threat of release from a facility, and the person is a bona fide prospective purchaser of the facility;

"(D) to the extent liability is based solely on the person's status as an owner under subsection (a)(1) for a release or threat of release from a facility, and the person acquired the facility by inheritance or bequest, if the person—

"(i) acquired the real property on which the facility concerned is located after disposal or placement of the hazardous substance took place;

"(ii) did not cause or contribute to the release or threat of release; and

"(iii) exercised due care with respect to the hazardous substance concerned, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substance,

in light of all relevant facts and circumstances;

''(E) to the extent the liability of a Federal or State governmental entity or municipality is based solely on its—

''(i) ownership of a road, street, or other right-of-way or public transportation route over which hazardous substances are transported; or

''(ii) granting of a license or permit to conduct business;

''(F) to the extent that liability under section 120(a)(1) based on the actions of the United States encompasses actions of a department, agency, or instrumentality taken in response to a natural disaster pursuant to section 5 of the Act of August 18, 1941 (55 Stat. 650, chapter 377; 33 U.S.C. 701n), or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

''(G) to the extent liability is based solely on the status of the person as a railroad owner or operator of a spur track, including a spur track over land subject to an easement, to a facility

owned or operated by an unaffiliated person, and if—

"(i) the spur track provides access to a main line or branch line track owned by the railroad;

"(ii) the spur track is 10 miles in length or less; and

"(iii) the person who is the railroad owner or operator has not caused or contributed to a release or threat of release at the spur track.

"(2) CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT LIMITATIONS.—Notwithstanding paragraphs (1) through (4) of subsection (a), a person shall not be liable for more than 10 percent of total response costs at a facility, in aggregate, to the extent the person's liability is based solely on paragraph (3) or (4) of subsection (a), and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. In any case in which more than 1 person at a facility comes within the coverage of this paragraph, the 10 percent limitation on liability shall apply to the aggregate liability of all such persons. Such limitation

on liability shall apply only if either the acts or omissions giving rise to liability occurred before the date occurring 3 years after the date of enactment of this paragraph, or the person asserting the limitation institutes or participates in a qualified household hazardous waste collection program, or, in the case of a person other than a municipality, participates, if eligible, in any qualified household hazardous waste collection program in the vicinity of the facility.''.

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Section 107 (as amended by subsection (a)(2)) is further amended by inserting after subsection (n) the following new subsection:

''(o) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

''(1) LIEN.—In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (n)(1)(C), and each of the conditions described in paragraph (2) is met, the United States shall have a lien upon such facility, or may obtain from the appropriate responsible party or parties, a lien on other property or other assurances of payment satisfactory to the Administrator, for such unrecovered costs. Such lien—

"(A) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

"(B) shall arise at the time costs are first incurred by the United States with respect to a response action at the facility;

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

"(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.

"(2) CONDITIONS.—The conditions referred to in paragraph (1) are the following:

"(A) RESPONSE ACTION.—A response action for which there are unrecovered costs is carried out at the facility.

"(B) FAIR MARKET VALUE.—Such response action increases the fair market value of the facility above the fair market value of the facility that existed 180 days before the response action was taken.

"(C) SALE.—A sale or other disposition of all or a portion of the facility has occurred.".

(c) FEDERAL ENTITIES AND FACILITIES.—Section 120 (42 U.S.C. 9620) is amended—

(1) by striking the section heading and inserting the following:

"SEC. 120. FEDERAL ENTITIES AND FACILITIES.";

and

(2) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—

"(A) REQUIREMENTS.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including but not limited to any requirements for permits, reporting, or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), regarding response actions related to, or management of, hazardous substances or pollutants or contaminants in the same manner, and to the same extent, as any nongovernmental person is subject to such requirements, including liability under sections

106 and 107 and the payment of reasonable service charges.

"(B) ORDERS, PENALTIES, AND FINES.—The Federal, State, interstate, and local substantive and procedural requirements referred to in subparagraph (A) include all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties and fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including but not limited to any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge).

"(C) REASONABLE SERVICE CHARGES.—The reasonable service charges referred to in this paragraph include fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facili-

ties, as well as any other nondiscriminatory charges that are assessed in connection with a State, interstate, or local response program.

"(D) PROHIBITION ON IMMUNITY OR EXEMPTION FROM PROCESS OR SANCTION.—Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any injunctive relief under this Act.

"(E) PROHIBITION ON PERSONAL CIVIL LIABILITY.—No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal or State response law with respect to any act or omission within the scope of their official duties. An agent, employee, or officer of the United States may be subject to any criminal sanction (including any fine or imprisonment) under any Federal or State response law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction.

"(F) LIMITATION ON WAIVER OF SOVEREIGN IMMUNITY.—The waiver of sovereign immunity

provided in this paragraph shall not apply to the extent a State law would apply any standard or requirement to such Federal department, agency, or instrumentality in a manner that is more stringent than such standard or requirement would be applied to any other person.

"(G) CONSTRUCTION.—Nothing in this section shall be construed to affect the liability of any person or entity other than a department, agency, or instrumentality of the Federal Government under sections 106 and 107.

"(H) POWERS OF ADMINISTRATOR.—The Administrator may issue an order under section 106 to any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as action would be initiated against any other person.

"(I) CONTRIBUTION.—Each such department, agency, and instrumentality shall have the right to contribution protection set forth in section 113, when such department, agency, or in-

strumentality resolves its liability under this Act.'';

(B) by striking paragraph (4); and

(C) by inserting ''(except for section 119)'' after ''responsibility'' in paragraph (3).

(d) COMMON CARRIERS.—Section 107(b)(3) (42 U.S.C. 9607(b)(3)) is amended by striking ''a published tariff and acceptance'' and inserting ''a contract''.

(e) CONFORMING AMENDMENTS.—

(1) Section 107 (42 U.S.C. 9607) is amended—

(A) in the matter following subparagraph (D) of the matter following paragraph (4) of subsection (a), by inserting ''of the matter following paragraph (4)'' after ''subparagraphs (A) through (D)''; and

(B) in subsection (f)(1), by inserting after ''subparagraph (C)'' each place it appears the following: ''of the matter following paragraph (4)''.

(2) Section 122(j)(2) (42 U.S.C. 9622(j)(2)) is amended by striking ''section 107(a)(4)(C)'' and inserting ''subparagraph (C) of the matter following paragraph (4) of section 107(a)''.

SEC. 404. LIABILITY.

(a) LIABILITY.—Section 107 (42 U.S.C. 9607) (as amended by section 403) is further amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''and'' and inserting ''or'';

(B) in paragraph (3), by striking ''such person,'' and inserting ''such person, or'';

(C) in subparagraph (A) of the matter following paragraph (4), by inserting '', including the costs of overseeing response actions conducted by potentially responsible parties,'' before ''incurred by the United States''; and

(D) in subparagraph (B) of the matter following paragraph (4)—

(i) by striking ''other'' the second place it appears; and

(ii) by inserting '', other than the United States, a State, or an Indian tribe,'' before ''consistent with the national contingency plan''; and

(2) in subsection (n), by adding at the end the following new paragraph:

''(3) RESPONSE ACTION OVERSIGHT COSTS.—The Administrator shall calculate the Environmental Protection Agency response action oversight costs (which

shall consist of the direct costs of oversight and the indirect costs associated with the direct costs) for which potentially responsible parties are liable under this section (pursuant to subparagraph (A) of the matter following paragraph (4) of subsection (a)) on a national basis as a percentage of total response costs incurred by potentially responsible parties (in this paragraph referred to as the 'national oversight rate'). The calculation shall be based on data comparing such oversight costs of the Environmental Protection Agency to estimated or actual response costs incurred by potentially responsible parties. The Administrator shall periodically review and update the national oversight rate. If the Administrator calculates that the rate would exceed 10 percent of total response costs incurred by potentially responsible parties the rate shall be deemed to be 10 percent. The national oversight rate shall be applied to all settlements under section 129.''.

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

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

(2) by striking ''at least equal to,'' and all that follows through the end of the sentence and inserting ''of up to 3 times the amount of such response costs.''.

(c) TIMING.—Section 119 (42 U.S.C. 9619) is amended—

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

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

(d) REMINING LIMITATION.—Section 107(n) (42 U.S.C. 9607(n)) (as added by section 403(a)(2) and amended by subsection (a)(2)) is further amended by adding at the end the following new paragraph:

''(4) REMINING LIMITATION.—

''(A) IN GENERAL.—

''(i) LIMITATION.—Notwithstanding paragraphs (1) through (4) of subsection (a) and subject to clause (ii) and subparagraphs (B) and (C), a person who does not impede the performance of response actions or natural resource restoration and who is a reminer shall not be liable, to the extent liability is based solely on a remining operation by the person at a facility, to any person for response costs, damages, or ex-

penses, or otherwise, under this Act as a result of the remining operation.

"(ii) EXCEPTION.—Clause (i) shall not apply in the case of a release or threatened release of a hazardous substance or pollutant or contaminant that is caused by conduct of the reminer that is negligent or grossly negligent, or that constitutes intentional misconduct.

"(B) CONDITIONS ON LIMITATION.—Except as provided in subparagraph (D), the limitation on liability provided by subparagraph (A) shall be applicable only—

"(i) if the President has determined that the remining operation carried out by the person asserting the limitation has the potential to—

"(I) result in a significant recovery of a metal or mineral; and

"(II) facilitate a removal or a remedial action at the facility, by reducing or eliminating a source of a release or threatened release of a hazardous substance or pollutant or contaminant

or by reducing the cost of the anticipated removal or remedial action;

''(ii)(I) if the President has entered into a contract or agreement with the person, which contract or agreement may be subject to such terms and conditions as the President considers appropriate (including reimbursement of oversight costs specifically attributable to the contract or agreement for a remining operation) to ensure that the remining operation will facilitate a removal or a remedial action at the facility to the maximum extent practicable and will not cause any additional significant adverse effect on human health or the environment; and

''(II) if not later than the date that is 30 days after the President enters into the contract or agreement with the reminer—

''(aa) the contract or agreement is made available to the public; and

''(bb) a notice of the availability is published in the Federal Register;

''(iii) if the remining operation is carried out in a manner consistent with any

such contract or agreement and with such regulations as the President may promulgate to ensure that the remining operation is carried out in a manner to ensure protection of human health and the environment; and

''(iv) to a release or threatened release of a hazardous substance or pollutant or contaminant that is attributable to extraction, beneficiation, or a processing operation, or the management of a material or solid waste from the extraction, beneficiation, or processing operation, prior to February 3, 1994.

''(C) RESTRICTIONS ON LIMITATION.—

''(i) PERSONS OTHERWISE LIABLE.—The limitation on liability provided by subparagraph (A) shall not apply to, and may not be asserted by, a person who—

''(I) would otherwise be liable under this section with respect to a release or threatened release of a hazardous substance or pollutant or contaminant at the facility (including if the person were not a reminer); or

"(II) is directly or indirectly affiliated with such an otherwise liable person other than in connection with a contractual relationship relating to a remining operation.

"(ii) ASSERTION OF DEFENSES.—The conduct of a remining operation subject to the limitation on liability provided by subparagraph (A) shall not in any manner be a basis for an otherwise liable person to assert a defense pursuant to subsection (b).

"(iii) OTHER LAWS.—This paragraph shall not be construed to affect, in any manner, the obligation of a person to comply with any Federal, State, or local statute, regulation, ordinance, or other requirement that may be applicable to a remining operation, nor to limit or preempt any Federal, State, or local regulatory authority with respect to a remining operation.

"(iv) HYDROCARBON MINING OPERATIONS.—This paragraph shall not be construed to affect, in any manner, the liability of a person who carries out a remining

operation with respect to coal or another hydrocarbon.

"(v) PENDING CLAIMS.—This paragraph shall not be construed to apply to, or be asserted with respect to, any claim pending as of the date of enactment of this paragraph in any administrative or judicial action or proceeding for the recovery of response costs or damages, or for the performance of a response action or restoration.

"(vi) INDEMNIFICATION.—With respect to a contract or agreement described in subparagraph (B)(ii), the President shall not have authority to indemnify or hold harmless the reminer or other person carrying out the remining operation.

"(D) LIABILITY FOR REMINING OPERATIONS PRIOR TO QUALIFYING FOR LIMITATION.—The liability of a person who locates or acquires an interest in a mining claim on Federal land where the extraction, beneficiation, or processing of any ore or mineral, or the management of a material or solid waste from the extraction, beneficiation, or processing, occurred prior to February 3, 1994, shall be subject to the limitation on liabil-

ity provided by subparagraph (A), notwithstanding the absence of a prior determination by the President, or a contract or an agreement, pursuant to subparagraph (B), if the person—

"(i) does not cause or contribute to a release of a hazardous substance or pollutant or contaminant at the facility prior to qualifying for the limitation on liability provided by subparagraph (A); and

"(ii) within 3 years after locating or acquiring the interest in the mining claim—

"(I) qualifies for the limitation on liability provided by subparagraph (A); or

"(II) abandons or otherwise relinquishes the interest in the mining claim.

"(E) LIABILITY OF GOVERNMENTAL EMPLOYEES OVERSEEING REMINING OPERATIONS.—An employee of the Federal Government, or a department, agency, or instrumentality of the Federal Government, or an employee of a State or municipality, who provides oversight or other services relating to a contract or an agreement

for a remining operation, while acting within the scope of authority of the employee as a governmental employee, shall be subject to the limitation on liability provided by subparagraph (A) in the same manner as if the employee were a reminer.

"(F) TIMELY DETERMINATION BY THE PRESIDENT.—After receiving a written request for a contract or agreement described in subparagraph (B)(ii), the President shall make any determinations required by such subparagraph not later than 180 days after the receipt of the request.

"(G) DEFINITIONS.—As used in this paragraph:

"(i) REMINER.—The term 'reminer' means a person who owns or operates a facility—

"(I) at which another unaffiliated person prior to February 3, 1994, engaged in the extraction, beneficiation, or processing of any ore or mineral, or the management of a material or solid waste from the extraction, beneficiation, or processing; and

''(II) at which there is an ongoing release or threatened release of a hazardous substance or pollutant or contaminant because of the past activity referred to in subclause (I).

''(ii) REMINING OPERATION.—

''(I) IN GENERAL.—Subject to subclause (II), the term 'remining operation' means any of the following activities when carried out by a reminer:

''(aa) The extraction, beneficiation, or processing of any ore or mineral.

''(bb) The beneficiation, processing, reclamation, or beneficial use or reuse of any material or solid waste from the extraction, beneficiation, or processing of any ore or mineral at a facility at which the carrying out of extraction, beneficiation, or processing prior to February 3, 1994, has resulted in an ongoing release or threatened release of a hazardous

substance or pollutant or contaminant.

"(cc) The investigation or evaluation of a facility to determine whether an activity described in item (aa) or (bb) is economically feasible, including the sampling of any ore, other material, or solid waste, surveying, monitoring of environmental media, or an exploration activity.

"(dd) Any other activity, including a construction, maintenance, or waste management activity, that is incidental to an activity described in item (aa), (bb), or (cc).

"(ee) The acquisition and retention of any ownership, leasehold, or other interest in the facility needed to engage in an activity described in item (aa), (bb), (cc), or (dd), except that in order for the acquisition or retention of any ownership, leasehold, or other

such interest to be subject to the limitation on liability provided by subparagraph (A), the reminer shall be a person described in subparagraphs (B), (C), (E), and (F) of section 101(39).

''(II) EXCLUSION.—The term 'remining operation' does not include smelting.

''(iii) SOLID WASTE.—The term 'solid waste' has the meaning provided in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).''.

(e) DEFINITION OF CONTRACTUAL RELATIONSHIP.—Section 101(35) (42 U.S.C. 9601(35)) is amended by adding at the end the following new subparagraph:

''(E) PATENTS.—The term 'contractual relationship' does not include the initial filing by a claimant of an unpatented mining claim or the issuance of a patent for such a claim.''.

SEC. 405. CIVIL PROCEEDINGS.

(a) PETITIONS.—Section 113(a) (42 U.S.C. 9613(a)) is amended—

(1) by striking ''upon application by any interested person'' and inserting ''by any interested person through the filing of a petition for review''; and

(2) by striking ''application shall be made'' and inserting ''petition shall be filed''.

(b) PERIOD IN WHICH ACTION MAY BE BROUGHT.—Section 113(g) (42 U.S.C. 9613(g)) is amended by striking paragraphs (2) and (3) and inserting the following:

''(2) ACTIONS FOR RECOVERY OF COSTS.—

''(A) INITIAL ACTION.—Except as provided in subparagraph (C), an initial action for recovery of costs referred to in section 107 shall be commenced—

''(i) for a removal action, within 3 years after completion of all removal action taken with respect to the facility involved, including offsite disposal of any removed materials, except that if physical onsite construction of the remedial action is initiated within 3 years after the completion of all removal action taken with respect to the facility, costs incurred for removal action may be recovered in a cost recovery action brought under clause (ii); and

"(ii) for a remedial action, within 6 years after initiation of physical onsite construction of the remedial action.

"(B) DECLARATORY JUDGMENT AND SUBSEQUENT ACTIONS.—In any such action for recovery of costs, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding in such action or in any subsequent action or actions to recover further response costs or damages with respect to the vessel or facility. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but shall be commenced no later than 3 years after the date of completion of all response action with respect to the vessel or facility. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of such costs at any time after such costs have been incurred.

"(C) COMMENCEMENT.—An action by any potentially responsible party against another potentially responsible party for recovery of any re-

sponse costs or damages under section 107 shall be commenced within the later of—

''(i) the time limitations set forth in subparagraph (A); or

''(ii) where recovery is sought for such costs or damages paid pursuant to a judgment or settlement, 3 years after—

''(I) the date of such judgment in any action under this Act for recovery of such costs or damages; or

''(II) the date of any administrative order or judicial settlement for recovery of the costs or damages paid or incurred pursuant to such a settlement.

''(3) CLAIMS BY THE UNITED STATES OR STATES.—Claims by the United States under section 106 and claims by the United States or a State under section 107(a) shall not be deemed to be compulsory counterclaims in an action against the United States or a State seeking response costs, contribution, or damages, or with respect to any other claim by any person under this Act.''.

(c) JUDICIAL REVIEW.—Section 113(j)(1) (42 U.S.C. 9613(j)(1)) is amended by striking ''or ordered by the Presi-

dent'' and inserting ''or selected by the President pursuant to this Act, or ordered or sought by the President,''.

(d) CONFORMING AMENDMENT.—Section 113(g)(1) (42 U.S.C. 9613(g)(1)) is amended by striking ''paragraphs (3) and (4)'' and inserting ''paragraph (4)''.

SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.

Section 113(f) (42 U.S.C. 9613(f)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''Any person'' and inserting ''Except as provided in paragraph (4), any person who is liable or potentially liable under section 107(a)'';

(B) in the first sentence, by striking '', during or following any civil action under section 106 or under section 107(a).'' and inserting ''in a claim asserted under section 107(a).'';

(C) in the second sentence, by striking ''this section'' and inserting ''section 107(a), this section,''; and

(D) by striking the sentence beginning with ''Nothing in this subsection'';

(2) by striking paragraph (2) and inserting the following:

''(2) SETTLEMENTS.—A person who has resolved its liability to the United States in an administrative

or judicially approved settlement under this Act shall not be liable for contribution or any other claims by other persons regarding response actions, response costs, or damages addressed in the settlement. A person who has resolved its liability to a State or an Indian tribe in an administrative or judicially approved settlement under this Act shall not be liable for contribution or any other claims by persons other than the United States regarding response costs or damages addressed in the settlement for which the State or Indian tribe has a claim under this title. A settlement described in this paragraph shall not be construed to discharge any other potentially responsible persons unless its terms so provide, but it reduces the potential liability of such other persons by the amount of the settlement. The protection afforded by this subsection shall include protection against claims, under Federal or State law, that may be asserted against a settling party for recovery of response costs or damages incurred or paid by another person, if such costs or damages are addressed in the settlement, but shall not include protection against claims based on contractual indemnification or other express contractual agreements to pay such costs or damages.''; and

(3) by adding at the end the following new paragraph:

"(4) LIMITATIONS ON CONTRIBUTION ACTIONS.—

"(A) CIRCUMSTANCES.—There shall be no right of contribution in any of the following circumstances:

"(i) WAIVER.—The person asserting the right of contribution has waived the right in a settlement pursuant to this Act.

"(ii) NO LIABILITY.—The person from whom contribution is sought is not liable under this Act.

"(iii) SETTLEMENT.—The person from whom contribution is sought has entered into a settlement with the United States, with respect to matters addressed in that settlement.

"(B) COSTS OF DEFENDING CLAIM.—Any person who commences an action for contribution shall be liable to the person against whom the claim of contribution is brought for all reasonable costs of defending against the claim, including all reasonable attorneys' and expert witness fees, if—

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

''(ii) the action is brought during the moratorium pursuant to section 129.''.

SEC. 407. SCOPE OF RULEMAKING AUTHORITY.

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

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

''The President (or the Administrator where applicable) is authorized to promulgate such regulations as the President (or the Administrator where applicable) determines to be necessary to carry out the provisions of this Act, and to delegate and assign any duties or powers imposed upon or assigned to the President (or the Administrator where applicable) by this Act, including the authority to promulgate regulations. The authority granted to the President (or the Administrator where applicable) under this section includes the authority to issue rules to clarify or interpret, in a manner that is reasonable and consistent with this Act, all terms, as necessary to determine the liability of a party under section 107.''.

SEC. 408. ENHANCEMENT OF SETTLEMENT AUTHORITIES.

Section 122 (42 U.S.C. 9622) is amended—

(1) in subsection (a), by inserting after the first sentence the following new sentence: ''The President may include in an agreement entered into pursuant to this section terms and conditions relating to the method, terms, and time of payment of any amount to be paid by the person referred to in the preceding sentence with respect to a response action.'';

(2) in subsection (b)—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3);

(3) in subsection (e)—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively;

(4)(A) by transferring paragraph (6) of subsection (e) to the end of the section and redesignating such paragraph as subsection (n);

(B) by indenting such subsection (n) and aligning the margins of such subsection (n) with the margins of subsection (m); and

(C) by adding after such subsection (n) the following new subsections:

''(o) RETENTION OF FUNDS AND USE OF FINANCIAL INSTRUMENTS.—

"(1) RETENTION OF FUNDS.—If, as part of any settlement agreement under this Act, the potentially responsible parties have paid or will be paying amounts to the President for carrying out any response action, the President may retain such amounts in interest bearing accounts, and use such amounts, together with accrued interest, to conduct or enable other persons to conduct such response action.

"(2) USE OF FINANCIAL INSTRUMENTS.—

"(A) IN GENERAL.—If, as part of any settlement agreement under this Act, a potentially responsible party will pay an amount to the President for carrying out any response action, the President may assume ownership of a financial instrument that runs irrevocably to the benefit of the President and may use the amount made available through the instrument to conduct or enable other persons to conduct such response action.

"(B) DEFINITION.—As used in this paragraph, the term 'financial instrument' means an instrument—

"(i) that is an annuity contract, a funding agreement, or a similar instrument;

"(ii) that includes a defined schedule of periodic payments that coincides with the obligations set forth in the settlement agreement; and

"(iii) under which the periodic payments will be made to the owner of the instrument, or be made in such manner as the owner may direct, for response costs at the facility that is the subject of the settlement agreement.

"(p) CHALLENGE TO COST RECOVERY COMPONENT OF SETTLEMENT.—Notwithstanding the limitations on review in section 113(h), and except as provided in subsection (g), a person whose potential claim for response costs or contribution is limited as a result of contribution protection afforded by an administrative settlement under this section or section 129 may challenge the cost recovery component of such settlement. Such a challenge may be made only by filing a complaint against the Administrator, or a State that is exercising authority delegated under section 127, with respect to the facility in a United States district court within 60 days after such settlement becomes final. Venue shall lie in the district in which the principal office of the appropriate Regional Administrator is located. Any such review of an administrative settlement shall be limited to

the administrative record, and the settlement shall be upheld unless the objecting party demonstrates on that record that the decision of the President or the State to enter into the administrative settlement was arbitrary, capricious, or otherwise not in accordance with law. Nothing in this subsection shall be construed to allow a challenge to a selection of a response action that would otherwise be barred by section 113(h).

''(q) UNSUCCESSFUL CHALLENGERS LIABLE FOR ATTORNEY'S FEES.—Any party who challenges any settlement entered into between the Administrator and any potentially responsible party pursuant to this section or section 129, and who is not successful in overturning or modifying the settlement, shall be liable to the United States and any settling party for all reasonable attorney's fees and costs incurred in defending the settlement.

''(r) PROFESSIONAL SERVICES.—The Administrator has the authority to use the procedures set forth in section 109(e) to obtain the services of a neutral professional to assist in the conduct of settlement negotiations under this section, whether or not the neutral professional actually participates in such negotiations.'';

(5) in subsection (f)—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs addressed in the settlement, if all of the following conditions are met:

"(A) ASSURANCES OF PERFORMANCE.—Such a settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action authorized by the Administrator for the release or threat of release that is the subject of the settlement.

"(B) PROHIBITION ON HAZARDOUS SUBSTANCES AT CONCENTRATIONS ABOVE PROTECTIVE CONCENTRATION LEVELS.—The remedial action does not provide that any hazardous substances will remain at the facility at concentrations above the protective concentration levels established pursuant to section 121(d) after the final remedial action is completed.

"(C) PRIOR TO COMMENCEMENT OF LITIGATION.—The settlement agreement has been reached prior to the commencement of litigation

against the settling party under section 106 or 107 with respect to this facility.

"(D) WAIVER.—The settling party waives all contribution rights against other potentially responsible parties at the facility.

"(E) PREMIUM.—

"(i) IN GENERAL.—Subject to clauses (ii) and (iii), the settling party pays a premium that compensates for the risks of—

"(I) remedy failure;

"(II) future liability resulting from unknown conditions;

"(III) unanticipated increases in the cost of any uncompleted response action, unless the settling party has agreed to fully perform the response action; and

"(IV) the United States litigation risk as provided in section 129 with respect to persons who have not resolved their liability to the United States under this Act, unless all parties have settled their liability to the United States, or the settlement covers 100

percent of the United States response costs.

"(ii) PRESIDENTIAL DISCRETION.—Subject to clause (iii), the President shall have sole discretion to determine the appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President shall have discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.

"(iii) DE MINIMIS SETTLEMENTS.—In the case of a de minimis settlement, the amount of the premium shall not exceed the liability of the settling party for response costs.

"(F) SETTLEMENT OTHERWISE ACCEPTABLE.—The settlement is otherwise acceptable to the United States.

"(G) PUBLIC INTEREST.—The covenant not to sue is in the public interest.";

(B) by striking paragraph (3) and inserting the following new paragraph:

"(3) DISCRETIONARY COVENANTS.—For settlements under this title for which covenants under paragraph (1) are not available, the President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this title, if the covenant not to sue is in the public interest. Such covenants shall be subject to the requirements of paragraph (5). The President may include any conditions in such covenant not to sue, including the additional condition referred to in paragraph (5). In determining whether such a condition or covenant is in the public interest, the President shall consider the nature and scope of the commitment by the settling party under the settlement, the effectiveness and reliability of the response action involved, the nature of the risks remaining at the facility involved, the strength of evidence, the likelihood of cost recovery, the effectiveness and reliability of any response action or actions to restore, replace, or acquire the equivalent of injured, damaged, or lost natural resources, the extent to which performance standards are included in the settlement order or decree, the extent to which the technology used in the response action is demonstrated to be effective, and any

other factors relevant to the protection of human health and the environment.'';

(C) by striking paragraph (4);

(D) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(E) in paragraph (2), by striking ''remedial'' each place it appears and inserting ''response''; and

(F) in paragraph (5) (as so redesignated)—

(i) in subparagraph (A)—

(I) by striking ''remedial'' the first place it appears and inserting ''response'';

(II) by striking ''paragraph (2)'' in the first sentence and inserting ''paragraph (1) or (2)'';

(III) by striking ''de minimis settlements'' and inserting ''de minimis and other expedited settlements pursuant to subsection (g)''; and

(IV) by striking ''the President certifies under paragraph (3) that remedial action has been completed at the facility concerned'' and inserting ''that the response action that is the

subject of the settlement agreement is selected''; and

(ii) in subparagraph (B)—

(I) by striking ''In extraordinary circumstances, the'' and inserting ''The'';

(II) by striking ''those referred to in paragraph (4) and'';

(III) by striking ''if other terms,'' and inserting '', if the agreement containing the covenant not to sue provides for payment of a premium to provide sufficient contingency funding for possible remedy failure or any releases that may result from unknown conditions, and if other terms,''; and

(IV) by adding at the end the following new sentence: ''The President may, in his discretion, waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.'';

(6) in subsection (g)—

(A) by striking the subsection heading and all that follows through the end of subparagraph (A) of paragraph (1) and inserting the following:

"(g) EXPEDITED FINAL SETTLEMENT.—

"(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—The President shall, as promptly as possible, offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet 1 or more of the following conditions for eligibility for an expedited settlement:

"(A) DE MINIMIS CONTRIBUTION.—The potentially responsible party's individual contribution of hazardous substances at the facility is de minimis. For purposes of this subparagraph, the contribution of hazardous substance to a facility by a potentially responsible party is de minimis if—

"(i) the potentially responsible party's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the facility, and such individual contribution is presumed to be minimal

if it is 1 percent or less of the total volumetric contribution at the facility, unless the Administrator identifies a different threshold based on site-specific factors; and

''(ii) the potentially responsible party's contribution of materials containing hazardous substances does not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the facility.'';

(B) by inserting after subparagraph (B) of paragraph (1) the following:

''(C) MUNICIPAL SOLID WASTE OR SEWAGE SLUDGE.—The potentially responsible party's liability is based on paragraph (3) or (4) of section 107(a), and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. The Administrator may offer to settle the liability of generators and transporters of municipal solid waste or sewage sludge whose liability is limited pursuant to section 107(n)(2) for up to 10 percent of the total response costs at the facility.

"(D) ABILITY TO PAY.—

"(i) IN GENERAL.—The potentially responsible party is a natural person, a small business, or a municipality and demonstrates to the United States an inability or a limited ability to pay response costs. A party who enters into a settlement pursuant to this subparagraph shall be deemed to have resolved the liability of the party under this Act to the United States with respect to all matters addressed in the settlement.

"(ii) SMALL BUSINESSES.—For purposes of this subparagraph, each of the following provisions shall apply:

"(I) REQUEST BY SMALL BUSINESS.—In the case of a small business, the President shall take into consideration the ability to pay of the business, if requested by the business. The President shall consider the reasonable expectation of the ability of the small business to pay its total settlement amount and still maintain its basic business operations. Such consideration

shall include the business's overall financial condition and demonstrable constraints on its ability to raise revenues.

"(II) INFORMATION.—Any business requesting such consideration shall promptly provide the President with all relevant information needed to determine the business's ability to pay.

"(III) DEMONSTRATION.—The business shall demonstrate the amount of its ability to pay. If the business employs fewer than 20 employees, and has gross income revenues of less than $1,800,000 or a net profit margin of less than 2 percent, the President shall perform any analysis that may be required to demonstrate the business's ability to pay. The President, in his discretion, may perform such analysis for any other party or require such other party to perform the analysis.

"(IV) ALTERNATIVE PAYMENT METHODS.—If the President determines that a small business is unable

to pay its total settlement amount immediately, the President shall consider such alternative payment methods as may be necessary or appropriate. The methods to be considered may include installment payments, to be paid during a period not to exceed 10 years, and the provision of in-kind services.

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

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

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

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

"(IV) the amount of total expenses;

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

"(VI) per capita income and cost of living;

"(VII) real property values;

"(VIII) unemployment information; and

"(IX) population information;

of the municipality.

"(iv) EVALUATION OF IMPACT.—A municipality may also submit for consideration by the President an evaluation of the potential impact of the settlement on the provision of municipal services, and the feasibility of making delayed payments or payments over time. If a municipality asserts that it has additional environmental obligations besides its potential liability under this Act, the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations.

"(v) RISK OF DEFAULT OR VIOLATION.—A municipality may establish an inability to pay for purposes of this subparagraph through an affirmative showing that such payment of its liability under this Act would—

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

"(II) necessitate a violation of legal requirements or limitations of general applicability concerning the assumption and maintenance of fiscal municipal obligations.

"(vi) ABILITY TO PAY OF SMALL MUNICIPALITIES.—Any individual municipal owner or operator with a population of less than 100,000 persons (as measured by the

1990 census of population) shall be deemed to have an ability to pay an amount equal to no more than 10 percent of the total response costs for the facility. In any case in which more than 1 municipal owner or operator at a facility comes within the coverage of the first sentence of this clause, the 10 percent limitation on ability to pay shall apply to the aggregate ability to pay of all such owners or operators.

This paragraph shall not be construed to limit or affect the President's authority to evaluate any person's ability to pay or to enter into settlements with any person based on that person's inability to pay.'';

(C) by striking paragraphs (2) and (3) and inserting the following new paragraphs:

''(2) BASIS OF DETERMINATION.—Any person who enters into a settlement pursuant to this subsection shall provide any information requested by the President or by an allocator in accordance with section 129 or 104(e). Neither the determination by the President as to the eligibility of a party for a settlement pursuant to this section, nor the terms of the final settlement, shall be subject to judicial review. If the President determines that a party is not eligible

for a settlement pursuant to this section, the basis for that determination shall be explained in writing to any person who requests such a settlement.

''(3) ADDITIONAL FACTORS RELEVANT TO SETTLEMENTS WITH MUNICIPALITIES.—In any settlement with a municipality pursuant to this title, the President may take additional equitable factors into account in determining an appropriate settlement amount, including the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.'';

(D) in the second sentence of paragraph (4), by striking ''$500,000'' and inserting ''$5,000,000'';

(E) by striking paragraph (5); and

(F) by redesignating paragraph (6) as paragraph (5); and

(7) in subsection (h)—

(A) by striking the subsection heading and inserting the following: ''AUTHORITY TO SETTLE CLAIMS FOR FINES, CIVIL PENALTIES, PUNITIVE DAMAGES, AND COST RECOVERY.—'';

(B) in paragraph (1)—

(i) in the first sentence, by striking ''costs incurred'' and inserting ''past and future costs incurred or that may be incurred'';

(ii) by inserting after the first sentence the following new sentences: ''The head of any department or agency with the authority to seek fines, civil penalties, or punitive damages under this Act may consider, compromise, and settle a claim for any such fines, civil penalties, or punitive damages that may otherwise be assessed in civil administrative or judicial proceedings if the claim has not been referred to the Department of Justice for further action. If the total claim for fines, civil penalties, or punitive damages exceeds $300,000, such claim may be compromised and settled only with the prior written approval of the Attorney General.''; and

(iii) in the last sentence, by striking ''$500,000 (excluding interest), any claim referred to in the preceding sentence'' and inserting ''$5,000,000 (excluding interest),

any claim for response costs referred to in this subsection'';

(C) in paragraph (2), by striking ''$500,000 (excluding interest)'' and inserting ''$5,000,000 (excluding interest)''; and

(D) by striking paragraph (4).

SEC. 409. ALLOCATION PROCEDURES.

Title I (42 U.S.C. 9601 et seq.) (as amended by section 201) is further amended by adding at the end the following new section:

''SEC. 129. ALLOCATION AT MULTIPARTY FACILITIES.

''(a) SCOPE.—

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

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

initiate the allocation process under this section, if requested to do so by a potentially responsible party that has resolved its liability to the United States with respect to the remedial action or that is performing the remedial action pursuant to an order issued under section 106(a).

"(3) OTHER FACILITIES.—The Administrator, if the Administrator considers use of such process to be appropriate, may initiate the allocation process under this section for any facility, other than a facility referred to in paragraph (1) or (2), involving 2 or more potentially responsible parties.

"(4) EXCLUDED FACILITIES.—The allocation process under this section shall not apply to any of the following:

"(A) A facility for which there has been a final settlement, decree, or order, that determines all liability under this Act or allocated shares of response costs for all potentially responsible parties.

"(B) A facility for which a response action is being carried out by a State pursuant to the authority of this Act, unless otherwise provided in this Act.

"(C) A facility at which the Administrator determines that all of the potentially responsible parties are potentially liable as current or past owners or operators within the meaning of section 107(a)(1) or 107(a)(2), notwithstanding any other basis for liability. In determining whether this exclusion is applicable where an administrative or judicial proceeding with respect to the facility was commenced prior to February 3, 1994, the Administrator shall consider only those potentially responsible parties who were named as parties to such actions on or before such date.

"(5) MULTIPLE REMEDIAL ACTIONS.—An allocation under this section shall apply to all post-February 3, 1994, remedial actions selected for a facility (but not to those remedial actions subject to paragraph (2)), unless the allocator determines that the allocation should address only 1 or more of such remedial actions.

"(6) MULTIPLE FACILITIES.—An allocation under this section may address more than 1 facility where appropriate. Where appropriate, the Administrator may combine allocations performed pursuant

to this subsection for separate remedial actions at the same facility, or for different facilities.

"(7) EFFECT OF ALLOCATION.—An allocation pursuant to paragraph (2) or (3) shall not be construed—

"(A) to require payment of an orphan share pursuant to this section;

"(B) to require the conferral of reimbursement rights pursuant to this section; or

"(C) to permit the reopening or modification of any settlement or consent decree entered into under this Act prior to the date of the initiation of the allocation process.

"(8) SETTLEMENT OFFERS AFTER COMMENCEMENT OF LITIGATION.—The provisions of this section shall not apply to any offer of settlement made after expiration of the moratorium period under subsection (b).

"(b) MORATORIUM ON COMMENCEMENT OR CONTINUATION OF SUITS.—

"(1) MORATORIUM ON COMMENCEMENT.—No person may assert any claim for response costs under section 107 or commence any civil action seeking contribution regarding or recovery of any response costs in connection with a response action for which an al-

location is required under paragraph (1) or (2) of subsection (a), or for which the Administrator has initiated an allocation process under subsection (a)(3), until 90 days after issuance of the allocator's report under subsection (h) or (m), whichever is later.

"(2) STAY OF EXISTING ACTIONS.—If a claim for response costs under section 107 or an action seeking recovery of response costs in connection with a response action for which an allocation is to be performed under this section is pending—

"(A) upon the date of enactment of the Superfund Reform Act of 1994; or

"(B) upon initiation of an allocation process;

the action or claim shall be stayed until 90 days after the issuance of the latest allocator's report required by this section, unless the court determines that a stay will result in manifest injustice.

"(3) STATUTE OF LIMITATIONS.—Any applicable limitations period with respect to a cause of action subject to paragraph (1) shall be tolled from the earlier of the following until 180 days after the latest allocator's report required by this section has been issued by the allocator:

"(A) The date of listing of the facility on the National Priorities List.

"(B) The commencement of the allocation process pursuant to this section.

"(c) COMMENCEMENT OF ALLOCATION.—

"(1) RESPONSIBLE PARTY SEARCH.—At all facilities subject to this section, the Administrator shall, as soon as practicable, but not later than 60 days after the commencement of a remedial investigation, initiate a thorough investigation and search for all potentially responsible parties, using authorities of the Administrator under section 104. Any person may submit information to the Administrator concerning any potentially responsible party at the facility, and the Administrator shall consider such information in carrying out the responsible party search.

"(2) NOTIFICATION OF DE MINIMIS PARTIES.—As soon as practicable after receipt of sufficient information, but not later than 12 months after the commencement of the remedial investigation, the Administrator shall take each of the following actions:

"(A) NOTIFICATION.—The Administrator shall notify any potentially responsible party who the Administrator determines is eligible for an expedited final settlement in accordance with

section 122(g)(1)(A) of its eligibility, based on information available to the Administrator at the time the determination is made.

"(B) SETTLEMENT OFFER.—The Administrator shall submit a written settlement offer to each party notified under subparagraph (A) no later than 60 days after such notification. At the same time as the submission under the preceding sentence, the Administrator shall make available to the party, upon request, any nonconfidential information on which the Administrator based the settlement offer. If the settlement offer is based in whole or in part on confidential information, the Administrator shall so inform the party.

"(3) PRELIMINARY NOTICE TO OTHER PARTIES.—As soon as practicable after receipt of sufficient information, but not later than 18 months after the commencement of the remedial investigation, the Administrator shall—

"(A) notify any party not previously notified under paragraph (2) who the Administrator determines is eligible for an expedited final settlement in accordance with section 122(g)(1)(A) of its eligibility, based on information available

to the Administrator at the time the determination is made;

"(B) issue a list of all potentially responsible parties preliminarily identified by the Administrator to all such parties;

"(C) notify the public, in accordance with section 117(d), of the list of potentially responsible parties notified or listed pursuant to subparagraph (A) or (B), respectively; and

"(D) make available all responses to information requests, and a preliminary list of neutral parties whom the Administrator believes to be qualified to perform an allocation with respect to the facility (as determined in accordance with the factors described in subclauses (I) through (VI) of paragraph (6)(B)(ii)), or the factors described in paragraph (6)(B)(iii), as appropriate, as well as other relevant information concerning the facility and potentially responsible parties, to the notified parties, except that the Administrator shall not make available any privileged or confidential information, unless otherwise authorized by law.

The Administrator shall take the actions specified in this paragraph within 9 months after the date of en-

actment of this section for all facilities eligible for allocation under paragraph (1) or (2) of subsection (a) for which the responsible party search described in paragraph (1) was substantially complete prior to the date of the enactment of this section.

"(4) STATUS OF PARTIES.—At the time of proposing the list of potentially responsible parties under paragraph (3), the Administrator shall—

"(A) identify parties that are eligible for expedited settlement pursuant to section 122(g);

"(B) identify parties who are not eligible for such expedited settlement; and

"(C) identify parties for which the Administrator determines that there is insufficient information to ascertain whether or not the parties are entitled to such expedited settlement.

"(5) NOMINATION OF PARTIES.—

"(A) IDENTIFICATION.—For 60 days after information has been made available pursuant to paragraph (3)(C), the parties identified by the Administrator in such notification and members of the community shall have the opportunity to identify and nominate additional potentially responsible parties, to identify and nominate neutral parties whom the identified parties believe

to be qualified to perform an allocation with respect to the facility (as determined in accordance with the factors described in subclauses (I) through (VI) of paragraph (6)(B)(ii)), or the factors described in paragraph (6)(B)(iii), as appropriate, or otherwise provide information relevant to the facility or such potentially responsible parties. The 60-day period may be extended by the Administrator for an additional 30 days upon request of any person.

"(B) DISCLOSURE OF INFORMATION.—Any proposal for the addition of any potentially responsible party with respect to a facility shall be supported by a statement demonstrating that there is an adequate basis in law and fact to determine that the additional nominated party is potentially liable under this Act and by full disclosure to the Administrator, and simultaneously to the nominated party, of all available information concerning that party's liability under this Act and that party's contribution of hazardous substances to the facility. Not later than 30 days after the receipt by the nominated party of the information referred to in the preceding sentence, the nominated party may submit to the Admin-

istrator information relating to the nomination of the party as a potentially responsible party with respect to the facility.

"(6) LIST OF ALLOCATION PARTIES.—

"(A) LISTING AND IDENTIFICATION.—Within 60 days after the end of the period specified in paragraph (5)(A) for the proposal of additional parties, the Administrator shall—

"(i) issue a list of parties subject to the allocation process (referred to individually in this section as an 'allocation party');

"(ii) identify in writing, as to each of the proposed additional parties, which parties the Administrator has determined, in the Administrator's sole discretion—

"(I) to be eligible for expedited settlement pursuant to section 122(g);

"(II) not to be eligible for such expedited settlement; and

"(III) for whom insufficient information exists to determine whether or not the party is eligible for such expedited settlement; and

"(iii) identify (in writing supported by a brief explanation) those parties as to

which the Administrator has determined, in the Administrator's sole discretion, that there is an inadequate basis in law or fact to determine that the party is potentially liable under this Act.

For each party identified under clause (iii), the Administrator shall, to the extent practicable, further identify whether that party, if liable, would be eligible for such an expedited settlement. In making determinations under this subparagraph, the Administrator shall consider all available information, including any information provided pursuant to paragraph (5)(B).

''(B) LIST OF NEUTRAL PARTIES.—

''(i) IN GENERAL.—At the time of issuance of the list of parties provided for in subparagraph (A)(i), the Administrator shall provide the potentially responsible parties who received notice under this subsection with a list of neutral parties who are qualified to perform an allocation at the facility, as determined in accordance with clause (ii) or (iii), as appropriate. The Administrator shall include in the list not fewer than 5 neutral parties nominated by

any allocation party on the list issued under subparagraph (A)(i), except that the Administrator may reject any such party on the basis that the party fails to meet the requirements of clause (ii). The decision of the Administrator to reject such a party shall be accompanied by an explanation, but shall not be subject to judicial review.

''(ii) QUALIFICATIONS.—For purposes of clause (i), a party shall be considered qualified to perform an allocation if the Administrator determines, in the sole discretion of the Administrator, that the party—

''(I) is not an employee of the United States;

''(II) has an ability to exercise independent judgment;

''(III) has experience in the resolution of disputes;

''(IV) has experience in the application of this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or another law governing the remediation of hazardous substances;

"(V) is otherwise professionally qualified to perform an allocation; and

"(VI) has such other qualifications as the Administrator shall specify in guidelines published within 60 days after the date of enactment of this section.

"(iii) PRIOR ALLOCATIONS.—For purposes of clause (i), in determining the qualifications of a neutral party who has previously performed an allocation under this Act, the Administrator shall assume that the party is qualified if the party—

"(I) has performed any prior allocation under this Act in a timely manner and in accordance with this Act;

"(II) has not submitted any prior allocator's report under this Act that has been rejected by the Administrator and the Attorney General; and

"(III) meets the requirements of clause (ii).

"(C) DE MINIMIS PARTIES.—Parties potentially eligible for a settlement under section 122(g) (referred to in this section as 'de minimis

parties') that the Administrator identifies as entitled to expedited settlement pursuant to this section, shall not be subject to, or assigned a share in, the allocation (except to the extent required to determine the orphan share pursuant to subsection (h)), unless that party fails to reach an agreement with the President on settlement terms within 60 days after the offer involved is received.

"(D) INADEQUATE BASIS.—If the Administrator determines that there is an inadequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the Administrator, the determination shall have the following effect:

"(i) EXEMPT PARTIES.—With respect to a party that the Administrator has determined to be—

"(I) exempt from liability pursuant to section 107(n)(1); or

"(II) not liable on some other basis but who, if liable, would be eligible for such an expedited settlement;

the Administrator's determination that there is an inadequate basis in law or fact to conclude that party to be liable shall mean that the party is not subject to, and shall not be assigned a share in, the allocation.

"(ii) OTHER PARTIES.—With respect to all other parties, the Administrator's determination shall be accorded deference by the allocator. For such parties, the allocator shall consider the Administrator's determination together with the allocation factors listed in subsection (h)(2).

"(E) PROHIBITION ON JUDICIAL REVIEW.—The Administrator's determinations for purposes of this subsection shall not be subject to judicial review, nor shall any determination or explanation provided for purposes of an allocation be admissible for any purpose in an action commenced by the United States against the party that is the subject of the determination or any other party.

"(F) ZERO SHARE.—The allocator may assign a zero share to any party the allocator determines should receive such a share in consider-

ation of the allocation factors, including the Administrator's determinations regarding parties identified under subparagraph (C).

"(G) COSTS OF ZERO SHARE PARTY.—If a party is assigned a zero share by the allocator, the costs of the party of participating in the allocation process (including reasonable attorney's fees) shall be—

"(i) paid by the potentially responsible party who initially identified and nominated the zero share party for inclusion in the allocation process pursuant to paragraph (5); or

"(ii) if the Administrator initially identified the zero share party for inclusion in the allocation process pursuant to this subsection, funded from amounts made available under subsection (r)(2).

"(d) DE MINIMIS SETTLEMENT OFFER.—

"(1) SETTLEMENT OFFER.—Within 30 days after the final list of parties is issued pursuant to paragraph (6)(A)(i) of subsection (c), the Administrator shall submit a written settlement offer to any party identified as a potentially responsible party pursuant to this section who the Administrator has

determined is eligible for an expedited final settlement in accordance with section 122(g)(1)(A), and who has not entered into a settlement with the United States regarding the matters being addressed by the allocation. At the same time as the submission under the preceding sentence, the Administrator shall make available to the party, upon request, any nonconfidential information on which the Administrator based the settlement offer and that was not previously provided to the party. If the settlement offer is based in whole or in part on confidential information, the Administrator shall so inform the party.

"(2) PROHIBITION ON PREMIUM.—The President shall not include any premium in a settlement offer made pursuant to paragraph (1) more than 60 days after the date the offer is required to be made pursuant to paragraph (1) to a party that is a small business.

"(3) SETTLEMENT OFFERS TO SMALL BUSINESSES.—If a party is a small business that the President has determined is eligible for a settlement pursuant to section 122(g)(1)(A), and is not offered a settlement by the President within 120 days after the date the offer is required to be made pursuant to paragraph (1), the party shall have no further liabil-

ity under this Act for the costs of response actions at the facility for which the allocation is being performed, unless the party has failed to fully comply with information requests under this Act or failed to provide in a timely manner information to ascertain whether the party is entitled to such expedited settlement.

"(e) SELECTION OF ALLOCATOR.—

"(1) PROPOSAL OF ADDITIONAL CANDIDATES.—Any party identified by the Administrator under subsection (c) may propose any person whom such party determines to be qualified for selection as an allocator in addition to those proposed from the list provided under subsection (c)(6)(B).

"(2) SELECTION OF ALLOCATOR BY ALLOCATION PARTIES.—

"(A) SELECTION.—The allocation parties shall select an allocator from the list of allocators proposed by the Administrator under subsection (c)(6)(B) or from among names proposed under paragraph (1) by the following voting method with each allocation party having a single vote:

"(i) VOTING.—Each allocation party, and the Administrator (in casting a vote on behalf of each of the identified but insolvent

or defunct parties), shall numerically rank the individuals on the final list of proposed allocators, with a ranking of 1 indicating first preference, and forward its vote to the Administrator within 30 days after the issuance of the final list of allocators pursuant to subsection (c)(6)(B).

"(ii) DETERMINATION.—The proposed allocator who receives the lowest combined numerical score, taking into account all votes submitted to the Administrator pursuant to clause (i), and who agrees to serve as allocator, shall be selected as the allocator.

"(B) VOTE BY THE ADMINISTRATOR.—The Administrator may cast a vote on behalf of each of the identified but insolvent or defunct parties. Each allocation party shall otherwise have a single vote under this paragraph.

"(3) PEREMPTORY STRIKE.—The Administrator may reject any allocator selected by the allocation parties if the proposed allocator is not on the list provided under paragraph (6)(B) of subsection (c). Whenever the Administrator rejects a proposed allocator under this paragraph, the Administrator shall supply the reasons for such rejection to each alloca-

tion party. In the case of any such rejection the allocator shall be selected in order of lowest combined numerical score in accordance with paragraph (2).

"(4) SELECTION OF ALLOCATOR BY ENVIRONMENTAL PROTECTION AGENCY.—

"(A) IN GENERAL.—If the allocation parties do not select an allocator pursuant to paragraph (3) within 60 days after receipt of the list provided under subsection (c)(6)(B), the Administrator shall select the allocator, except as provided in subparagraph (B).

"(B) REJECTIONS BY THE ADMINISTRATOR.—If the Administrator rejects 4 allocators selected by the allocation parties, the Administrator shall initiate a new allocator selection process under this subsection. If the Administrator rejects 4 allocators selected by the allocation parties during the new allocator selection process, the parties shall select an allocator from the list described in subsection (c)(6)(B), or, if the parties fail to select the allocator, the Administrator shall select the allocator from the list.

"(f) CONTRACT.—Following selection of the allocator, the Administrator shall enter into a contract with the se-

lected allocator for the provision of allocation services, and immediately make available all responses to information requests, as well as other relevant information, concerning the facility and potentially responsible parties, to the allocator. The Administrator has the authority to use the procurement procedures set forth in section 109(e) to procure the services of a neutral professional for use in conducting allocation procedures under this section, whether or not the neutral professional actually conducts such allocation procedures. Nothing in this section shall be construed to require the Administrator to enter into such a contract with a person who has previously issued an allocator's report under this section that has been rejected by the Administrator and Attorney General or who has failed to comply with the requirements of this Act.

"(g) POTENTIALLY RESPONSIBLE PARTY SETTLEMENT.—At any time prior to the issuance of an allocator's report as described in subsection (h), any group of potentially responsible parties may submit to the allocator a private allocation proposal for the remedial action at the entire facility or a portion of the facility. If such private allocation proposal meets all of the following criteria, the allocator shall promptly adopt it as the allocator's report:

"(1) BINDING ALLOCATION.—The private allocation is a binding allocation of 100 percent of the past,

present, and future recoverable costs of the remedial action at the entire facility or a portion of the facility.

"(2) PROHIBITION ON ALLOCATION TO NONSIGNATORIES.—The private allocation does not allocate any share of response costs to any person who is not a signatory to the private allocation proposal or, in the case of any orphan share, unless the United States is a signatory to the private allocation proposal.

"(3) WAIVER.—The signatories to the private allocation proposal waive their contribution rights with respect to the remedial action at the entire facility or a portion of the facility against all other potentially responsible parties at the facility.

"(h) ALLOCATION DETERMINATION.—

"(1) SETTLEMENT AND REPORT.—Following issuance of the final list of allocation parties pursuant to subsection (c)(6)(A)(i), the allocator shall initiate and conduct an allocation process that shall culminate in the issuance of a written report, with a nonbinding, equitable allocation of the percentage shares of responsibility for response costs (other than operation and maintenance costs assumed by a State pursuant to section 104(c)(11)) at the facility (re-

ferred to in this section as a 'share') of all allocation parties, including an orphan share, for the facility, and provide such report to the allocation parties and the Administrator. Such report shall not disclose confidential or privileged information. The allocator shall provide the report to the allocation parties and the Administrator within 180 days after the issuance of the list of parties pursuant to subsection (c)(6)(A)(i) or the date the contract for allocation services is entered into pursuant to subsection (f), whichever is later. Upon request by the allocator, for good cause shown by any allocation party, the Administrator may grant the allocator additional time to complete the allocation, not to exceed 90 days.

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

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

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

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

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

"(E) The degree of care exercised by each allocation party with respect to the hazardous substance, taking into account the characteristics of the hazardous substance.

"(F) The cooperation of each allocation party in contributing to the response action and in providing complete and timely information during the allocation process.

"(G) Such other factors as the Administrator determines are appropriate by published guidance, which shall be consistent with this Act and shall be published only after notice and opportunity for public comment. An alleged failure of the allocator to consider 1 or more additional factors set forth in such guidance shall not be deemed to be unlawful conduct or procedural error for purposes of paragraph (2) or (3) of subsection (l).

"(3) CONDUCT OF ALLOCATION PROCESS.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this

section, including the allocation factors specified in paragraph (2). Each party to the allocation shall be afforded an opportunity to be heard (either orally or in writing, at the allocator's discretion), and an opportunity to comment on a draft allocator's report. The allocator shall not be required to respond to comments.

"(4) IDENTIFICATION OF ORPHAN SHARES.—

"(A) COMPONENTS OF ORPHAN SHARE.— The allocator may determine that a share for the facility is specifically attributable to an orphan share. The orphan share shall consist only of each of the following:

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

"(ii) The difference between—

"(I) the aggregate share that the allocator determines, on the basis of the information presented, is specifically attributable to allocation parties that

are contributors of municipal solid waste or sewage sludge subject to the limitations in section 122(g)(1)(C); and

"(II) the share actually assumed by those parties in any settlements with the United States pursuant to section 122(g), including the fair market value of in-kind services provided by a municipality.

"(iii) The difference between—

"(I) the aggregate share that the allocator determines, on the basis of information presented, to be specifically attributable to allocation parties with a limited ability to pay response costs; and

"(II) the share actually assumed by those parties in any settlements with the United States pursuant to section 122(g).

"(iv) The costs described in subsection (c)(6)(G) of each zero share party identified by the Administrator, as described in subsection (c)(6)(G)(ii).

"(v) Shares that the allocator determines, on the basis of the information presented, are specifically attributable to parties that, solely due to the application of subsection (d)(3), have no liability under this Act for the costs of response actions at the facility for which the allocation is being performed.

"(B) NOT INCLUDED IN ORPHAN SHARE.—Shares attributable to hazardous substances that the allocator cannot attribute to any identified party shall be distributed among the allocation parties, including the orphan share.

"(i) ANSWERS AND CERTIFICATIONS TO ALLOCATOR'S INFORMATION REQUESTS.—

"(1) SUBPOENAS AND INFORMATION REQUESTS.—Where necessary to assist in determining the allocation of shares, the allocator may request information or documents from any allocation party in accordance with paragraph (2) or (5) of section 104(e), and require by subpoena the attendance of persons or the production of documents, or other information in accordance with section 104(e)(9). Any allocation party to whom a request is directed shall include in the response a certification by a respon-

sible representative or authorized representative that satisfies the requirement of section 104(e)(3). The allocator may also request the Administrator to utilize the authorities of paragraph (2) and to exercise any information-gathering authority of the Administrator under this Act.

"(2) POWERS OF THE ALLOCATOR.—In addition to the information-gathering authority set forth in paragraph (1), the allocator shall have the authority—

"(A) to schedule meetings and require the attendance of allocation parties at such meetings;

"(B) to require that allocation parties wishing to present similar legal or factual positions consolidate their presentations;

"(C) to obtain or employ support services, including secretarial and clerical services, computer support services, and legal and investigative services; and

"(D) to take any other actions necessary to conduct a fair, efficient, and impartial allocation process.

"(j) CIVIL AND CRIMINAL PENALTIES.—

"(1) CIVIL PENALTIES.—Where the allocator issues an administrative subpoena or information or

document request pursuant to subsection (i), a party who unreasonably fails to comply with the subpoena or request shall be subject to a civil penalty not to exceed $25,000 for each day of noncompliance.

"(2) ENFORCEMENT.—The allocator may seek enforcement of an administrative subpoena or an information or document request pursuant to subsection (i)(1), and shall seek such enforcement by requesting that the Attorney General commence an action to enforce the subpoena or request. The Attorney General, within 30 days after receiving such request from the allocator, shall—

"(A) notify the allocator that the Attorney General will commence an action to enforce the subpoena or information or document request;

"(B) notify the allocator that the Attorney General will not seek enforcement of the subpoena or request because the subpoena or request is barred by law or would result in annoyance, embarrassment, oppression, or undue burden or expense, to the party to whom it was issued; or

"(C) notify the allocator that the Attorney General has insufficient information on which to determine whether an enforcement action is appropriate.

"(3) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days after a request for enforcement of the subpoena or information or document request, the allocator may retain counsel and commence a civil action to enforce the subpoena or information or document request.

"(4) PENALTY.—If the Attorney General or allocator prevails in an action to enforce the subpoena or information or document request, the party who failed to comply shall be subject to a sanction that may include civil penalties as provided in paragraph (1). The court shall require such party to pay the reasonable expenses, including attorney's fees, caused by the failure to comply, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

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

"(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

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

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

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

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

The documents and information in the document repository shall be available only to the parties to the allocation process for review and copying at their own expense, subject to the confidentiality provisions of paragraph (2). The Administrator shall provide to the allocator all information obtained under section 104(e), including information entitled to protection under section 1905 of title 18, United States Code, or exempt from disclosure pursuant to section 552(a) of title 5, United States Code. An allocation party shall not assert any privilege as a basis for withholding any information from the allocator.

"(2) CONFIDENTIALITY.—All documents and materials submitted to the allocator or placed in the document repository, together with the record of any in-

formation generated or obtained during the allocation process, shall be confidential. The allocator, each allocation party, the Administrator, and the Attorney General shall maintain such documents and materials, together with the record of any information generated or obtained during the allocation process, as confidential and are prohibited from using any such material in any other matter or proceeding, and the documents, materials, and record shall not be subject to disclosure under section 552 of title 5, United States Code. Such material shall not be discoverable or admissible in any other Federal, State, or local judicial, administrative, or legislative proceedings, except—

"(A) a new allocation process pursuant to subsection (m) or (n) for the same remedial action or operable unit; or

"(B) an initial allocation process for a different remedial action or operable unit at the same facility.

Nothing in this section shall be construed to authorize any person, including the allocator, to withhold any documents or information from Congress, or any duly authorized committee thereof, or limit in any manner the right of Congress, or any duly authorized commit-

tee thereof, to obtain such documents or information. Any person disclosing such documents or information to Congress shall notify the person who produced such documents or information of the fact of such disclosure.

"(3) DISCOVERABILITY AND ADMISSIBILITY.—Notwithstanding paragraph (2), if the original of any document or material submitted to the allocator or placed in the document repository was, in the hands of the party that provided it, otherwise discoverable or admissible, then such original document, if subsequently sought from such party, shall remain discoverable or admissible. If a fact generated or obtained during the allocation process was, in the hands of a witness, otherwise discoverable or admissible, such fact, if subsequently sought from such other party, shall remain discoverable or admissible.

"(4) NO WAIVER OF PRIVILEGE.—The submission of documents or information pursuant to the allocation process shall not be deemed to be a waiver of any privilege, applicable to such documents or information, under any Federal or State law or rule of discovery or evidence.

"(5) PROCEDURE WHEN DISCOVERY IS SOUGHT.—Any person, including the United States

and any Federal, State, or local agency, department, or instrumentality, receiving any request for a statement, document, or material submitted under this title, or for the record of any allocation proceeding, shall promptly notify the person who originally submitted such item and shall provide such submitting person the opportunity to assert and defend the confidentiality of such item. No person shall release or provide a copy of the item to any person not a party to such allocation, except as may be required by court order.

"(6) CIVIL PENALTY FOR VIOLATION OF CONFIDENTIALITY.—Any person who fails to maintain the confidentiality of any statement, document, or information generated or obtained during an allocation proceeding, or who releases any such statement, document, or information in violation of this section shall be subject to a civil penalty of up to $25,000 per violation. Such penalty may be sought in a civil action initiated by the Attorney General on behalf of the United States, or any allocation party adversely affected by the failure to maintain confidentiality.

"(l) REJECTION OF ALLOCATOR'S REPORT.—The Administrator and the Attorney General may reject an allocator's report if they jointly determine that—

"(1) no rational interpretation of the facts before the allocator, in light of the factors the allocator is required to consider, would form a reasonable basis for the shares assigned to the allocation parties;

"(2) the allocation was affected by bias, fraud, or unlawful conduct; or

"(3) the allocation was substantially and directly affected by procedural error.

The allocator's report may not be rejected after the United States has accepted a settlement offer (excluding de minimis or other expedited settlements) pursuant to the allocation. The Administrator and the Attorney General shall make any such determination with respect to rejection of the report within 180 days after the receipt of the first offer pursuant to the allocator's report. The determinations of the Administrator and the Attorney General under this subsection shall not be judicially reviewable. No such determination may be delegated to any officer or employee of the Environmental Protection Agency or the Department of Justice below the level of an Assistant Secretary or Acting Assistant Secretary with authority for implementing this Act at the Environmental Protection Agency or the Department of Justice.

"(m) SECOND ALLOCATION.—If the Administrator and Attorney General reject an allocator's report, the parties

shall select a new allocator pursuant to subsection (e) to perform, on an expedited basis, a new allocation based on the same record (but taking into account any correction for bias, fraud, unlawful conduct, or procedural error that served as the basis for the rejection) available to the first allocator. The moratorium on commencement of litigation and tolling of statutes of limitation set forth in paragraphs (1) through (3) of subsection (b) shall be extended until 90 days after the issuance of the second allocator's report. If the Administrator and Attorney General reject the second allocator's report the President may, following the expiration of the moratorium on commencement of litigation, commence an action under section 107.

"(n) NEW INFORMATION.—Any settling party, including the United States, may seek from the Administrator a new allocation pursuant to subsection (h), where that party presents to the Administrator clear and convincing information or the United States otherwise determines on the basis of clear and convincing information that—

"(1) the allocator did not have information concerning 35 percent or more of the materials containing hazardous substances at the facility, and that this information has been discovered subsequent to the issuance of the allocator's report; or

"(2) the allocator did not have information concerning a person not subject to the allocation who contributed 15 percent or more of materials containing hazardous substances at the facility, and that this information has been discovered subsequent to the issuance of the allocator's report.

Amendments to the allocator's report may be made with the written consent of all the allocation parties and of the Administrator. Determinations by the United States pursuant to this subsection shall not be subject to judicial review.

"(o) SETTLEMENT FOLLOWING ALLOCATION.—

"(1) OBLIGATIONS OF THE UNITED STATES.—If, within 90 days after issuance of the latest allocator's report required under this section, an allocation party—

"(A) makes a written offer to settle with respect to the response action involved based on the share specified by the allocator and on the additional terms and conditions of settlement (other than the percentage share of liability) that are acceptable to the President; and

"(B) fully complied with any information requests under this Act;

the President shall not seek a higher share of response costs other than the premiums authorized by this sec-

tion, unless the President has rejected the offer on a basis other than the percentage share of liability, or unless the Administrator and the Attorney General have rejected the allocator's report pursuant to subsection (l).

"(2) EXPLANATION OF REFUSAL TO SETTLE.—If the Administrator and the Attorney General determine not to settle on the basis of the allocation, they shall provide the allocation parties and members of the community with a written explanation of their determination.

"(3) SETTLEMENT PROVISIONS.—Settlements based on allocated shares shall include each of the following:

"(A) A waiver of contribution rights against all parties who are potentially responsible parties for the response action addressed by the settlement, as well as a waiver of any rights to challenge any settlement the President enters into with any other potentially responsible party regarding the response action addressed by the settlement.

"(B) Covenants not to sue, in accordance with section 122(f), and provisions regarding performance or adequate assurance of perform-

ance of response actions addressed in the settlement.

"(C) A premium determined on a site-specific basis and subject to the limitations set forth in paragraph (4), that compensates for the litigation risk of the United States with respect to potentially responsible parties who have not resolved their liability under this Act to the United States, except that no such premium shall apply if all parties settle or the settlement covers 100 percent of response costs.

"(D) Contribution protection, in accordance with section 113(f), regarding matters addressed in the settlement, which settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but reduces the potential liability of the other parties by the amount of the settlement.

"(E) Provisions through which the settling parties shall receive reimbursement from the Fund for any response costs incurred by such parties in excess of the aggregate of their allocated share and any premiums required by the settlement, which right to reimbursement shall not be contingent on the recovery by the United

States of response costs from any responsible person not a party to any settlement with the United States under this Act.

"(F) A commitment that the United States shall pay for the orphan share, if any, backed by the full faith and credit of the United States.

"(4) LIMITS ON PREMIUMS.—The premiums authorized by paragraph (3)(C) for litigation risk shall not exceed the following:

"(A) Five percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for 80 percent or more of responsibility at the facility.

"(B) Ten percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 60 percent and less than 80 percent of responsibility at the facility.

"(C) Fifteen percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 40 percent and less than 60 percent of responsibility at the facility.

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

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

"(5) AUTHORIZATION OF REIMBURSEMENT.—In any settlement in which a party agrees to perform response work in excess of its share, the Administrator shall have authority to reimburse such settling party under this section pursuant to such reasonable procedures as the Administrator may prescribe.

"(6) FINANCIAL CONTROLS ON REIMBURSEMENT.—The Administrator shall require all claims

for reimbursement under this section to be supported by—

"(A) documentation of actual costs incurred; and

"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable, necessary, and consistent with the national contingency plan.

The Administrator may require independent auditing of any such claim for reimbursement and may require other information to support such auditing by the independent auditor.

"(7) SETTLEMENTS WITH SMALL BUSINESS PARTIES.—Section 122(g)(1)(D)(ii) shall apply to a small business allocation party that makes a written offer to settle pursuant to paragraph (1)(A) and that the President determines has an inability or a limited ability to pay the allocated share of the party.

"(p) POST-SETTLEMENT LITIGATION.—

"(1) IN GENERAL.—The United States may commence an action under section 107 against any person liable under that section that has not resolved such liability to the United States following an allocation, on or after 90 days following issuance of the latest allocator's report required under this section. In

any such action, such person shall be subject to liability in accordance with section 107 for all response costs at the facility involved not recovered through settlements with other persons. Such recoverable costs shall include any federally funded orphan share identified in accordance with subsection (h), but shall not include any shares allocated to Federal, State, or local governmental agencies, departments, or instrumentalities because of their liability under section 107. Defendants in any such action may implead only allocation parties who did not resolve their liability under this Act to the United States. The Administrator and the Attorney General shall issue guidelines to ensure that the relief sought against de minimis parties under principles of joint and several liability will not be grossly disproportionate to their contribution to the facility. The application of such guidelines is committed to the discretion of the Administrator and the Attorney General.

"(2) CERTIFICATION.—In commencing any action under section 107 following allocation, the Attorney General shall certify, in the complaint, that the United States has been unable to reach a settlement with the defendant that would be in the best interests

of the United States. This certification shall not be subject to judicial review.

"(3) DEFENDANTS.—For response costs for which an allocation has been completed under this section, no person may commence an action under section 107 or otherwise seek contribution against any person who was not identified as an allocation party pursuant to subsection (c)(6)(A)(i) or subsequently identified as a potentially liable party under subsection (n) (relating to new information).

"(4) ADMISSIBILITY OF ALLOCATOR'S REPORT.—The allocator's report shall not be admissible in any court for any purpose, except as set forth in this section. The allocator's report, subject to the rules and discretion of the court, may be admissible solely for the purpose of assisting the court in making an equitable allocation of response costs among the relative shares of nonsettling liable parties.

"(5) COSTS OF ALLOCATION PROCEDURE.—

"(A) INCLUDED AS COSTS OF RESPONSE.—The costs of implementing the allocation process set forth in this section, including reasonable fees and expenses of the allocator, shall be considered necessary costs of response for purposes of this Act.

"(B) ORPHAN SHARE.—The amount of orphan shares identified by the allocator pursuant to subsection (e)(4) shall be considered necessary costs of response for purposes of this Act, and shall be recoverable from liable parties who do not resolve their liability under this Act on the basis of the allocation.

"(6) REJECTION OF SHARE DETERMINATION.—In any action by the United States under this title, if the United States has rejected an offer of settlement that is consistent with subsection (o)(1)(A) and that was presented to the United States prior to the commencement of the action, the offeror shall be entitled to recover from the United States the offeror's reasonable costs of defending the action after the making of the offer (including reasonable attorneys' fees) if the ultimate resolution of liability or allocation of costs with respect to the offeror (taking into account all settlements and reimbursements with respect to the facility other than those attributable to insurance or indemnification), is as, or more, favorable to the offeror than the offer based on the allocation involved.

"(q) REIMBURSEMENT FOR UNILATERAL ADMINISTRATIVE ORDER PERFORMANCE.—

"(1) REIMBURSEMENT.—Parties who satisfactorily perform work under an administrative order issued under section 106(a) with respect to a remedial action for which an allocation is required by subsection (a)(1), shall be entitled to reimbursement for the reasonable and necessary costs of work they perform that is consistent with the national contingency plan and is in excess of the share assigned to them in the allocation in accordance with the provisions of this section, if the allocator's report is not rejected by the United States and, at the end of the moratorium following the allocation, the performing party, in consideration of such reimbursement—

"(A) agrees not to contest liability for all response costs not inconsistent with the national contingency plan to the extent of the allocated share;

"(B) receives no covenant not to sue;

"(C) agrees that its reimbursement shall be reduced by an amount equal to the maximum litigation risk premium provided for in subsection (o)(4) based on the total allocated shares of the allocation parties who have not reached settlements with the United States by the end of

the moratorium on commencement of actions provided in subsection (b); and

"(D) waives contribution rights against all parties who are potentially responsible parties for the remedial action, as well as waives any rights to challenge any settlement the President enters into with any other such potentially responsible party.

"(2) OFFSET.—Any and all reimbursement provided to such a performing party for such work in excess of its share is subject to equitable offset or reduction by the Administrator upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.

"(3) TIME OF PAYMENT.—Any and all reimbursement to such a performing party for such work in excess of its share shall be paid after the work is completed, but no sooner than completion of the construction of the remedial action.

"(4) LIMIT ON ORPHAN SHARE FUNDING.—The amount of orphan share funding available to the performing party shall be further limited as follows:

"(A) WAIVER OF RIGHT TO CHALLENGE.—A performing party who fully waives the right to challenge remedy selection at the end of the mor-

atorium following allocation shall be entitled to full reimbursement of reasonable and necessary costs incurred consistent with the national contingency plan in excess of the party's share and attributable by the allocator to the orphan share paid in nominal dollars after the work is completed, but no sooner than completion of the construction of the remedial action.

"(B) RETENTION OF RIGHT TO CHALLENGE.—A performing party who retains the right to challenge the remedy shall be reimbursed for reasonable and necessary costs incurred consistent with the national contingency plan that represent 90 percent of orphan share funding, paid in nominal dollars after the work is completed, but no sooner than completion of the construction of the remedial action, unless the orphan share is less than 20 percent of responsibility at the site, in which case such parties shall be reimbursed only 80 percent of the orphan share.

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

"(5) INTEREST.—Reimbursement for reasonable and necessary costs incurred consistent with the national contingency plan in excess of the performing party's allocated share but that is not attributable to the orphan share shall be paid in nominal dollars after the work is completed, but no sooner than completion of the construction of the remedial action, and the performing party is entitled to all interest (prejudgment and postjudgment, whether recovered from a party or earned in a site account) that has accrued on money recovered by the United States from other parties for such work at the time construction of the remedy is completed.

"(6) FINANCIAL CONTROLS ON REIMBURSEMENT.—The Administrator shall require that all claims for such reimbursement be supported by—

"(A) documentation of actual costs incurred; and

"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable, necessary, and incurred consistent with the national contingency plan.

The Administrator may require independent auditing of any such claim for reimbursement and may require

other information to support such auditing by the independent auditor.

"(r) FUNDING OF ORPHAN SHARES.—

"(1) LIMITATION ON OBLIGATIONS.—For each settlement agreement entered into pursuant to subsection (o) that includes an orphan share, the United States shall reimburse the allocation parties, including any Federal agency, for costs incurred and equitably attributable to the orphan share. In no case shall the United States enter into obligations for any fiscal year for the sum of the costs, and interest determined under paragraph (3), totalling in excess of $300,000,000, plus any remaining unobligated balance of funds made available under paragraph (2) from any previous fiscal year. In no case shall the total obligations for the costs and the interest exceed $1,500,000,000 for the period beginning October 1, 1994, and ending September 30, 1999.

"(2) LIMITATION ON APPROPRIATIONS.—Appropriations shall be made available to the President from the Fund in an amount not to exceed $300,000,000 for fiscal year 1996 and for each fiscal year thereafter for the payments required by paragraph (1), to remain available until expended.

"(3) REIMBURSEMENT DELAYS.—Notwithstanding section 1341 of title 31, United States Code, any sums found to be due and owing under paragraph (1) in excess of amounts appropriated for a fiscal year for agreements described in such paragraph shall be paid from amounts made available under paragraph (2) for subsequent fiscal years. Such payments shall include interest on the unpaid balance of the sums at a rate equal to the rate of interest on 1-year Treasury bills.

"(4) TERMS AND CONDITIONS.—Reimbursements made under this subsection shall be subject to such terms and conditions as the President may prescribe.

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

"(t) ROLE OF FEDERAL AGENCIES.—Federal departments, agencies, or instrumentalities, or their agents, that are identified as potentially responsible parties under this Act shall be subject to, and be entitled to the benefits of,

the allocation process provided by this section to the same extent as any other party.

"(u) REPRESENTATION OF THE UNITED STATES AND OF A STATE.—The Administrator and the Attorney General, and a State that is exercising authority delegated under section 127, with respect to the facility that is the subject of the allocation process shall be entitled to review all documents related to, and participate in any phase of, the allocation process.

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

"(w) SAVINGS PROVISIONS.—Nothing in this section shall in any way limit or affect the President's authority to exercise the powers conferred by section 103, 104, 105, 106, or 122, to commence an action against a party where there is a contemporaneous filing of a judicial consent decree resolving that party's liability, or to file a proof of claim or take other action in a proceeding under title 11, United States Code. The procedures established in this section shall not be construed to modify or affect in any way the principles of retroactive, strict, joint and several liabil-

ity under this title. Nothing in this section shall limit or affect—

"(1) the Administrator's obligation to perform an allocation for facilities that have been the subject of partial or expedited settlements;

"(2) the ability of a potentially responsible party at a facility to resolve its liability under this Act to the United States or other parties at any time before initiation or completion of the allocation process;

"(3) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree that is issued, signed, lodged, or entered with respect to liability under this Act or that authorizes modification of any such order, judgment, or decree; or

"(4) the validity, enforceability, finality, or merits of any preexisting (as of the date of enactment of this section) contract or agreement relating to any allocation of responsibility or any sharing of response costs under this Act.

"(x) RESPONSE ACTION CONTRACTOR.—Notwithstanding any provision of this section, any liability of a response action contractor under this Act shall be determined in accordance with section 119, to the extent such liability arises

from a person's activities as a response action contractor at a facility.''.

SEC. 410. CLARIFICATION OF LIABILITY FOR RECYCLING TRANSACTIONS.

(a) PURPOSES.—The purposes of this section and the amendments made by this section are—

(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

(2) to level the playing field between the use of virgin materials and recycled materials; and

(3) to remove the disincentives and impediments to recycling because of potential Superfund liability.

(b) CLARIFICATION OF LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 FOR RECYCLING TRANSACTIONS.—Title I (42 U.S.C. 9601 et seq.) (as amended by sections 201 and 409) is further amended by adding at the end the following new section:

''SEC. 130. RECYCLING TRANSACTIONS.

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

paragraph (3) or (4) of section 107(a) with respect to the material.

"(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap metal, and spent lead-acid batteries, spent nickel-cadmium batteries, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap material.

"(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—For purposes of this section, a transaction involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber shall be considered to be arranging for the recycling of recyclable material if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

"(1) GRADE.—The recyclable material met a commercial specification grade.

"(2) MARKET.—A market existed for the recyclable material.

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

"(4) REPLACEMENT OR SUBSTITUTE.—The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

"(5) CONSUMING FACILITY.—In the case of a transaction occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (referred to in this section as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of each Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For purposes of this paragraph, 'rea-

sonable care' shall be determined using criteria that include—

"(A) the price paid in the recycling transaction;

"(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, storage, or other management activities associated with the recyclable material; and

"(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or other management activity associated with the recyclable materials shall be considered to be a substantive provision.

"(d) TRANSACTIONS INVOLVING SCRAP METAL.—

"(1) ARRANGING FOR THE RECYCLING OF RECYCLABLE MATERIAL.—For purposes of this section, a transaction involving scrap metal shall be considered to be arranging for the recycling of recyclable material if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

"(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

"(B) the person was in compliance with the applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) subsequent to the date of enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

"(C) the person did not melt the scrap metal prior to the transaction.

"(2) MELT.—For purposes of paragraph (1)(C), the term 'melt', used with respect to scrap metal, does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').

"(3) SCRAP METAL.—For purposes of this subsection, the term 'scrap metal' means bits and pieces of metal parts (such as bars, turnings, rods, sheets, and wire) or metal pieces that may be combined together with bolts or soldering (such as radiators, scrap automobiles, and railroad boxcars) that when worn or superfluous can be recycled, except for—

"(A) scrap metals that the Administrator excludes from this definition by regulation; and

"(B) steel shipping containers of capacities of not less than 30 liters and not more than 3000 liters, whether intact or not, having any hazardous substances (but not metal bits or pieces) contained in or adhering thereto.

"(e) TRANSACTIONS INVOLVING BATTERIES.—For purposes of this section, a transaction involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be considered to be arranging for the recycling of recyclable material if the person who arranged for the transaction (by selling recyclable material or otherwise

arranging for the recycling of recyclable material) demonstrates by a preponderance of the evidence that at the time of the transaction—

"(1) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries but did not recover the valuable components of such batteries; and

"(2)(A) with respect to a transaction involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

"(B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with such regulations or standards that are applicable; or

"(C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with

the recycling of such batteries, and the person was in compliance with such regulations or standards that are applicable.

"(f) EXCLUSIONS.—

"(1) IN GENERAL.—The exemptions set forth in subsections (c), (d), and (e) shall not apply if—

"(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction—

"(i) that the recyclable material would not be recycled;

"(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or

"(iii) for transactions occurring during the 90-day period beginning on the date of enactment of this section, that the consuming facility was not in compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other manage-

ment activities associated with the recyclable material;

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

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

"(2) BASIS FOR BELIEF.—For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that includes the size of the person's business, customary industry practices, the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

"(3) REQUIREMENT.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material shall be considered to be a substantive provision.

"(g) EFFECT ON OTHER LIABILITY.—Nothing in this section shall be considered to affect the liability of a person under paragraph (1) or (2) of section 107(a).

"(h) POLYCHLORINATED BIPHENYLS.—An exemption under this section shall not apply if the recyclable material contained polychlorinated biphenyls in excess of 50 parts per million or any new standard promulgated after the date of enactment of this section pursuant to applicable Federal laws.

"(i) REGULATIONS.—The Administrator shall have the authority, under section 115, to promulgate additional regulations concerning this section.

"(j) EFFECT ON PENDING OR CONCLUDED ACTIONS.—The exemptions provided in this section for a party shall not affect any judicial or administrative action that is concluded with respect to the party prior to February 3, 1994, or any pending (as of the date of enactment of this section) judicial action initiated prior to February 3, 1994. The exemptions provided in this section shall not be available with respect to a facility if a potentially responsible party whose liability at the facility based on paragraph (3) or (4) of section 107(a) has resolved the liability with the United States prior to February 3, 1994.

"(k) LIABILITY FOR ATTORNEY'S FEES FOR CERTAIN ACTIONS.—Any person who commences an action in con-

tribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

"(l) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—

"(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

"(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.".

SEC. 411. LENDER AND FIDUCIARY LIABILITY.

(a) CERCLA AMENDMENT.—Title I (42 U.S.C. 9601 et seq.) (as amended by sections 201, 409, and 410(b)) is further amended by adding at the end the following new sections:

"SEC. 131. INSURED DEPOSITORY INSTITUTION AND OTHER LENDER LIABILITY.

"(a) LIABILITY LIMITATIONS.—The liability of an insured depository institution or other lender that is liable under any other provision of this Act for the release or

threatened release of a hazardous substance at, from, or in connection with property—

"(1) acquired through foreclosure;

"(2) subject to a security interest held by such institution or lender;

"(3) held by a lessor pursuant to the terms of an extension of credit; or

"(4) subject to financial control or financial oversight pursuant to the terms of an extension of credit;

shall be limited to the actual benefit conferred on such institution or lender by a removal, remedial, or other response action undertaken by another party.

"(b) ACTUAL BENEFIT.—For purposes of this section, the actual benefit conferred on an institution or lender by a removal, remedial, or other response action shall be equal to the net gain, if any, realized by such institution or lender due to such action. For purposes of this subsection, the 'net gain' shall not exceed the amount realized by the institution or lender on the sale of property less acquisition, holding, and disposition costs.

"(c) EXCLUSION.—Notwithstanding subsection (a), but subject to the provisions of section 107(d), a depository institution or lender that caused or contributed to the release

of a hazardous substance may be liable for a response action pertaining to that release.

"(d) ENVIRONMENTAL ASSESSMENTS.—

"(1) DEPOSITORY INSTITUTIONS.—The Administrator, in consultation with the Secretary of the Treasury, shall issue and publish guidelines for insured depository institutions and other lenders to develop and implement adequate procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The requirements may provide for exclusions or different types of environmental assessments as may be appropriate under the circumstances in order to account for the levels of risk that may be posed by different classes of collateral. Each Federal agency having the authority under Federal law to make an examination of an insured depository institution shall take compliance with the guidelines into account in performing such examinations.

"(2) FINAL GUIDELINES.—Final guidelines required to be issued pursuant to paragraph (1) shall be issued not later than 180 days after the date of enactment of this section.

"(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) PROPERTY ACQUIRED THROUGH FORECLOSURE.—

"(A) IN GENERAL.—The term 'property acquired through foreclosure' means property acquired, or the act of acquiring property, from a nonaffiliated party by an insured depository institution or other lender—

"(i) through purchase at sales under judgment or decree, power of sales, nonjudicial foreclosure sales, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(ii) through conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(iii) through any other formal or informal manner by which the insured depository institution or other lender temporarily acquires, for subsequent disposition, posses-

sion of collateral in order to protect its interest.

"(B) EXCLUSION.—Property is not acquired through foreclosure if the insured depository institution or lender does not seek to sell or otherwise divest such property at the earliest practical, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

"(2) LENDER.—The term 'lender' means—

"(A) a person (other than an insured depository institution) that—

"(i) makes a bona fide extension of credit to or takes a security interest from a nonaffiliated party; and

"(ii) substantially and materially complies with the environmental assessment requirements imposed under subsection (d), after final guidelines under that subsection have been issued;

and includes a successor or assign of any such person;

"(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Cor-

poration, the Federal Agricultural Mortgage Corporation, or other entity that in a bona fide manner is engaged in the business of buying or selling loans or interests therein, if such Association, Corporation, or entity requires institutions from which it purchases loans (or other obligations) to comply substantially and materially with the requirements of subsection (d), after final guidelines under that subsection have been issued;

''(C) any person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to nonaffiliated parties; and

''(D) any person regularly engaged in the business of providing title insurance who acquires the property as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

''(3) EXTENSION OF CREDIT.—The term 'extension of credit' includes a lease finance transaction—

''(A) in which the lessor does not initially select the leased property and does not during the

lease term control the daily operations or maintenance of the property; or

"(B) that conforms with regulations issued by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or the appropriate State banking regulatory authority.

"(4) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), and shall also include—

"(A) an insured credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

"(B) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

"(C) a leasing or trust company that is an affiliate of an insured depository institution (as such term is defined in this paragraph).

"(5) SECURITY INTEREST.—The term 'security interest' includes rights under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, lease, or any other

right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.

"(f) SAVINGS CLAUSE.—Nothing in this section shall—

"(1) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party subject to the provisions of this section;

"(2) be construed to create any liability for any party; or

"(3) create a private right of action against an insured depository institution or lender or against any Federal agency that regulates an insured depository institution or other lender.

"SEC. 132. LIABILITY OF FIDUCIARIES.

"(a) IN GENERAL.—The liability of a fiduciary that is liable under any other provision of this Act for the release or threatened release of a hazardous substance at, from, or in connection with property held in a fiduciary capacity, may not exceed the assets held in such fiduciary capacity that are available to indemnify the fiduciary.

"(b) EXCLUSION.—Subsection (a) does not apply to the extent that a person is liable under this Act independent

of such person's ownership or actions taken in a fiduciary capacity.

"(c) LIMITATION.—Notwithstanding subsections (a) and (d), a fiduciary whose failure to exercise due care caused or contributed to the release of a hazardous substance may have liability in its personal capacity for a response action pertaining to that release.

"(d) SAFE HARBOR.—A fiduciary shall not be liable in its personal capacity under this Act for—

"(1) undertaking or directing another to undertake a response action under section 107(d)(1) or under the direction of an on-scene coordinator;

"(2) undertaking or directing another to undertake any other lawful means of addressing hazardous substances in connection with the property;

"(3) terminating the fiduciary relationship;

"(4) including in the terms of the fiduciary agreement covenants, warranties, or other terms and conditions that relate to compliance with environmental laws, or monitoring or enforcing such terms;

"(5) monitoring or undertaking 1 or more inspections of the property;

"(6) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settler or beneficiary;

"(7) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship; or

"(8) declining to take any of the actions described in paragraphs (2) through (7).

"(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) FIDUCIARY.—The term 'fiduciary'—

"(A) means a person acting for the benefit of another party as a bona fide—

"(i) trustee;

"(ii) executor;

"(iii) administrator;

"(iv) custodian;

"(v) guardian of estates or guardian ad litem;

"(vi) receiver;

"(vii) conservator;

"(viii) committee of estates of lunatics or other disabled persons;

"(ix) personal representative; or

"(x) representative in any other capacity that the Administrator, pursuant to public notice, determines to be similar to those listed in clauses (i) through (ix); and

"(B) does not include any person who is acting as a fiduciary with respect to a trust or other fiduciary estate that—

"(i) was not created as part of, or to facilitate, 1 or more estate plans or pursuant to the incapacity of a natural person; and

"(ii) was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit.

"(2) FIDUCIARY CAPACITY.—A person acts in a 'fiduciary capacity' with respect to property if the person holds title to such property, or otherwise has control of or an interest in such property, pursuant to the exercise of such person's responsibilities as a fiduciary.

"(3) FEDERAL BANKING OR LENDING AGENCY.—The term 'Federal banking or lending agency' has the same meaning as in section 44 of the Federal Deposit Insurance Act.

"(f) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person subject to the provisions of this section. Nothing in this section shall create any liability for any party. Nothing in

this section shall create a private right of action against a fiduciary or any other party.

''(g) INAPPLICABILITY TO FEDERAL BANKING AND LENDING AGENCIES.—Nothing in this section shall be construed to apply to a Federal banking or lending agency.

''(h) NO EFFECT ON CERTAIN PERSONS.—Nothing in this section shall be construed to affect the liability, if any, of a person who—

''(1)(A) acts in a capacity other than a fiduciary capacity; and

''(B) directly or indirectly benefits from a trust or fiduciary relationship; or

''(2) who—

''(A) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

''(B) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

''(i) REGULATORY AUTHORITY.—The Administrator may promulgate regulations to implement this section.''.

(b) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 44. FEDERAL BANKING AND LENDING AGENCY LIABILITY.

"(a) GOVERNMENTAL ENTITIES.—

"(1) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (3), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of a hazardous substance at or from property (including any right or interest therein) acquired—

"(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries;

"(B) in connection with the provision of loans, discounts, advances, guarantees, insurance or other financial assistance; or

"(C) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(2) APPLICATION OF STATE LAW.—Nothing in this section shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, except that liability under State law shall

not exceed the value of the agency's interest in the asset giving rise to such liability. Nothing in this section shall be construed to prevent a Federal banking or lending agency from agreeing with a State to transfer property to such State in lieu of any liability that might otherwise be imposed under State law.

"(3) LIMITATION.—Notwithstanding paragraph (1), and subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a Federal banking or lending agency that caused or contributed to the release of a hazardous substance may be liable for removal, remedial, or other response action pertaining to that release.

"(4) SUBSEQUENT PURCHASER.—The immunity provided by paragraph (1) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(A) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(B) is or was affiliated with or related to a party described in subparagraph (A);

"(C) fails to agree to take reasonable steps necessary to remedy the release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable environmental laws; or

"(D) causes or contributes to any additional release or threatened release on the property.

"(5) FEDERAL OR STATE ACTION.—Notwithstanding paragraph (4), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in paragraph (4)(C), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. Any such reimbursement shall not exceed the increase in the fair market value of the property attributable to the remedial action.

"(b) LIEN EXEMPTION.—Notwithstanding any other provision of law, any property held by a subsequent purchaser referred to in subsection (a)(4) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of a hazardous substance existing at the time of the transfer.

"(c) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in subsection (a)(1).

"(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) FEDERAL BANKING OR LENDING AGENCY.—The term 'Federal banking or lending agency' means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees.

''(2) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

''(3) RELEASE.—The term 'release' has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and includes the use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

''(e) SAVINGS CLAUSE.—Nothing in this section shall—

''(1) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party, subject to the provisions of this section;

''(2) be construed to create any liability for any party; or

''(3) create a private right of action against an insured depository institution or lender or against a Federal banking or lending agency.''.

(c) DEFINITION OF PARTICIPATION IN MANAGEMENT.—Section 101(20) (42 U.S.C. 9601(20)) (as amended by section 605(a)(3)(C)) is further amended—

(1) in subparagraph (A), by striking the second sentence; and

(2) by adding at the end the following:

"(F) EXCLUSION OF PERSONS NOT PARTICIPANTS IN MANAGEMENT.—

"(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY INTEREST.—The term 'owner or operator' does not include a person who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect such persons's security interest in the vessel or facility.

"(ii) NONPARTICIPATION IN MANAGEMENT PRIOR TO FORECLOSURE.—The term 'owner or operator' does not include a person who did not participate in management of a vessel or facility prior to foreclosure, even if such person forecloses on such vessel or facility, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, or undertakes any response action under section 107(d)(1) or under the direction of an on-scene coordi-

nator, with respect to the vessel or facility, or takes other measures to preserve, protect, or prepare the vessel or facility prior to sale or disposition, if such person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest such vessel or facility at the earliest practical, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

"(G) PARTICIPATION IN MANAGEMENT.—For purposes of subparagraph (F)—

"(i) the term 'participate in management' means actually participating in the management or operational affairs of the vessel or facility, and does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations;

"(ii) a person shall be considered to 'participate in management' while the borrower is still in possession of the vessel or facility encumbered by the security interest only if such person—

"(I) exercises decisionmaking control over the environmental compliance of a borrower, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices of the borrower; or

"(II) exercises control at a level comparable to that of a manager of the enterprise of the borrower, such that the person has assumed or manifested responsibility for the overall management of the enterprise encompassing day-to-day decisionmaking with respect to environmental compliance, or with respect to substantially all of the operational aspects (as distinguished from financial or administrative aspects) of the enterprise, other than environmental compliance;

"(iii) the term 'participate in management' does not include conducting an act or failing to act prior to the time that a security interest is created in a vessel or facility; and

"(iv) the term 'participate in management' does not include—

"(I) holding such a security interest or abandoning or releasing such a security interest;

"(II) including in the terms of an extension of credit, or in a contract or security agreement relating to such an extension, covenants, warranties, or other terms and conditions that relate to environmental compliance;

"(III) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

"(IV) monitoring or undertaking 1 or more inspections of the vessel or facility;

"(V) requiring or conducting response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility prior to, during, or upon the expiration of the term of the extension of credit;

"(VI) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

"(VII) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance; or

"(VIII) exercising other remedies that may be available under applicable law for the breach of any term or condition of the extension of credit or security agreement;

if such actions do not rise to the level of participating in management, as defined in clauses (i) and (ii).

"(H) OTHER TERMS.—As used in subparagraph (F), subparagraph (G), and this subparagraph, the following definitions shall apply:

"(i) EXTENSION OF CREDIT.—The term 'extension of credit' includes a lease finance transaction—

"(I) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

"(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or with regulations issued by the National Credit Union Administration Board, as appropriate.

"(ii) FINANCIAL OR ADMINISTRATIVE ASPECT.—The term 'financial or administrative aspect' includes a function such as a function of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or any similar function.

"(iii) FORECLOSURE; FORECLOSE.—The terms 'foreclosure' and 'foreclose' mean, respectively, acquiring, and to acquire, a vessel or facility through—

"(I) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such vessel or facility was security for an extension of credit previously contracted;

"(II) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(III) any other formal or informal manner by which the person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

"(iv) OPERATIONAL ASPECT.—The term 'operational aspect' includes a function such as a function of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

"(v) SECURITY INTEREST.—The term 'security interest' includes a right under a mortgage, deed of trust, assignment, judg-

ment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act.

SEC. 412. RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDUCATIONAL ORGANIZATIONS.

(a) DEFINITION.—Section 101(20) (42 U.S.C. 9601(20)) (as amended by section 411(c)) is further amended by adding at the end the following:

''(I) RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDUCATIONAL ORGANIZATION.—Subject to section 107(p), the term 'owner or operator' includes an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, that is organized and operated exclusively for religious, charitable, scientific, or educational purposes, and that holds title to a vessel or facility.''.

(b) LIMITATION ON LIABILITY.—Section 107 (42 U.S.C. 9607) (as amended by section 403(b)) is further amended by adding at the end the following:

"(p) RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDUCATIONAL ORGANIZATION.—

"(1) LIMITATION ON LIABILITY.—In the event that an organization described in section 101(20)(I) holds title to a vessel or facility, either directly or in trust, as a result of a charitable gift that is allowable as a deduction under section 170, 2055, or 2522 of the Internal Revenue Code of 1986 (determined without regard to dollar limitations), the liability of the organization shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization, subject to paragraph (2).

"(2) CONDITIONS.—In order for an organization described in section 101(20)(I) to be eligible for the limited liability described in paragraph (1), the organization shall—

"(A) provide full cooperation, assistance, and facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, preservation of integrity, oper-

ation, and maintenance of any complete or partial response action at the vessel or facility;

''(B) provide full cooperation and assistance to the United States in identifying and locating persons who recently owned, operated, or otherwise controlled activities at the vessel or facility;

''(C) establish by a preponderance of the evidence that all active disposal of hazardous substances at the facility or vessel occurred before the organization acquired the vessel or facility; and

''(D) establish by a preponderance of the evidence that the organization did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.

''(3) LIMITATION.—Nothing in this subsection shall affect the liability of any person, other than a person described in section 101(20)(I) who meets the conditions specified in paragraph (2).''.

SEC. 413. WORKING GROUP.

(a) DEFINITIONS.—As used in this section:

(1) ADMINISTRATOR; RESPONSE.—The terms ''Administrator'' and ''response'' have the meanings given the terms in paragraphs (2) and (25), respectively, of section 101 of the Comprehensive Environ-

mental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(2) RESPONSE ACTION CONTRACTOR.—The term ''response action contractor'' means a contractor described in section 119(a)(1) of such Act (42 U.S.C. 9619(a)(1)).

(b) ESTABLISHMENT.—The Administrator shall establish a working group, which shall include representatives of response action contractor organizations as well as interested government departments and agencies.

(c) STUDY AND REPORT.—

(1) STUDY.—The working group shall study the potential liability of response action contractors under such Act and the potential impact of the liability on the cost and effectiveness of response actions. The group shall examine potential risks to government and private sector entities involved in such response actions.

(2) REPORT.—The working group shall prepare a report that includes the findings from the study described in paragraph (1). The report shall contain recommended measures to address the potential risks. The working group shall submit the report to Congress not later than 120 days after the date of enactment of this Act.

SEC. 414. INDIRECT COSTS.

Title I (as amended by sections 201(a), 409, 410(b), and 411(a)) (42 U.S.C. 9601 et seq.) is further amended by adding at the end the following new section:

"SEC. 133. INDIRECT COSTS.

"(a) DEFINITION.—As used in this section:

"(1) INDIRECT COST EXPENDITURE.—The term 'indirect cost expenditure', used with respect to a fiscal year, means a disbursement from the Fund by the President for the operation, management, or implementation of activities under this Act for the fiscal year that is not directly attributable to the activities of the President for a particular facility at which response actions have been, are, or are planned to be taken.

"(2) TOTAL COST EXPENDITURES.—The term 'total cost expenditures', used with respect to a fiscal year, means the total amount of the disbursements from the Fund by the President for the operation, management, or implementation of activities under this Act for the fiscal year.

"(b) RULE.—Beginning with fiscal year 1995, the percentage of total cost expenditures that represents indirect cost expenditures shall not exceed 35 percent.

"(c) CALCULATION.—Not later than December 1 of fiscal year 1997 and of each subsequent fiscal year, the Presi-

dent shall calculate for the preceding fiscal year the percentage of total cost expenditures that represents indirect cost expenditures.

''(d) REDUCTION OF CLAIMS.—For any fiscal year for which indirect cost expenditures exceed 35 percent of total cost expenditures, the excess indirect cost expenditures shall not be considered to be response costs that are recoverable under this Act.

''(e) REPORT BY COMPTROLLER GENERAL.—Not later than 3 years after the date of enactment of this section, the Comptroller General shall commence a review of indirect cost expenditures for the period of 3 fiscal years immediately preceding the date on which the Comptroller General commences the review. Not later than 4 years after the date of enactment of this section, the Comptroller General shall submit a report to the Committee on Environment and Public Works of the Senate, containing the results of the review and recommendations as to the appropriate aggregate annual amount of indirect cost expenditures.''.

SEC. 415. RELEASE OF EVIDENCE.

(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(8)(A) (as amended by section 401(d)) is further amended by inserting after ''shall be made available to the public'' the following: ''not

later than 14 days after the records, reports, documents, or information are obtained''.

(b) REQUIREMENT TO PROVIDE PRPS EVIDENCE OF LIABILITY.—

(1) ABATEMENT ORDERS.—Section 106(a) (42 U.S.C. 9606(a)) (as amended by section 402(a)) is further amended by adding at the end the following: ''In any case in which the President issues an order to a person under this subsection, the President shall provide information concerning the evidence that indicates that each element of liability contained in section 107(a) is present with respect to the person.''.

(2) NOTICE OF PERIOD OF NEGOTIATION.—Section 122(e)(1) (42 U.S.C. 9622(e)(1)) is amended by inserting after subparagraph (C) the following:

''(D) For each potentially responsible party, information concerning the evidence that indicates that each element of liability contained in section 107(a) is present.''.

SEC. 416. CONTIGUOUS OR NEARBY PROPERTIES.

Section 107(n) (as added by section 403(a)(2) and amended by subsections (a)(2) and (d)(1) of section 404) (42 U.S.C. 9607(n)) is further amended by adding at the end the following new paragraph:

"(5) CONTIGUOUS PROPERTIES.—A person who owns or operates real property that is contiguous to or otherwise similarly situated with respect to real property on which there has been a release or threatened release of a hazardous substance and that is or may be contaminated by such release shall not be considered to be an owner or operator of a facility under subsection (a)(1) solely by reason of such contamination, if such person establishes by a preponderance of the evidence that—

"(A) such person exercised due care with respect to the hazardous substance, in light of all relevant facts and circumstances;

"(B) such person took precautions against any foreseeable act or omission that resulted in the release or threatened release and the consequences that could foreseeably result from such act or omission; and

"(C) such person did not cause or contribute to the release or threatened release.

The President may issue an assurance of no enforcement action under this Act to any such person and may grant any such person protection against cost recovery and contribution actions pursuant to section 113(f)(2).".

TITLE V—REMEDY SELECTION AND CLEANUP STANDARDS

SEC. 501. CLEANUP STANDARDS.

(a) IN GENERAL.—Section 121(d) (42 U.S.C. 9621(d)) is amended—

(1) in paragraph (2)(C)—

(A) by striking clause (iv);

(B) in clause (iii)—

(i) by striking ''(iii)'' and inserting ''(B)'';

(ii) by striking ''clause (ii)'' and inserting ''subparagraph (A)''; and

(iii) by redesignating subclauses (I), (II), and (III) as clauses (i), (ii), and (iii), respectively; and

(C) in clause (ii)—

(i) by striking ''(ii)'' and inserting ''(9)(A)''; and

(ii) by striking ''clauses (iii) and (iv)'' and inserting ''subparagraph (B)'';

(2) in paragraph (3), by inserting '', or 4010(c) if appropriate,'' after ''3005'';

(3) by redesignating paragraph (3) as paragraph (10);

(4) by striking paragraph (4); and

(5) by striking the subsection heading and all that follows through the end of clause (i) of paragraph (2)(C) and inserting the following:

"(d) ESTABLISHMENT OF PROTECTIVE CONCENTRATION LEVELS.—

"(1) NATIONAL GOAL.—

"(A) IN GENERAL.—The goal of this Act is to protect human health and the environment. In order to provide consistent and equivalent protection of human health, the goal of protection of human health shall be expressed as a single numerical health risk level that ensures a reasonable certainty of no harm from exposure to carcinogens and a single numerical health risk level that ensures a reasonable certainty of no harm from exposure to noncarcinogens, and shall provide the basis for protective concentration levels established under this subsection. The Administrator shall propose a regulation specifying the health risk levels not later than 12 months after the date of enactment of the Superfund Reform Act of 1994 and shall promulgate the regulation not later than 18 months after such date.

"(B) EXCEPTION.—If the President finds that achievement of the goal is technically infea-

sible or unreasonably costly, the President may select a protective concentration level or take a remedial action that does not achieve the goal.

"(C) LIMITATION.—If the President makes a finding pursuant to subparagraph (B), the President shall—

"(i) publish an explanation demonstrating that achievement of the goal is technically infeasible or unreasonably costly as a declaration in the record of decision with regard to such remedy; and

"(ii) with regard to any protective concentration level established for a carcinogen, ensure that the protective concentration level does not result in an unacceptable risk to human health unless the achievement of such level is technically infeasible, in which case the President shall take sufficient action to minimize risk to human health.

"(2) SCOPE AND PURPOSE OF NATIONAL RISK PROTOCOL.—

"(A) IN GENERAL.—The Administrator shall promulgate a national risk protocol for conducting risk assessments under this Act. The national risk protocol shall be used for risk as-

sessments underlying determinations of the need for remedial action, the establishment of protective concentration levels of chemicals, and the evaluation of remedial alternatives.

"(B) SCENARIOS, FORMULAE, OR METHODOLOGIES.—The national risk protocol shall establish, to the extent appropriate and practicable, each of the following:

"(i) Standardized exposure scenarios defining exposure pathways for a range of unrestricted and restricted land uses.

"(ii) Standardized formulae or methodologies for—

"(I) evaluating the exposure pathways of concern under the standardized exposure scenarios established under clause (i); and

"(II) developing, consistent with the national goal under paragraph (1), chemical concentration levels protective of receptors currently and reasonably anticipated to be exposed via the pathways included in such scenarios for at least the 100 contaminants most frequently occurring at facilities ad-

dressed under this Act and for which adequate toxicity information is available.

"(iii) Methodologies for facility-specific evaluations of ecological risks.

"(3) STANDARDIZED FORMULAE OR METHODOLOGIES.—Standardized formulae or methodologies established under paragraph (2) shall include the following:

"(A) National constants for specific characteristics of individual chemicals not expected to vary from facility to facility.

"(B) Facility-specific variables for physical characteristics of the facility and other factors. Criteria for identifying such variables shall include each of the following:

"(i) Whether a characteristic or factor can be objectively measured based on actual facility data or reasonably estimated based on credible scientific studies when facility-measured data cannot be reasonably obtained.

"(ii) Whether the effects of a characteristic or factor are scientifically well-understood.

"(iii) Whether the impact of the characteristic or factor on estimations of risk or protective concentration levels is significant.

"(C) Exposure factors related to demographics (including separate exposure factors for sensitive subpopulations to be applied where relevant), activity patterns, and natural constraints. Defaults or ranges of default values shall be established for such factors and used unless verifiable data are presented that the defaults are significantly different from actual facility conditions. In cases in which such data are presented, the values shall be determined on a site-specific basis after consideration of any views expressed by the Community Working Group, if available, and local residents.

"(4) APPLICATION OF NATIONAL RISK PROTOCOL.—

"(A) ANALYSIS.—The President shall conduct an analysis at each such facility to determine which exposure scenarios, pathways, hazardous substances, and pollutants or contaminants are relevant to that facility. Where standardized formulae or methodologies for addressing such relevant scenarios, pathways, hazardous

substances, and pollutants or contaminants are available, the formulae or methodologies shall be used.

"(B) NONEXISTENT EXPOSURE PATHWAY.—Standardized formulae or methodologies for exposure pathways that do not exist or are not reasonably anticipated to exist in the future at a facility shall not be applied in establishing protective concentration levels for the facility.

"(C) UNAVAILABLE FORMULAE AND METHODOLOGIES.—Where standardized formulae or methodologies for particular exposure scenarios, complex and atypical sites, exposure pathways, or chemicals are unavailable, facility-specific risk assessment shall be used to establish protective concentration levels under this subsection.

"(5) CONSIDERATIONS IN ESTABLISHING THE NATIONAL RISK PROTOCOL.—

"(A) IN GENERAL.—In developing the national risk protocol under paragraph (2), the Administrator shall evaluate and, to the degree appropriate and practicable—

"(i) identify appropriate sources of toxicity information;

"(ii) define the use of probabilistic modeling;

"(iii) identify criteria for the selection and application of transport and fate models;

"(iv) define the use of high end and central tendency exposure cases and assumptions;

"(v) define the use of population risk estimates in addition to individual risk estimates;

"(vi) define appropriate approaches for addressing cumulative risks posed by multiple hazardous substances, multiple pollutants or contaminants, or multiple exposure pathways; and

"(vii) establish appropriate sampling approaches and data quality requirements.

"(B) GUIDELINES.—The national risk protocol shall establish guidelines for all risk assessments conducted under this Act. The risk assessments and guidelines shall include reasonable estimates of plausible high end exposures that do not exaggerate risks by inappropriately compounding multiple hypothetical conservative

assumptions. For purposes of establishing protective concentration levels, and other relevant remedial decisions, the risk assessments and guidelines used to establish the levels and make such decisions shall rely on exposure estimates between the 90th percentile and the 95th percentile of the combined estimated exposures that may be experienced for all relevant exposure pathways. The Administrator shall ensure that the actual affected population, including, where relevant, sensitive subpopulations, receives a level of protection as provided in paragraph (1).

"(6) PHASING AND UPDATING OF THE NATIONAL RISK PROTOCOL.—The national risk protocol shall be developed in accordance with a schedule promulgated by the Administrator within 90 days after the date of enactment of the Superfund Reform Act of 1994. The national risk protocol may be developed and promulgated in phases as determined to be appropriate by the Administrator. The risk protocol shall be proposed not later than 12 months after the date of enactment of the Superfund Reform Act of 1994 and shall be promulgated not later than 18 months after such date. The Administrator also shall determine an appropriate approach and schedule for ensuring that the

national risk protocol remains current with emerging science and relevant Agency policy.

"(7) FEDERAL AND STATE LAWS.—

"(A) REQUIREMENTS.—A remedial action shall be required to—

"(i) comply with the substantive requirements of any promulgated standard, requirement, criterion, or limitation under any Federal or more stringent State environmental or facility siting law that is applicable to the conduct or operation of the remedial action;

"(ii) attain any promulgated protective concentration levels applicable to determining the level of cleanup for remedial actions conducted under any State environmental law where such levels are more stringent than—

"(I) those established under clause (i) or (ii) of paragraph (8)(A); or

"(II) the concentration levels determined to be protective for a given facility in accordance with the requirements of paragraph (2); and

"(iii) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State environmental or facility siting law that the State demonstrates is consistently applied to remedial actions under State law, and that the State determines, through a promulgation process that includes public notice, comment, and written response thereto, and opportunity for judicial review, applies to remedial actions under this Act.

"(B) COMPLIANCE.—Compliance with any State standard, requirement, criterion, or limitation under subparagraph (A) shall be required at a given facility if the standard, requirement, criterion, or limitation has been identified by the State to the President in a timely manner as applicable at that facility. In addition, each State shall publish a comprehensive list of the promulgated standards, requirements, criteria, or limitations that the State may apply to remedial actions under this Act and revise such list periodically, as requested by the President.

"(C) PROCEDURAL REQUIREMENTS.—Procedural requirements of Federal and State stand-

ards, requirements, criteria, or limitations, including permitting requirements, shall not apply to response actions conducted onsite at a facility. Compliance with subparagraph (A) shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same media in or very near then existing areas of contamination onsite at the facility.

"(D) SELECTION OF DIFFERENT STANDARD.—

"(i) FINDING.—The President may select for a facility a remedial action meeting the requirements of paragraph (1) that does not comply with or attain a Federal or State standard, requirement, criterion, or limitation as required by subparagraph (A), if the President finds any of the following:

"(I) PART OF REMEDIAL ACTION.—The remedial action selected is only part of a total remedial action that will comply with or attain the applicable requirements of subparagraph (A) when completed.

"(II) GREATER RISK.—Compliance with or attainment of such standard, requirement, criterion, or limitation at that facility will result in greater risk to human health and the environment than alternative options.

"(III) TECHNICALLY IMPRACTICABLE.—Compliance with or attainment of such standard, requirement, criterion, or limitation is technically impracticable from an engineering perspective.

"(IV) EQUIVALENT TO STANDARD OF PERFORMANCE.—The remedial action selected will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation identified under subparagraph (A) through use of another approach.

"(V) INCONSISTENT APPLICATION.—With respect to a State standard, requirement, criterion, limitation, or level identified under clause (i) or (ii) of subparagraph (A), the State has

not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criterion, limitation, or level in similar circumstances at other remedial actions within the State.

"(VI) BALANCE.—In the case of a remedial action to be undertaken solely under section 104 using amounts from the Fund, a selection of a remedial action that complies with or attains standards, requirements, criteria, or limitations required in subparagraph (A) will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other facilities that present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threat.

"(ii) PUBLICATION.—The President shall publish any findings made under

clause (i), together with an explanation and appropriate documentation.

"(8) REMEDIAL ACTIONS FOR CONTAMINATED WATER.—

"(A) GENERAL REQUIREMENTS FOR REMEDIAL ACTION.—

"(i) DRINKING WATER STANDARDS.—Where a maximum contaminant level or a nonzero maximum contaminant level goal has been established for a hazardous substance or a pollutant or contaminant under title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.), a remedial action with respect to such hazardous substance or pollutant or contaminant shall attain such level or goal in any surface water or ground water that may be used for drinking water, unless a more stringent remedial action is necessary to protect wildlife or aquatic life consistent with designated uses for the water and water quality criteria for wildlife or aquatic life issued under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

Protective concentration levels for ground water or surface water meeting the requirements of the preceding sentence shall be deemed to meet the requirements of paragraph (1).

"(ii) OTHER CONTAMINANTS.—Remedial actions and protective concentration levels with respect to other hazardous substances, and other pollutants or contaminants, in contaminated surface water or ground water that may be used for drinking water shall ensure attainment of the goal established in paragraph (1).

"(iii) SELECTION OF GROUND WATER REMEDIES.—The President shall identify and select an appropriate remedy for contaminated ground water that ensures attainment of the goal established in paragraph (1), or attains a standard described in clause (i), through the evaluation of remedial alternatives and by taking into consideration the factors identified in subsection (b)(3)(A) together with each of the following factors:

"(I) The urgency of the need for the ground water.

"(II) The ability of such remedy to prevent human exposure to such contamination.

"(iv) NATURAL ATTENUATION.—The President may select, for all or a part of the final remedy for a facility, a remedy that utilizes natural attenuation (which may include dilution and dispersion, but only to the extent necessary to achieve biodegradation).

"(v) OTHER GROUND WATER.—Remedial actions for contaminated ground water (other than ground water that may be used for drinking water) shall attain levels appropriate for the then current or reasonably anticipated future use of such ground water, or levels appropriate considering the then current use of any ground water or surface water to which such contaminated ground water discharges.

"(B) EXCEPTION.—

"(i) IN GENERAL.—The President may select protective concentration levels that do

not achieve the requirements of subparagraph (A), if the President determines that achievement of the requirements is technically impracticable from an engineering perspective and each of the requirements of this subparagraph is met. The President shall, to the extent practicable, make any such determination of technical impracticability on the basis of projections, modeling, or other analytical techniques without any requirement that remedial measures designed to achieve the requirements of subparagraph (A) first be constructed, installed, or operated. The preceding sentence shall not be interpreted to prevent the President from selecting or requiring implementation of any other response action, including actions pursuant to subparagraph (D).

"(ii) OPERABLE UNITS.—A remedial action for a facility based on a protective concentration level selected under this subparagraph shall, whenever appropriate considering the physical characteristics of the facility, be divided into 2 or more operable units reflecting—

"(I) the concentrations and characteristics (including density, phase, and propensity to adsorb) of the hazardous substances or pollutants or contaminants in ground water; or

"(II) the hydrogeologic and hydrological characteristics of the facility.

The President shall make separate determinations with respect to the technical impracticability of attaining protective concentration levels achieving the requirements of subparagraph (A) for each operable unit at a facility and shall define operable units so as to maximize the volume of ground water that will attain such levels.

"(iii) CONTAINMENT.—Remedial actions for each operable unit for which the President has made a determination pursuant to clause (i) shall—

"(I) with respect to an operable unit containing hazardous substances in high concentrations or in a non-aqueous phase to the extent technically feasible, prevent migration of hazard-

ous substances or pollutants or contaminants from the operable unit; and

"(II) to the extent technically feasible, prevent any increase in the spatial extent of contamination, beyond the area of contamination detected or known at the time the remedial action is selected, that may affect ground water that may be used for drinking water.

The President may waive the requirements of subclause (II) for an operable unit containing a relatively low concentration of a hazardous substance or pollutant or contaminant over a large area if containment would be technically impracticable from an engineering perspective.

"(iv) REMOVING SOURCE MATERIAL AND DISSOLVED CONTAMINANTS.—Remedial actions based on protective concentration levels selected under this subparagraph shall reduce the volume or toxicity of hazardous substances or pollutants or contaminants remaining in ground water at the facility to the extent technically practicable from an

engineering perspective and appropriate for effective containment as required under clause (iii) and consistent with the technical requirements for the remedial actions. With respect to an operable unit containing a relatively low concentration of a hazardous substance or pollutant or contaminant over a large area, the requirements of the preceding sentence may be modified if the President finds that such a reduction is technically impracticable from an engineering perspective.

"(v) OTHER REQUIREMENTS.—Remedial actions based on protective concentration levels selected under this subparagraph shall—

"(I) prevent or eliminate any actual human exposure through drinking water to any hazardous substance or pollutant or contaminant in excess of the maximum contaminant level or nonzero maximum contaminant level goal established for the hazardous substance or pollutant or contaminant under title XIV of the Public Health

Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.) and may include, as appropriate, the provision of an alternate water supply;

"(II) unless technically impracticable from an engineering perspective, prevent impairment of any surface water designated use established under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313), caused by such hazardous substance or pollutant or contaminant in any surface water body into which such contaminated ground water is known or projected to enter; and

"(III) provide for long-term monitoring of such ground water, as appropriate (including any information needed for the purposes of review under subsection (c)).

"(vi) PERIODIC REVIEW.—Each remedial action based upon protective concentration levels selected under this subparagraph shall be reviewed every 5 years as provided

in subsection (c). If the President determines that conditions at the facility have changed or that remedial alternatives have become available, so as to attain protective concentration levels achieving the requirements of subparagraph (A), the President shall select a new remedy pursuant to this paragraph.

"(vii) PREMIUM.—

"(I) TECHNOLOGY DEVELOPMENT.—Whenever the President selects a remedial action based on protective concentration levels selected pursuant to this subparagraph or conducts a review of such action under subsection (c), the President shall impose a premium that shall be considered a response cost otherwise incurred at the facility reflecting—

"(aa) the cost to monitor ground water at the facility to ensure that the requirements of this subparagraph continue to be met; and

"(bb) the opportunities to develop new remediation technologies that may be applicable to the facility.

Total premiums collected under this subclause shall not exceed $50,000,000 per year in the aggregate for all facilities with remedial actions based on protective concentration levels selected under this subparagraph. For each facility with a remedial action based on a protective concentration level selected under this subparagraph, the President shall assess the premium based on the extent and severity of the ground water contamination at the facility. In no case shall the total of the premiums collected from any single potentially responsible party under this subclause for a facility exceed $1,000,000. The President may reduce or waive a premium described in this subclause for a potentially responsible party at a facility if the President determines that such a party is a small business and

has a limited ability to pay or that such a party is currently (as of the date of the waiver) making a significant investment for research or development for new technologies that may be applicable to the ground water contamination at the facility.

"(II) NEW RELEASES.—In the case of any remediation of contaminated ground water resulting from any release of a hazardous substance or pollutant or contaminant from a facility constructed after the date of enactment of the Superfund Reform Act of 1994, and in the case of ground water remediation for operable units where the potentially responsible party is unable to demonstrate that the initial release occurred prior to the date of enactment of the Superfund Reform Act of 1994, the President shall impose a premium that shall be considered a response cost reflecting the reasonable capital and operating costs that would have been

incurred at the facility to prevent the release.

"(viii) USES OF PREMIUM PAYMENTS.—

"(I) IN GENERAL.—Premiums collected pursuant to clause (vii) shall be deposited in the Fund.

"(II) MONITORING AND ASSESSMENT.—The premiums may be appropriated to conduct monitoring and assessment, only to the extent necessary to assess the development of new technologies, for facilities for which remedies have been selected incorporating protective concentration levels selected under this subparagraph.

"(III) GRANTS.—The premiums may be appropriated to make grants under section 311(b)(3) to develop technologies designed to achieve remediation of ground water at facilities at which the Administrator has made determinations described in subparagraph (B)(i). In addition to complying with the requirements of section 311(b),

the Administrator, in evaluating applications for such a grant, shall evaluate the applications on the basis of scientific and technical merit and feasibility, using a scientific peer review process. The requirements of section 311(b)(5)(J) shall not apply with respect to such a grant. The grant shall be made in an amount of not to exceed $1,000,000, unless the Administrator finds that the project proposed to be carried out with the grant has unusual technical merit and that additional funding is necessary and appropriate. In no case shall the amount of such a grant exceed $5,000,000.

"(C) ALTERNATE CONCENTRATION LIMITS.—For purposes of this paragraph, a process for establishing alternate concentration limits to those otherwise applicable to hazardous substances or pollutants or contaminants in ground water may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclu-

sion of the remedial investigation and feasibility study for the facility, except where—

"(i) there are known and projected points of entry of such ground water into surface water;

"(ii) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such ground water in such surface water at the point of entry or at any point where there is reason to believe accumulation of the constituents may occur downstream; and

"(iii) the remedial action includes enforceable measures that will preclude human exposure to the contaminated ground water at any point between the facility boundary and all known and projected points of entry of such ground water into surface water.

"(D) PREREMEDIAL RESPONSE ACTIONS.—

"(i) INFORMATION COLLECTION.—The President shall ensure, to the extent practicable, that hydrogeologic and contaminant-related information necessary to select final ground water remedial actions shall be

collected as part of site characterization activities prior to and during the remedial investigation for the facility. Such data shall include information from response actions taken pursuant to clause (ii).

''(ii) EARLY RESPONSE ACTIONS.—The President shall, as appropriate, select in accordance with subparagraph (A)(iii) and implement response actions (referred to individually in this clause as a 'preremedial action'), prior to selecting a final remedial action, to minimize contaminant migration and reduce the risk of adverse effects on human health and the environment from contaminated ground water. In accordance with the provisions of subparagraph (B), the actions may include—

''(I) containment that prevents increases in the areal extent of contamination affecting ground water that may be used for drinking water;

''(II) removal of source material;

''(III) remediation of ground water containing high concentrations

of hazardous substances or pollutants or contaminants; or

''(IV) installation of physical barriers or caps to contain releases from source materials.

Each preremedial action taken under this clause shall be monitored to collect information for site characterization and selection of final remedial actions.

''(E) DEFINITION.—For purposes of this paragraph, the phrase 'ground water that may be used for drinking water' shall include all ground water except—

''(i) ground water containing more than 10,000 milligrams per liter total dissolved solids from naturally occurring sources;

''(ii) ground water that is so contaminated by naturally occurring conditions, or by the effects of broad scale human activity, that restoration to the requirements of subparagraph (A) is impracticable; or

''(iii) ground water with respect to which the potential source of drinking water is physically incapable of yielding a quan-

tity of 150 gallons per day of water to a well or spring without adverse environmental effects.''.

(b) RADIONUCLIDES.—Section 121(d) (42 U.S.C. 9621(d)) (as amended by subsection (a)) is further amended by adding at the end the following:

''(11) RADIONUCLIDES DETERMINATION.—

''(A) APPLICATION OF SINGLE NUMERICAL HEALTH RISK LEVEL.—Effective 6 months after the health risk levels established pursuant to paragraph (1) become effective, the single numerical health risk level for carcinogens shall apply to radionuclides, except as provided in subparagraph (B).

''(B) ALTERNATIVE QUANTIFIABLE BASIS FOR PROTECTIVE CONCENTRATION LEVELS.—

''(i) DETERMINATION.—The Administrator shall determine, by rule and after notice and opportunity for public comment, whether the health risk level for carcinogens established under paragraph (1) cannot be attained for a radionuclide, due to the technical infeasibility of detecting radionuclide contamination or distinguishing radionuclide contamination resulting from

human activity from the ambient level of radionuclides in the environment.

"(ii) ESTABLISHMENT OF ALTERNATIVE QUANTIFIABLE BASIS.—If the Administrator determines pursuant to clause (i) that the same level of protection cannot be attained for a radionuclide, the Administrator shall establish, by rule and after notice and opportunity for public comment, an alternative quantifiable basis for setting a protective concentration level for such radionuclide. Such basis shall apply to the radionuclide in lieu of the single numerical health risk level, subject to clause (iii).

"(iii) LEVEL OF PROTECTION.—The alternative quantifiable basis referred to in clause (ii) shall require a level of protection as close as possible to the level of protection provided by the single numerical health risk level for carcinogens established pursuant to paragraph (1), consistent with the determination described in clause (i). Such basis shall apply to a radionuclide unless achievement of the level of protection required by the basis is determined to be tech-

nically infeasible or unreasonably costly pursuant to this subsection. In any case in which the President selects a remedy that does not achieve the national goal established under paragraph (1), the President shall publish an explanation of the reason for the decision.

"(iv) TIMING.—The Administrator shall make the determination required under clause (i) and, as appropriate, issue a final rule pursuant to clause (ii) no later than 6 months after the health risk level for carcinogens becomes effective under paragraph (1).

"(C) APPLICATION OF OTHER LAWS.—In the case of remedial activities conducted under this Act, standards promulgated by the Administrator under any other law that apply to remediation of a radionuclide shall continue to apply until the earlier of—

"(i) 6 months after the date on which health risk levels become effective under paragraph (1); or

''(ii) the date on which a final rule is issued under subparagraph (B)(ii) for the radionuclide concerned.''.

(c) ALTERNATE WATER SUPPLY.—Section 118 (42 U.S.C. 9618) is amended—

(1) by striking ''For'' and inserting the following:

''(a) IN GENERAL.—For''; and

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

''(b) ALTERNATE WATER SUPPLY.—In any case where a remedial action at a facility includes a protective concentration level established pursuant to section 121(d)(8)(B) and contamination from the facility has resulted, or is expected to result, in the presence of a hazardous substance or a pollutant or contaminant in excess of the maximum contaminant level or nonzero maximum contaminant level goal established for the hazardous substance or pollutant or contaminant under title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.) in a drinking water supply, the remedial action shall include the prompt provision of an alternate supply of water for drinking and household purposes. The alternate supply of drinking water shall meet maximum contaminant levels and nonzero maximum

contaminant level goals established under title XIV of the Public Health Service Act.''.

(d) CONFORMING AMENDMENTS.—

(1) Section 117(a)(2) (42 U.S.C. 9617(a)(2)) is amended by striking ''121(d)(4)'' and inserting ''121(d)(7)(D)''.

(2) Section 121(f) (42 U.S.C. 9621(f)) is amended by striking ''(d)(4)'' each place it appears and inserting ''(d)(7)(D)''.

SEC. 502. REMEDY SELECTION.

Subsection (b) of section 121 (42 U.S.C. 9621(b)) is amended to read as follows:

''(b) GENERAL RULES.—

''(1) SELECTION OF PROTECTIVE REMEDIES.—Remedies selected at individual facilities shall be protective of human health and the environment, consistent with the factors described in paragraph (3)(A). A remedial action may achieve protection of human health and the environment through—

''(A) treatment that reduces the toxicity, mobility, or volume of hazardous substances or pollutants or contaminants;

''(B) containment or other engineering controls to limit exposure to such substances, pollutants, or contaminants;

"(C) a combination of such treatment and such containment; or

"(D) another method of protection.

The method or methods of remediation appropriate for a given facility shall be determined through the evaluation of remedial alternatives and the selection process under paragraphs (2) and (3). When determining the appropriate remedial method, the President shall prefer treatment for hot spots. This preference shall not apply to materials that do not constitute hot spots.

"(2) LAND USE.—

"(A) FACTORS.—In selecting a remedy, the President shall take into account the reasonably anticipated future uses of land at a facility as required by this Act. In identifying reasonably anticipated future land uses, the President shall consider factors, which generally shall include each of the following:

"(i) Any consensus recommendation of the Community Working Group and any other views expressed by members of the community.

"(ii) The land use history of the facility and surrounding properties, the current

land uses of the facility (as of the date of the identification of the uses) and surrounding properties, recent development patterns in the area where the facility is located, and population projections for that area.

''(iii) Federal or State land use designations, including designations of Federal facilities and national parks, State ground water or surface water recharge areas established under a State's comprehensive protection plan for ground water or surface water, and recreational areas.

''(iv) The current land use zoning (as of the date of the identification of the uses) and future land use plans of the local government with land use regulatory authority, and general goals and policies expressed in local or State comprehensive plans or related documents.

''(v) The potential for economic redevelopment.

''(vi) The proximity of the contamination to residences, sensitive populations or ecosystems, natural resources, or areas of unique historic or cultural significance.

"(vii) Current plans (as of the date of the identification of the uses) for the facility by the property owner or owners, not including potential voluntary remedial measures.

"(B) CONSIDERATIONS.—In developing its recommendation, the Community Working Group shall consider factors described in clauses (ii) through (vii) of subparagraph (A), and the President shall give substantial weight to that recommendation where consensus is reached, or substantial weight to the views of local residents where the Community Working Group does not reach consensus, in accordance with section 117(g).

"(C) INFORMATION.—All information considered by the President in evaluating reasonably anticipated future land uses under this paragraph shall be included in the administrative record under section 113(k).

"(3) APPROPRIATE REMEDIAL ACTION.—

"(A) FACTORS.—The President shall identify and select an appropriate remedy that prevents exposures to hazardous substances or pollutants or contaminants in excess of protective

concentration levels established under subsection (d) by balancing each of the following factors:

"(i) The effectiveness of the remedy.

"(ii) The long-term reliability of the remedy, defined as its capability to achieve long-term protection of human health and the environment considering the preference for treatment of hot spots.

"(iii) Any short-term risk posed by the implementation of the remedy to the community, to those engaged in the cleanup effort, and to the environment.

"(iv) The acceptability of the remedy to the community.

"(v) The reasonableness of the cost of the remedy.

"(B) HOT SPOTS.—Each of the following shall apply to the remediation of hot spots:

"(i) DEFINITION.—For purposes of this section, the term 'hot spot' means a discrete area within a facility that contains hazardous substances or pollutants or contaminants that are present in high concentrations, are highly mobile, or cannot be reliably contained, and that would present a

significant risk to human health or the environment should exposure occur. The President shall develop guidelines for the identification of hot spots. Such guidelines shall recommend appropriate field investigations that will not require extraordinarily complex or costly measures.

"(ii) REMEDY.—In determining an appropriate remedy for hot spots, the President shall consider the factors under subparagraph (A). With respect to the factor described in subparagraph (A)(v), the President shall use a higher threshold for evaluating the reasonableness of costs for hot spot treatment relative to the remediation of nonhot spot materials.

"(iii) TREATMENT.—The President shall select a remedy requiring treatment of materials constituting hot spots unless an appropriate treatment technology is unavailable or is available only at unreasonable cost. In such instances, the President shall select an interim containment remedy for such hot spot subject to adequate monitoring and public reporting to ensure its

continued integrity and shall review the interim containment remedy in accordance with subsection (c). When the appropriate treatment technology becomes available, as determined by the President, a remedy applying that treatment shall be considered in accordance with this section.

"(iv) FINAL CONTAINMENT REMEDY.—The President may select a final containment remedy for a hot spot at a landfill, mining site, or similar facility under each of the following circumstances:

"(I) SMALL HOT SPOTS.—The hot spot is small relative to the overall volume of waste or contamination being addressed, the hot spot is not readily identifiable and accessible, and without the presence of the hot spot containment would have been selected as the appropriate remedy under subparagraph (A) for the larger body of waste or area of contamination in which the hot spot is located.

"(II) HIGH VOLUME OR LARGE AREA HOT SPOTS.—The volume and

areal extent of the hot spot is extraordinary compared to other facilities listed on the National Priorities List, and it is highly unlikely due to the size and other characteristics of the hot spot that any treatment technology will be developed that could be implemented at reasonable cost.

With respect to a hot spot described in subclause (II), the President may require, pursuant to subparagraph (A), the removal of the hot spot to an appropriate location where necessary to ensure reliable containment of the hot spot, including the removal of the hot spot from a flood plain. Where final containment for a hot spot is selected, the President shall publish an explanation of the basis for that selection.

"(4) INSTITUTIONAL CONTROLS.—In any case in which the President selects a remedial action that provides that a hazardous substance will remain at the facility at a concentration level above the protective concentration level for unrestricted land use established pursuant to this section after the final remedial action is completed, the President shall ensure that an adequate institutional control (as described in

the national contingency plan, as in effect on the date of enactment of this subsection) is incorporated into the remedial action to achieve protection of human health and the environment.

''(5) GENERIC REMEDIES.—In order to streamline the remedy selection process and to facilitate rapid voluntary remedial action under this Act, the President shall establish, taking into account the factors enumerated in paragraph (3)(A), cost-effective generic remedies for categories of facilities, and expedited procedures that include community involvement for selecting a generic remedy at an individual facility. To be eligible for selection at a facility, a generic remedy shall be protective of human health and the environment at that facility. In appropriate cases, the President may select a generic remedy without considering alternatives to the generic remedy.''.

SEC. 503. MISCELLANEOUS AMENDMENTS TO SECTION 121.

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

(1) in the first sentence, by striking ''initiation'' and inserting ''completion of all physical onsite construction''; and

(2) in the second sentence—

(A) by inserting ''(1)'' after ''it is the judgment of the President that''; and

(B) by inserting after ''section 104 or 106,'' the following: ''or (2) an interim containment remedy was selected for such site and an appropriate final remedy applying treatment is available as described in subsection (b)(3)(B)(iii) and appropriate to select in accordance with subsection (b)(3)(A),''.

(b) PERMIT APPLICATION.—Section 121(e) (42 U.S.C. 9621(e)) is amended—

(1) in paragraph (1)—

(A) by striking ''(1)'';

(B) in the first sentence, by inserting ''or permit application'' before ''shall be required''; and

(C) by adding at the end the following new sentence: ''No Federal, State, or local permit or permit application shall be required for onsite or offsite activities conducted under section 311(b).''; and

(2) by striking paragraph (2).

SEC. 504. RESPONSE AUTHORITIES.

(a) STUDIES AND INVESTIGATIONS.—The second sentence of section 104(b)(1) (42 U.S.C. 9604(b)(1)) is amend-

ed by striking ''studies'' and all that follows through the period at the end of the sentence and inserting the following: ''actions, studies, or investigations as the President may determine to be necessary or appropriate to plan and direct response actions or to enforce the provisions of this Act and shall be entitled to recover the costs thereof.''.

(b) DISPOSAL AUTHORITY.—Section 104(j) (42 U.S.C. 9604(j)) is amended—

(1) in the first sentence of paragraph (1), by striking ''remedial'' and inserting ''response'';

(2) by striking paragraph (2);

(3) by redesignating paragraph (3) as paragraph (2);

(4) in paragraph (2) (as so redesignated), by striking ''estate'' and inserting ''property''; and

(5) by adding after paragraph (2) (as so redesignated) the following new paragraph:

''(3) DISPOSAL AUTHORITY.—The President is authorized to dispose of any interest in real property acquired for use by the Administrator under this subsection by sale, exchange, donation, or otherwise and any such interest in real property shall not be subject to any of the provisions of section 120 except the notice provisions of section 120(h)(1). Any moneys re-

ceived by the President pursuant to this paragraph shall be deposited in the Fund.''.

SEC. 505. REMOVAL ACTIONS.

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

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

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

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

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

''(7) NOTIFICATION OF AND CONCURRENCE FROM THE ENVIRONMENTAL PROTECTION AGENCY OR STATE FOR NONEMERGENCY REMOVAL ACTIONS.—Before the commencement of any nonemergency removal action by a department, agency, or instrumentality of the United States, such department, agency, or instrumentality shall—

"(A) notify the Environmental Protection Agency or the State, as appropriate, of the planned removal action; and

"(B) except in a case in which the agency undertaking the action is the Environmental Protection Agency, obtain concurrence in the planned removal action from the Environmental Protection Agency or the State, as applicable.".

SEC. 506. TRANSITION.

(a) EFFECTIVE DATE.—This title, and the amendments made by this title, shall become effective 180 days after the date of enactment of this Act. Remedies selected under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) following that effective date shall be selected as provided in section 121(b) of such Act (as amended by section 502) (42 U.S.C. 9621(b)) and subject to the Federal and State requirements specified in paragraphs (7) and (8) of section 121(d) of such Act (as amended by section 501(a)(5)) (42 U.S.C. 9621(d)), except as provided in subsection (b).

(b) CONTINUED EFFECTIVENESS OF REGULATIONS AND GUIDANCE.—Until promulgation of the national goals and the national risk protocol under section 121(d) of such Act, the President, in selecting such remedies, may continue

to rely on current regulations and guidance (in effect under such Act as of the date of enactment of this Act) with regard to acceptable risk levels and the conduct of risk assessments.

(c) PRIOR RECORDS OF DECISION.—

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

(2) CHANGES.—If, pursuant to section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617), the President determines that a change to a record of decision signed prior to the effective date of this title is necessary, the President may apply the rules in effect under such Act at the time the original record of decision was signed.

TITLE VI—MISCELLANEOUS

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

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

(1) in paragraph (4), by adding at the end the following new subparagraph:

"(D) A provision allowing for the participation of other responsible parties in the response action."; and

(2) by inserting after paragraph (7) (as added by section 505(b)) the following new paragraph:

"(8) EXCEPTION TO REQUIRED ACTION.—

"(A) CONDITIONS.—No department, agency, or instrumentality of the United States that owns or operates a facility over which the department, agency, or instrumentality exercises no regulatory or other control over activities that directly or indirectly resulted in a release or threat of a release of a hazardous substance shall be subject to the requirements of paragraphs (1) through (7), other than subparagraphs (F) and (G) of paragraph (5), to the extent that the department, agency, or instrumentality demonstrates to the satisfaction of the Administrator that—

"(i) no department, agency, or instrumentality was the primary or sole source or cause of a release or threat of release of a hazardous substance at the facility;

"(ii) the activities either directly or indirectly resulting in a release or threat of a

release of a hazardous substance at the facility were conducted pursuant to any of sections 2319 through 2329, section 2331, sections 2333 through 2337, or section 2344, of the Revised Statutes (30 U.S.C. 22–24, 26–30, 33–35, 37, 39–42, or 47) and occurred before January 1, 1976; and

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

"(B) APPLICATION.—

"(i) ENFORCEMENT.—If the conditions listed in clauses (i) through (iii) of subparagraph (A) are not met, the applicable terms of this subsection apply to the department, agency, or instrumentality of the United States at the facility. Upon a determination by the Administrator that a department, agency, or instrumentality qualifies for the exception provided by this paragraph to other provisions of this subsection, the head of such department, agency, or in-

strumentality may exercise enforcement authority under section 106 (in addition to any other delegated authorities). To the extent a person who has been issued an order under the authority of this paragraph seeks reimbursement under section 106, the relevant department, agency, or instrumentality, and not the Fund, shall be the source of any appropriate reimbursement.

"(ii) REMEDIAL INVESTIGATION AND FEASIBILITY STUDY.—Unless the relevant department, agency, or instrumentality has, with the concurrence of the Administrator, obtained or ensured the performance of a remedial investigation and feasibility study by responsible parties pursuant to an order or consent decree within 12 months after the facility has been listed on the National Priorities List, the exception provided by this paragraph to other provisions of this subsection shall be void and the department, agency, or instrumentality shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study

for such facility. If the Administrator determines that the relevant department, agency, or instrumentality has failed to ensure, within 180 days after the issuance of the record of decision for the facility, the performance of a complete remedial action for the facility, such exception shall be void 30 days after the determination, and the department, agency, or instrumentality shall, in consultation with the Administrator and such authorities, conduct a remedial action consistent with the record of decision for the facility.''.

SEC. 602. TRANSFERS OF UNCONTAMINATED PROPERTY.

The first sentence of section 120(h)(4)(A) (42 U.S.C. 9620(h)(4)(A)) is amended—

(1) by striking ''stored for 1 year or more,''; and

(2) by striking the comma after ''released''.

SEC. 603. AGREEMENTS TO TRANSFER BY DEED.

Section 120(h) (42 U.S.C. 9620(h)) is amended by adding at the end the following new paragraph:

''(6) AGREEMENTS TO TRANSFER BY DEED.—Nothing in this subsection shall be construed to prohibit the head of a department, agency, or instrumentality of the United States from entering into an

agreement to transfer by deed real property or a facility prior to the entering of such deed, if the head of the department, agency, or instrumentality has met the requirements of paragraph (4).''.

SEC. 604. ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.

Section 111(a) (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following new paragraph:

''(7) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.—Payment of no more than 50 percent of response costs incurred by a potentially liable party in taking actions approved by the Administrator to achieve required levels of response under this Act after employing 1 or more alternative or innovative treatment technologies, as defined in section 311(b)(10), that fails to achieve a level of response required under this Act pursuant to an administrative order or consent decree. The Administrator shall issue guidance on the appropriate level of funding for response activities using such alternative or innovative treatment technologies that are necessary to achieve a level of response required under this Act. The Administrator shall review and update such guidance, as appropriate.''.

SEC. 605. DEFINITIONS.

(a) IN GENERAL.—Section 101 (42 U.S.C. 9601) is amended—

(1) in paragraph (10)(H), by striking ''subject to'' and inserting ''in compliance with'';

(2) in paragraph (14), by adding at the end the following new sentence: ''The term includes methane, but only when a response action undertaken to address a release or threat of release of a hazardous substance (as otherwise defined in this paragraph) at a landfill or similar site also addresses methane.'';

(3) in paragraph (20)—

(A) in clause (iii) of the first sentence of subparagraph (A), by inserting ''the United States or'' after ''similar means to'';

(B) in subparagraph (D)—

(i) in the first sentence, by inserting ''the United States or'' after ''does not include''; and

(ii) in the second sentence—

(I) by inserting ''any department, agency, or instrumentality of the United States or'' before ''any State''; and

(II) by striking ''such a'' and inserting ''such department, agency, or

instrumentality of the United States or''; and

(C) by inserting after subparagraph (D) the following new subparagraph:

''(E) EXCLUSION OF UNITED STATES, CONSERVATOR, OR RECEIVER.—The term 'owner or operator' shall not include the United States or any department, agency, or instrumentality of the United States, or a conservator or receiver appointed by a department, agency, or instrumentality of the United States, if the United States or the conservator or receiver meets both of the following conditions:

''(i) AUTHORITY.—The United States, conservator, or receiver acquired ownership or control of a vessel or facility (or any right or interest therein)—

''(I) in connection with the exercise of receivership or conservatorship authority or the liquidation or winding up of the affairs of any entity subject to a receivership or conservatorship, including any subsidiary thereof;

''(II) in connection with the exercise of any seizure or forfeiture authority; or

''(III) pursuant to an Act of Congress specifying the property to be acquired.

''(ii) NONPARTICIPATION IN MANAGEMENT.—The United States, conservator, or receiver does not participate in the management of the vessel or facility operations that result in a release or threat of release of hazardous substances and complies with such other requirements as the Administrator may set forth by regulation.'';

(4) in paragraph (23)—

(A) in the first sentence—

(i) by striking ''terms'' and inserting ''term'';

(ii) by striking ''necessary'' the first place it appears and inserting ''necessarily''; and

(iii) by inserting ''or combination of such actions'' after ''environment, such actions'';

(B) in the second sentence, by striking ''The term'' and inserting ''Each term''; and

(C) by adding at the end the following new sentence: ''The term 'remove' or 'removal' is not limited to emergency situations and includes actions to address future or potential exposures and, if such actions are consistent with the requirements of this Act, actions that obviate the need for a remedial action at a site listed on the National Priorities List by meeting the same requirements as are applicable to remedial actions under section 121.'';

(5) in paragraph (24), by adding at the end the following new sentence: ''The term includes operation and maintenance for a facility.'';

(6) in paragraph (25)—

(A) by striking ''terms'' the first place it appears and inserting ''term'';

(B) by striking ''action;, all'' and inserting ''action. All''; and

(C) by striking ''related thereto'' and inserting ''(including the services of attorneys and expert witnesses) and oversight activities related to the activities described in paragraph (23) or

(24), as appropriate, if the activities are undertaken by the President'';

(7) in paragraph (29), by inserting before the period the following: '', except that the term 'hazardous substance' shall be substituted for the term 'hazardous waste' in the definitions of 'disposal' and 'treatment' '';

(8) in paragraph (33), by striking ''; except that the'' and inserting ''. The'';

(9) in paragraph (35)—

(A) in subparagraph (A)—

(i) by striking clause (iii); and

(ii) in the matter preceding clause (i), by striking ''clause (i), (ii), or (iii)'' and inserting ''clause (i) or (ii)''; and

(B) by striking subparagraph (B) and inserting the following new subparagraph:

''(B) KNOWLEDGE OF INQUIRY REQUIREMENT.—

''(i) IN GENERAL.—To establish that the defendant had no reason to know, as provided in subparagraph (A)(i), the defendant must have undertaken, at the time of the acquisition, all appropriate inquiry into the previous ownership and uses of the

facility and its real property in accordance with generally accepted good commercial and customary standards and practices. For the purposes of the preceding sentence and until the Administrator issues or designates standards and practices as provided in clause (ii), the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

"(ii) RULE.—Within 1 year after the date of enactment of the Superfund Reform Act of 1994, the Administrator shall, by rule, issue standards and practices or designate standards and practices promulgated or developed by others, that satisfy the requirements of this subparagraph. In issuing or designating such standards and prac-

tices, the Administrator shall consider each of the following:

"(I) Conduct of an inquiry by an environmental professional.

"(II) Inclusion of interviews with past and present owners, operators, and occupants of the facility and its real property for the purpose of gathering information regarding the potential for contamination at the facility and its real property.

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

"(IV) Inclusion of a search for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or its real property.

"(V) Inclusion of a review of Federal, State, and local government

records (such as waste disposal records), underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or its real property.

''(VI) Inclusion of a visual inspection of the facility and its real property and of adjoining properties.

''(VII) Any specialized knowledge or experience on the part of the defendant.

''(VIII) The relationship of the purchase price to the value of the property if uncontaminated.

''(IX) Commonly known or reasonably ascertainable information about the property.

''(X) The obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

"(iii) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph."; and

(10) by adding at the end the following new paragraphs:

"(39) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person who acquires ownership of a facility after the date of enactment of the Superfund Reform Act of 1994, or a tenant of such a person, who can establish each of the following by a preponderance of the evidence:

"(A) DISPOSAL PRIOR TO ACQUISITION.—All active disposal of hazardous substances at the facility occurred before that person acquired the facility.

"(B) INQUIRY.—The person made all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted good commer-

cial and customary standards and practices. The standards and practices issued by the Administrator pursuant to paragraph (35)(B)(ii) shall satisfy the requirements of this subparagraph. In the case of property for residential or other similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.

"(C) NOTICES.—The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

"(D) CARE.—The person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop on-going releases, prevent threatened future releases of hazardous substances, and prevent or limit human or natural resource exposure to hazardous substances previously released into the environment.

"(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to those persons that

are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(F) RELATIONSHIP.—The person is not liable, or is not affiliated with any other person that is liable, for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.

"(40) COMMUNITY.—The term 'community', except as provided in paragraph (36), used with respect to a facility and without further modification, means a political subdivision of a State, or a combination of such subdivisions, that contains, borders on, or is significantly affected by the facility, in a case of a facility that is—

"(A) listed or proposed for listing on the National Priorities List; or

"(B) listed on a State Registry.

"(41) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means all waste materials gen-

erated by households, including single and multifamily residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes—

"(A) are essentially the same as waste normally generated by households; or

"(B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services, and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under section 3001(d) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)).

Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control)

operations not essentially the same as waste normally generated by households.

"(42) MUNICIPALITY.—The term 'municipality' means a political subdivision of a State, including a city, county, village, town, township, borough, parish, school, school district, sanitation district, water district, or other public entity performing local governmental functions. The term also includes a natural person acting in the capacity of an official, employee, or agent of any entity referred to in the preceding sentence in the performance of governmental functions.

"(43) NATIONAL PRIORITIES LIST.—The term 'National Priorities List' means the list established under the national contingency plan in accordance with section 105(a)(8).

"(44) OWNER, OPERATOR, OR LESSEE OF RESIDENTIAL PROPERTY.—The term 'owner, operator, or lessee of residential property' means a person who owns, operates, manages, or leases residential property and who uses or allows the use of the residential property exclusively for residential purposes. The term 'residential property' means single or multifamily residences, including accessory land, buildings, or

improvements incidental to such dwellings, that are exclusively for residential use.

"(45) POTENTIALLY RESPONSIBLE PARTY.—The term 'potentially responsible party' means a potentially responsible party referred to in section 104(a)(1).

"(46) QUALIFIED HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.—The term 'qualified household hazardous waste collection program' means a program established by an entity of the Federal Government, a State, a municipality, or an Indian tribe that provides, at a minimum, for semiannual collection of household hazardous wastes at accessible, well-publicized collection points within the relevant jurisdiction.

"(47) RECORD OF DECISION.—The term 'record of decision' means a record of decision referred to in section 117(e).

"(48) REMEDIAL ACTION AND FEASIBILITY STUDY.—The terms 'remedial action' and 'feasibility study' mean the remedial action and the feasibility study, respectively, referred to in section 104(a)(1).

"(49) SEWAGE SLUDGE.—The term 'sewage sludge' means solid, semisolid, or liquid residue removed during the treatment of municipal waste

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

"(50) SITE CHARACTERIZATION.—The term 'site characterization' means an investigation that determines the nature and extent of a release or potential release of a hazardous substance, pollutant, or contaminant, and that includes an onsite evaluation and sufficient testing, sampling, and other field data gathering activities to analyze whether there has been a release or threat of a release of a hazardous substance, pollutant, or contaminant, and the health and environmental risks posed by such a release or threat of release. The investigation also may include review of existing information (available at the time of the review), an offsite evaluation, or other measures that the Administrator considers appropriate.

"(51) SMALL BUSINESS.—The term 'small business' means any business entity that employs no more than 100 individuals and is a 'small business concern' as defined under the Small Business Act (15 U.S.C. 631 et seq.).

"(52) SMALL NONPROFIT ORGANIZATION.—The term 'small nonprofit organization' means any organization that, at the time of disposal, did not distribute any part of its income or profit to its members,

directors, or officers, employed no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.

''(53) STATE REGISTRY.—The term 'State Registry' means a list described in section 105(a)(8)(C).''.

(b) CONFORMING AMENDMENTS.—

(1) EPA.—

(A) Section 104(i) (42 U.S.C. 9604(i)) is amended by striking ''the Administrator of EPA'' each place it appears and inserting ''the Administrator''.

(B) Section 104(i)(2)(A) (42 U.S.C. 9604(i)(2)(A)) is amended by striking ''('EPA')''.

(C) Section 301(h)(2) (42 U.S.C. 9651(h)(2)) is amended by striking ''EPA's activities'' and inserting ''activities of the Environmental Protection Agency''.

(2) NPL.—Section 113(g)(1) (42 U.S.C. 9613(g)(1)) is amended by striking ''(NPL)''.

(3) RI/FS.—

(A) Except as provided in subparagraph (B), section 104(a)(1) (42 U.S.C. 9604(a)(1)) is amended by striking ''RI/FS'' each place it appears and inserting ''remedial investigation and feasibility study''.

(B) Sections 104(a)(1) and 116(d) (42 U.S.C. 9604(a)(1) and 9616(d)) are amended by striking ''(RI/FS)''.

(4) RELATIONSHIP OF OPERATION AND MAINTENANCE TO REMEDIAL ACTION.—Section 104(c)(6) (42 U.S.C. 9604(c)(6)) is amended by striking the second and third sentences.

SEC. 606. CONFORMING AMENDMENT.

Section 126(a) (42 U.S.C. 9626(a)) (as amended by section 205(b)) is further amended by striking ''authorities) and'' and inserting ''authorities),''.

SEC. 607. RESPONSE CLAIMS PROCEDURES.

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

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

(1) in the first sentence, by inserting after ''unless such claim is'' the following: ''(1) accompanied by an audit prepared by an independent, certified public accountant, and (2)''; and

(2) by inserting after the first sentence the following new sentence: ''The Administrator reserves the right to review such audits to determine that the costs for which the claimant is seeking reimbursement are consistent with section 111(a) and, where necessary, withhold claims or a portion thereof that are inconsistent with section 111(a).''.

SEC. 608. SMALL BUSINESS OMBUDSMAN.

The Administrator of the Environmental Protection Agency shall establish a small business Superfund assistance section within the small business ombudsman office of the Environmental Protection Agency. This section shall—

(1) act as a clearinghouse of information for small businesses concerning the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), consisting of materials comprehensible to the general public and including information concerning the allocation process described in section 129 of such Act (as added by section 409), requirements and procedures for expe-

dited settlements under section 122(g)(1) of such Act (42 U.S.C. 9622(g)(1)), de minimis and de micromis status, and ability-to-pay procedures;

(2) provide general advice and assistance to small businesses as to the questions and problems of the businesses concerning the allocation and settlement processes, except that the advice and assistance shall not include any legal advice as to liability or any other legal representation and the ombudsman shall not participate in the allocation process; and

(3) develop proposals and make recommendations for changes in policies and activities of the Environmental Protection Agency that would better fulfill the goals of title IV and the amendments made by such title in ensuring equitable, simplified, and expedited allocations and settlements for small businesses.

SEC. 609. CONSIDERATION OF LOCAL GOVERNMENT CLEANUP PRIORITIES IN ALLOCATION OF OVERSIGHT RESOURCES.

Section 104(c)(2) (42 U.S.C. 9604(c)(2)) is amended—

(1) by striking ''(2) The'' and inserting the following:

''(2) DETERMINATION OF APPROPRIATE REMEDIAL ACTION.—

''(A) IN GENERAL.—The''; and

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

"(B) PRIORITIES.—In setting priorities for scheduling work and allocating oversight resources for a remedial action at a facility at which a potentially responsible party that is a State or local government proposes to carry out the remedial action (or a portion thereof), the Administrator should give higher priority to such remedial action (or portion thereof) if the State or local government demonstrates that the remedial action—

"(i) will have a public benefit; and

"(ii) will result in the property on or adjacent to the facility being returned to productive use.

A private potentially responsible party may request similar consideration, in the Administrator's discretion. Nothing in this subparagraph shall affect the responsibility of the Administrator to schedule and oversee the conduct of remedial action so as to ensure protection of human health and the environment.".

SEC. 610. SEVERABILITY.

Section 113 (42 U.S.C. 9613) is amended by adding at the end the following new subsection:

''(m) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.''.

SEC. 611. RESULTS-ORIENTED CLEANUPS.

Section 105(a) (42 U.S.C. 9605(a)) (as amended by section 103(a)(2)) is further amended—

(1) in paragraph (10), by striking ''and'' the last place it appears;

(2) in paragraph (11), by striking the period at the end of the paragraph and inserting ''; and''; and

(3) by inserting after paragraph (11) the following:

''(12) alternative procedures for conducting response measures, including remedial investigations, feasibility studies, remedial designs, and remedial actions, which procedures shall—

''(A) utilize a results-oriented approach in order to minimize the time required to conduct response measures, and reduce the potential for

exposure to hazardous substances, in an efficient, timely, and cost-effective manner; and

''(B) be conducted in accordance with specified methods and criteria, including directives, standards, and time limits, for the implementation of the alternative procedures.

The national hazardous substance response plan shall be amended within 180 days after the date of enactment of the Superfund Reform Act of 1994 to include procedures required by paragraph (12), after notice and opportunity for public comment. Procedures described in paragraph (12) shall be subject to the requirements of sections 117, 120, and 121, and any other provision of this Act in the same manner and to the same degree as these sections and provisions apply to such response measures.''.

SEC. 612. INNOVATIVE TECHNOLOGIES FOR REMEDIAL ACTION AT FEDERAL FACILITIES.

(a) IN GENERAL.—Section 311 (42 U.S.C. 9660) is amended by adding at the end the following new subsection:

''(h) FEDERAL FACILITIES.—

''(1) DESIGNATION.—The President may designate a facility that is owned or operated by any department, agency, or instrumentality of the United States, and that is listed or proposed for listing on the National Priorities List, to facilitate the research,

development, and application of innovative technologies for remedial action at the facility.

"(2) USE OF FACILITIES.—Such a facility shall be made available to Federal departments and agencies, State departments and agencies, and public and private instrumentalities, to carry out activities described in paragraph (1). The Administrator shall coordinate the use of the facilities with the departments, agencies, and instrumentalities of the United States, and shall have the right to approve or deny the use of a particular innovative technology for remedial action at any such facility.

"(3) CONSIDERATIONS.—In considering whether to permit the application of a particular innovative technology for remedial activity at such a facility, the Administrator shall evaluate the schedules and penalties applicable to the facility under any agreement or order entered into pursuant to section 120. If, after such evaluation, the Administrator determines that there is a need to amend any agreement or order entered into pursuant to section 120, the Administrator shall comply with all provisions of the agreement or order, respectively, relating to the amendment of such agreement or order, respectively.".

(b) REPORT.—Section 311(e) (42 U.S.C. 9660(e)) is amended—

(1) by striking ''At the time'' and inserting the following:

''(1) IN GENERAL.—At the time''; and

(2) by adding at the end the following:

''(2) ADDITIONAL INFORMATION.—The report shall also include information on—

''(A) the use of facilities described in subsection (h)(1) for the research, development, and application of innovative technologies for remedial activity, as authorized under subsection (h); and

''(B) the use of the Fund to pay for the response costs at facilities that fail to meet the requirements of section 121 due to the application of such innovative technologies under subsection (h).''.

SEC. 613. NOTIFICATION.

Section 103 (42 U.S.C. 9603) is amended by adding at the end the following:

''(g) NOTIFICATION OF LISTING ON NATIONAL PRIORITIES LIST.—

''(1) REQUIREMENT.—Any owner or operator of a facility that is—

"(A) listed on the National Priorities List; and

"(B) receiving for treatment or disposal hazardous waste generated offsite of such facility; shall notify any person who arranges for treatment or disposal, or arranges with a transporter for transport for treatment or disposal, of such waste at such facility, that the facility is listed on the National Priorities List.

"(2) PROHIBITION ON DEFENSE.—Lack of notification described in paragraph (1) shall not be a defense to liability under section 107.

"(3) TIMING.—The owner or operator shall provide the notification before accepting the hazardous waste at the facility.

"(4) DEFINITION.—As used in this subsection, the term 'hazardous waste' has the meaning given the term in section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)).".

SEC. 614. CERTIFICATION OF ENVIRONMENTAL TRAINING AND CERTIFICATION ORGANIZATIONS.

(a) GUIDELINES.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall, after considering the recommendations submit-

ted under subsection (b)(4), publish guidelines for a model State program for organizations that train and certify individuals to perform phase I environmental site assessments.

(2) CONTENTS.—The guidelines published under paragraph (1) may include minimum standards relating to—

(A) formal environmental training;

(B) continuing environmental education;

(C) environmental certification and testing procedures;

(D) revocation and disciplinary procedures;

(E) establishment of a code of ethics;

(F) consumer education;

(G) certification renewal procedures; and

(H) annual reporting of program activities.

(b) ESTABLISHMENT OF ENVIRONMENTAL CERTIFICATION BOARD.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Administrator shall establish a certification advisory board to be known as the ''Environmental Certification Board''.

(2) MEMBERS.—The Board shall consist of not fewer than 6 members, appointed by the Administrator, who have demonstrated knowledge in the envi-

ronmental field. The Board shall include representatives from the Environmental Protection Agency, environmental interest organizations, the chemical manufacturing industry, the environmental consulting service industry, the insurance industry, and the banking and investment industry, and other appropriate representatives with knowledge in the environmental field.

(3) CHAIRPERSON.—The Board shall appoint 1 member to serve as Chairperson of the Board to exercise the executive and administrative functions of the Board.

(4) DUTIES.—Not later than 180 days after the date of enactment of this Act, the Board shall submit recommendations to the Administrator regarding the guidelines described in subsection (a) that shall include the minimum standards described in subsection (a)(2).

(5) COMPENSATION.—Notwithstanding section 1342 of title 31, United States Code, each member of the Board shall serve without compensation in addition to any compensation received for the services of the member as an officer or employee of the United States.

(6) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the homes or regular places of business of the members in the performance of services for the Board.

(7) FACILITIES, SUPPLIES, AND PERSONNEL.—

(A) IN GENERAL.—Upon the request of the Board, the Administrator shall provide to the Board the facilities, supplies, and personnel necessary for the Board to carry out the responsibilities of the Board under this subsection.

(B) DETAILS.—In the case of a detail of a Federal Government employee under subparagraph (A), the employee may be detailed to the Board without reimbursement. The detail shall be without interruption or loss of civil service status or privilege.

(C) HEARINGS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this paragraph.

(D) INFORMATION FROM FEDERAL AGENCIES.—The Board may secure directly from any Federal department or agency such information as the Board considers necessary to carry out this paragraph. Upon request of the Board, the head of the department or agency shall furnish the information to the Board.

(E) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(8) TERMINATION.—The Board shall terminate 2 years after the date of enactment of this Act.

(c) STATE ADOPTION OF REGULATIONS.—

(1) IN GENERAL.—After the publication of the guidelines under subsection (a), any State may adopt regulations identical (except as provided in paragraph (2)) to the guidelines.

(2) CONSTRUCTION.—Nothing in this section shall preclude any State from issuing and enforcing, at any time, additional or more stringent guidelines and regulations regarding the training and certification of persons who perform phase I environmental site assessments.

(d) DETERMINATION OF COMPLIANCE.—

(1) SUBMISSION OF INFORMATION.—If a State adopts the guidelines issued by the Administrator under subsection (a), any organization located in the State that seeks to obtain a determination of compliance with the regulations adopted under subsection (c) may submit to the State information documenting the compliance of the organization.

(2) DETERMINATION.—The State shall make the determination of the compliance or noncompliance of the organization with the regulations.

(3) APPROVAL.—As soon as practicable after a determination of compliance has been made under paragraph (2), the State shall issue notice in writing to the organization, indicating that the organization is an approved phase I environmental training and certification organization in accordance with this section. The approval shall be valid for a term established by the State, but not longer than 5 years.

(4) FEE.—A State may charge a reasonable fee, equal to the cost of determining compliance under paragraph (2), to each organization that applies for the determination. Each such fee shall be listed as part of the regulations adopted under subsection (c).

(5) ISSUANCE OF DEGREE.—Any organization that has received notice of a determination of compli-

ance from a State under paragraph (3) may issue, to any individual who has completed to the satisfaction of the organization the curriculum and training program of the organization, a diploma, certification, or other form of degree signifying that the recipient is a certified phase I environmental professional qualified to perform phase I environmental site assessments.

(6) REVIEW.—A State may periodically, or upon expiration of an approval under paragraph (3), review the program, curriculum, facilities, and training methods of an organization referred to in paragraph (5) to determine if the organization continues to comply with the regulations adopted under subsection (c).

(e) DEFINITIONS.—As used in this section:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) APPROVED PHASE I ENVIRONMENTAL TRAINING AND CERTIFICATION ORGANIZATION.—The term ''approved phase I environmental training and certification organization'' means an organization that trains and certifies individuals to perform phase I environmental site assessments whose curriculum, program, facilities, training, and testing methods

comply with the regulations adopted by a State under this section.

(3) BOARD.—The term ''Board'' means the Environmental Certification Board established under subsection (b)(1).

(4) CERTIFIED PHASE I ENVIRONMENTAL PROFESSIONAL.—The term ''certified phase I environmental professional'' means any person who receives certification to perform phase I environmental site assessments from an approved environmental training and certification organization in accordance with this section.

(5) PHASE I ENVIRONMENTAL SITE ASSESSMENT.—The term ''phase I environmental site assessment'' means the process by which a person or entity seeks to determine whether a particular parcel of real property is subject to recognized environmental conditions that indicate the presence or likely presence of a hazardous substance or petroleum product on the property under conditions that indicate an existing release, a past release, or a material threat of a release into structures on the property, or into the ground, ground water, or surface water of the property.

SEC. 615. SENSE OF THE COMMITTEE CONCERNING OFFSETS FROM THE CORPORATE ENVIRONMENTAL INCOME TAX TO PAY FOR WELFARE REFORM.

(a) FINDINGS.—The Committee on Environment and Public Works finds that—

(1) real welfare reform means spending less taxpayer money, not more;

(2) real welfare reform means putting people to work in exchange for benefits;

(3) real welfare reform means concentrating efforts to reduce illegitimacy; and

(4) real welfare reform means giving the States maximum flexibility to design their own solutions.

(b) SENSE OF THE COMMITTEE.—It is the sense of the Committee on Environment and Public Works of the Senate that revenues resulting from the extension of the corporate environmental income tax under section 59A of the Internal Revenue Code of 1986 should not be used to offset expenditures incurred as a result of welfare reform.

TITLE VII—FUNDING

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 111(a) (42 U.S.C. 9611(a)) is amended by striking "$8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than

$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994'' and inserting ''$9,600,000,000 for the period commencing October 1, 1994, and ending September 30, 1999''.

SEC. 702. ORPHAN SHARE FUNDING.

Section 111(a) (42 U.S.C. 9611(a)) (as amended by section 607(a)) is further amended by inserting after paragraph (7) the following new paragraph:

''(8) ORPHAN SHARE FUNDING.—Payment of orphan shares pursuant to section 129.''.

SEC. 703. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Subsection (m) of section 111 (42 U.S.C. 9611(m)) is amended to read as follows:

''(m) HEALTH AUTHORITIES.—There are authorized to be appropriated from the Fund to the Secretary of Health and Human Services to be used for the purposes of carrying out the activities described in subsection (c)(4) and the activities described in section 104(i), $50,000,000 for each of fiscal years 1995 through 1999. Funds appropriated under this subsection for a fiscal year, but not obligated by the end of the fiscal year, shall be returned to the Fund.''.

SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Subsection (n) of section 111 (42 U.S.C. 9611(n)) is amended to read as follows:

"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

"(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—For each of fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

"(2) HAZARDOUS SUBSTANCE RESEARCH, DEMONSTRATION, AND TRAINING.—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

"(A) For fiscal year 1995, $40,000,000.

"(B) For fiscal year 1996, $50,000,000.

"(C) For fiscal year 1997, $55,000,000.

"(D) For fiscal year 1998, $55,000,000.

"(E) For fiscal year 1999, $55,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) for any fiscal year.

"(3) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).".

SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Paragraph (1) of section 111(p) (42 U.S.C. 9611(p)(1)) is amended to read as follows:

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

"(A) For fiscal year 1995, $250,000,000.

"(B) For fiscal year 1996, $250,000,000.

"(C) For fiscal year 1997, $250,000,000.

"(D) For fiscal year 1998, $250,000,000.

"(E) For fiscal year 1999, $250,000,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate

amount authorized to be appropriated under this subsection and the appropriate section of the Internal Revenue Code of 1986 as has not been appropriated before the beginning of the fiscal year involved.''.

SEC. 706. ADDITIONAL LIMITATIONS.

Section 111 (42 U.S.C. 9611) is amended by adding at the end the following new subsections:

''(q) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGIES.—For each of fiscal years 1995, 1996, 1997, 1998, and 1999, not more than $40,000,000 of the amounts available in the Fund may be used for the purposes of subsection (a)(7) (relating to alternative or innovative treatment technologies).

''(r) CITIZEN INFORMATION AND ACCESS OFFICES.—For each of fiscal years 1995 through 1999, not more than $25,000,000 of the amounts available in the Fund may be used to carry out section 117(h) (relating to Citizen Information and Access Offices).

''(s) COMMUNITY WORKING GROUPS.—For the period commencing October 1, 1994, and ending September 30, 1999, not more than $30,000,000 of the amounts available in the Fund may be used to make grants under section 117(g)(6) (relating to Community Working Groups).

''(t) WORKER HEALTH AND SAFETY TRAINING AND EDUCATION GRANTS.—For each of fiscal years 1995

through 1999, not more than $20,000,000 of the amounts available in the Fund may be used to carry out section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (relating to worker health and safety training and education grants).

"(u) RECOVERIES.—Effective beginning October 1, 1995, any recoveries collected pursuant to this Act shall be credited as offsetting collections to the Superfund appropriations account.".

SEC. 707. USES OF THE FUND.

Section 111(a) (42 U.S.C. 9611(a)) (as amended by section 702) is further amended by inserting after paragraph (8) the following new paragraphs:

"(9) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTY COSTS.—If a potentially responsible party and the Administrator enter into a settlement under this Act under which the Administrator is reimbursed for the response costs of the Administrator, and if the Administrator determines, through a Federal audit of response costs, that the costs for which the Administrator was reimbursed—

"(A) are unallowable due to contractor fraud;

"(B) are unallowable under the Federal Acquisition Regulation; or

''(C) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures;

the Administrator is authorized to use the Fund to reimburse a potentially responsible party for any costs identified under subparagraph (A), (B), or (C).

''(10) STATE REGISTRY GRANTS.—The cost of grants under section 104(d)(5) (relating to State Registries).''.

SEC. 708. TECHNICAL AND CONFORMING AMENDMENTS.

Section 9507(c)(1)(A) of the Internal Revenue Code of 1986 is amended—

(1) at the end of clause (ii), by striking ''and'';

(2) at the end of clause (iii), by striking ''or'' and inserting ''and''; and

(3) by inserting after clause (iii) the following:

''(iv) paragraphs (7), (8), (9), and (10), of subsection (a), and subsections (q), (r), (s), and (t), of section 111 of such Act, or''.

TITLE VIII—ENVIRONMENTAL INSURANCE RESOLUTION FUND

SEC. 801. SHORT TITLE.

This title may be cited as the ''Environmental Insurance Resolution and Equity Act of 1994''.

SEC. 802. DEFINITIONS.

For purposes of this title:

(1) APPLICABLE COSTS.—The term ''applicable costs'' means applicable National Priorities List facility costs or applicable non-National Priorities List facility costs. Costs of removal shall be treated as applicable costs only if the removal is conducted in accordance with section 104, 106, or 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or under the regulations of the Administrator of the Environmental Protection Agency governing removal actions (section 300.415 of title 40, Code of Federal Regulations, or any successor regulations).

(2) APPLICABLE NATIONAL PRIORITIES LIST FACILITY COSTS.—The term ''applicable National Priorities List facility costs'' means the costs for an eligible National Priorities List facility—

(A) of response (as defined in section 101(25) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(25))), or any other liability imposed under section 107 of such Act (42 U.S.C. 9607), including the costs of meeting State requirements at the facility;

(B) for natural resources damages under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607); or

(C) to defend potential liability for the costs described in subparagraph (A) or (B) or both, including attorney's fees, costs of suit, consultant and expert fees and costs, and expenses for testing and monitoring.

(3) APPLICABLE NON-NATIONAL PRIORITIES LIST FACILITY COSTS.—The term ''applicable non-National Priorities List facility costs'' means the costs for a non-National Priorities List facility—

(A) of removal (as defined in section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(23))), or other liability associated with the removal that is imposed under section 107 of such Act (42 U.S.C. 9607), but not including natural resource damages; and

(B) to defend potential liability for such costs of removal, including attorney's fees, costs of suit, consultant and expert fees and costs, and expenses for testing and monitoring.

(4) BOARD.—The term ''Board'' means the Board of Trustees of the Fund.

(5) ELIGIBLE COSTS.—The term ''eligible costs'' means the applicable costs incurred with respect to a hazardous substance disposed of at an eligible facility for which an eligible person either—

(A) has not been reimbursed; or

(B) has been reimbursed and that are the subject of a dispute between the eligible person and an insurer.

The term ''eligible costs'' shall not include any costs paid by the United States, other than unallocated costs that the United States has established as allowable costs in its contracts with an eligible person.

(6) ELIGIBLE FACILITY.—The term ''eligible facility'' means an eligible National Priorities List facility or an eligible non-National Priorities List facility.

(7) ELIGIBLE NATIONAL PRIORITIES LIST FACILITY.—The term ''eligible National Priorities List facility'' means any facility placed on the National Priorities List at any time, at which a hazardous substance was disposed of on or before December 31, 1985.

(8) ELIGIBLE NON-NATIONAL PRIORITIES LIST FACILITY.—The term ''eligible non-National Priorities List facility'' means any facility where a removal (as defined in section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(23))) was conducted pursuant to governmental direction or oversight under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the national contingency plan at any time, at which a hazardous substance was disposed of on or before December 31, 1985.

(9) ELIGIBLE PERSON.—The term ''eligible person'' means any person that demonstrates, to the satisfaction of the Fund, that such person—

(A)(i) has received a notice at any time that it may be a potentially responsible party pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to an eligible National Priorities List facility, which notice requests or demands that such party perform response actions or pay response costs or natural resource damages for such facility; or

(ii) is or was liable, or alleged to be liable, at any time for a removal (as defined in section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(23))) at any eligible facility; and

(B) had entered into a valid insurance contract for qualified insurance.

(10) FACILITY.—The term ''facility'' has the same meaning as provided in section 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(9)).

(11) FUND.—The term ''Fund'' means the Environmental Insurance Resolution Fund.

(12) NATIONAL CONTINGENCY PLAN.—The term ''national contingency plan'' has the same meaning as provided in section 101(31) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(31)).

(13) NATIONAL PRIORITIES LIST.—The term ''National Priorities List'' means the National Priorities List under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

(14) PERSON.—The term ''person'' means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity or governmental unit (including any predecessor in interest or any subsidiary thereof).

(15) QUALIFIED INSURANCE.—The term ''qualified insurance'' means insurance for comprehensive general liability or commercial multiperil insurance coverage for any period prior to January 1, 1986. For purposes of this paragraph—

(A) comprehensive general liability insurance includes broad form liability, general liability, commercial general liability, and excess or umbrella coverage; and

(B) commercial multiperil insurance includes broad form property, commercial package, special multiperil, and excess or umbrella coverage.

The term ''qualified insurance'' shall not include any other insurance, such as environmental impairment liability insurance.

(16) VALID INSURANCE CONTRACT.—The term ''valid insurance contract'' means a contract for qualified insurance other than any of the following:

(A) An insurance contract with respect to which a person has entered into a settlement with an insurer providing, or where a judgment has provided, that the contract has been satisfied and that such person has no right to make any further claims for eligible costs under such contract.

(B) An insurance contract that covers only a time period prior to the earliest date of the action or status of the insured person that resulted in liability or potential liability under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607).

(C) An insurance contract with an insurance company that is insolvent or in insolvency proceedings on the date an eligible person elects to participate in the Fund.

(D) An insurance contract that is the subject of a settlement between the insurance company and the insured pursuant to which the policy has been reformed to include an absolute exclusion for pollution liability.

(E) An insurance contract issued to a response action contractor for any liability under

the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 governed by section 119 of such Act (42 U.S.C. 9619).

(17) STATE.—The term ''State'' has the same meaning as provided in section 101(27) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(27)).

SEC. 803. ENVIRONMENTAL INSURANCE RESOLUTION FUND.

(a) ENVIRONMENTAL INSURANCE RESOLUTION FUND ESTABLISHED.—There is established the Environmental Insurance Resolution Fund.

(b) OFFICES.—The principal office of the Fund shall be in the District of Columbia or at such other place as the Fund may from time to time prescribe.

(c) STATUS OF RESOLUTION FUND.—Except as expressly provided in this title, the Fund shall not be considered an agency or establishment of the United States.

(d) BOARD OF TRUSTEES.—

(1) IN GENERAL.—The Fund shall be administered by a Board of Trustees.

(2) MEMBERSHIP.—The Board shall consist of the following:

(A) GOVERNMENTAL MEMBERS.—

(i) The Administrator of the Environmental Protection Agency or the Administrator's designee, who shall be a Deputy Assistant Administrator in the Environmental Protection Agency or a person with immediate or general supervisory authority over such a Deputy Assistant Administrator.

(ii) The Attorney General of the United States or the Attorney General's designee, who shall be a Deputy Assistant Attorney General in the Department of Justice or a person with immediate or general supervisory authority over such a Deputy Assistant Attorney General.

(B) PUBLIC MEMBERS.—Five public members appointed by the President not later than 60 days after the date of enactment of this Act, not fewer than 2 of whom shall represent insurers subject to the appropriate section of the Internal Revenue Code of 1986, and not fewer than 2 of whom shall represent eligible persons. The public members shall be citizens of the United States. The public members of the Board shall not, by reason of such membership, be deemed to be officers or employees of the United States.

(C) NONVOTING MEMBER.—The Secretary of the Treasury or the designee of the Secretary shall serve as a nonvoting member of the Board. Any designee of the Secretary shall be a Deputy Assistant Secretary in the Department of the Treasury or a person with immediate or general supervisory authority over such a Deputy Assistant Secretary.

(D) INTERIM AUTHORITY.—Notwithstanding subparagraph (C) and paragraph (7), until such time as all the public members have been appointed pursuant to subparagraph (B), all authority of the Board shall be exercised by majority vote of the Attorney General, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency, or their designees.

(3) CHAIRPERSON.—

(A) DESIGNATION BY PRESIDENT.—The Chairperson of the Board shall be designated by the President from time to time from among the members described in paragraph (2)(A).

(B) AUTHORITY OF CHAIRPERSON.—No expenditure may be made by the Fund, or other action taken by the Fund, without the concur-

rence of the Chairperson of the Board. Except with respect to an action taken or required to be taken by the Board, the Chairperson may delegate such authority to any officer or employee of an agency represented by a governmental member of the Board. Any such delegation by the Chairperson shall be effective only upon publication of notice in the Federal Register.

(4) COMPENSATION.—Governmental members of the Board shall serve without additional compensation. Public members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this title, be entitled to receive compensation at the rate of $200 per day, including travel time. While away from their homes or regular places of business, members of the Board shall be allowed travel and actual, reasonable, and necessary expenses to the same extent as officers of the United States.

(5) TERM OF PUBLIC MEMBERS.—Public members of the Board shall serve for a term of 5 years, except that such members may be removed by the President for any reason at any time. A public member whose term has expired may continue to serve on

the Board until such time as the President appoints a successor. The President may reappoint a public member of the Board, but no such member may consecutively serve more than 2 terms.

(6) VACANCIES.—A vacancy on the Board shall be filled in the same manner as the original appointment, except that such appointment shall be for the balance of the unexpired term of the vacant position.

(7) QUORUM.—Four members of the Board shall constitute a quorum for the conduct of business.

(8) MEETINGS.—The Board shall meet not less than quarterly at the call of the Chairperson. Meetings of the Board shall be open to the public unless the Board, by a majority vote of members present in open session, determines that it is necessary or appropriate to close a meeting. The Chairperson shall provide at least 10 days notice of a meeting by publishing a notice in the Federal Register and such notice shall indicate whether it is expected that the Board will consider closing all or a portion of the meeting. Nothing in this paragraph shall be construed to apply to informal discussions or meetings among Board members.

(e) OFFICERS AND EMPLOYEES.—

(1) CHIEF EXECUTIVE OFFICER; CHIEF FINANCIAL OFFICER.—

(A) CHIEF EXECUTIVE OFFICER.—The Fund shall have a Chief Executive Officer appointed by the Chairperson of the Board who shall exercise any authority of the Fund or the Chairperson under such terms and conditions as the Chairperson of the Board may prescribe.

(B) CHIEF FINANCIAL OFFICER.—The Fund shall have a Chief Financial Officer appointed by the Board.

(2) COMPENSATION.—No officer or employee of the Fund may be compensated by the Fund at an annual rate of pay that exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code. No officer or employee of the Fund, other than a member of the Board, may receive any salary or other compensation from any source other than the Fund for services rendered during the period of employment by the Fund.

(3) POLITICAL TEST OR QUALIFICATION.—No political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel ac-

tions with respect to officers, agents, and employees of the Fund.

(4) ASSISTANCE BY FEDERAL AGENCIES.—The Attorney General, the Secretary of the Treasury, and the Administrator of the Environmental Protection Agency may, to the extent practicable and feasible and in their sole discretion, make personnel and other resources available to the Fund. Such personnel and resources may be provided on a reimbursable basis, and any personnel so provided shall not be considered employees of the Fund for purposes of paragraph (2).

(f) POWERS OF RESOLUTION FUND.—Notwithstanding any other provision of law, except as provided in section 803(d)(3)(B) or in any other provision of this title or as may be hereafter enacted by Congress expressly in limitation of the provisions of this subsection, the Fund shall have the power—

(1) to have succession until dissolved by Act of Congress;

(2) to make and enforce such bylaws, rules, and regulations as may be necessary or appropriate to carry out the purposes of this title;

(3) to make and perform contracts, agreements, and commitments;

(4) to settle, adjust, and compromise, and with or without consideration or benefit to the Fund release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Fund;

(5) to sue and be sued, complain, and defend in any Federal, State, or other court;

(6) to determine its necessary expenditures and appoint, employ, and fix and provide for the duties, compensation and benefits of officers, employees, attorneys, and agents, all of whom shall serve at the pleasure of the Chairperson of the Board;

(7) to hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Fund in carrying out the purposes of this title; and

(8) to take such other actions as may be necessary to carry out the responsibilities of the Fund under this title.

(g) BORROWING AUTHORITY.—Nothing in this title shall be construed to permit the Fund to issue any evidence of indebtedness or otherwise borrow money.

(h) CONFLICTS OF INTEREST.—

(1) STANDARDS OF CONDUCT.—For purposes of the standards of conduct promulgated by the Office of

Government Ethics pursuant to part 2635 of title 5, Code of Federal Regulations, officers and employees of the Fund shall be considered to be officers and employees of agencies, within the meaning of such part. The Chairperson of the Board shall enforce such standards and may prescribe such supplemental standards of conduct as the Board determines to be appropriate.

(2) FINANCIAL CONFLICTS OF INTEREST.—For purposes of section 208 of title 18, United States Code, officers and employees of the Fund shall be considered to be officers and employees of the executive branch of the United States Government.

(i) TORT CLAIMS.—The Fund shall be considered to be an agency of the United States for purposes of chapter 171 of title 28, United States Code.

SEC. 804. RESOLUTION OFFERS.

(a) IN GENERAL.—The Fund shall offer 1 comprehensive resolution to each eligible person. The offer shall be for a percentage of all the eligible costs of such eligible person incurred in connection with all eligible facilities. The amount of the offer shall be determined pursuant to section 806.

(b) REQUESTS FOR RESOLUTION OFFERS.—

(1) IN GENERAL.—An eligible person may, at any time after the promulgation of the interim final regulations under section 812(a), file a request for a resolution offer from the Fund.

(2) RESPONSE TO REQUEST.—Not later than 180 days after the receipt of a complete request as determined by the Fund, the Fund shall in writing—

(A) make a resolution offer to each eligible person that has filed a request for a resolution offer; or

(B) notify a person filing such a request that such person is not an eligible person.

(c) JOINT VENTURES AND SUBSIDIARIES.—A joint venture shall not be aggregated with any individual joint venturer for purposes of this section but shall be treated as a distinct entity for such purposes. All claims by subsidiaries shall be included in a single claim by the corporate parent for purposes of this Act.

SEC. 805. DOCUMENTATION OF CLAIMS AND INSURANCE COVERAGE.

(a) SCREENING OF CLAIMS.—

(1) DENIAL BY REASON OF FELONY.—The Fund may deny a resolution offer to an otherwise eligible person for a specific facility if the eligible person has been convicted of a felony under any Federal or State

statute that has a material effect on the response costs or natural resource damage incurred at the facility.

(2) FILING AND ACTIVE PURSUIT OF CLAIMS.—The Fund may decide not to make an offer to an eligible person unless the eligible person has filed a claim and is actively pursuing the claim. The Fund may also decide that an offer should be made to any such person.

(3) EFFECT OF SCREENING.—An eligible person who has been denied a resolution offer under this subsection for 1 or more facilities shall not be subject to sections 807(c) and 809(a) with respect to the facilities.

(b) FILING OF CLAIMS.—For the purposes of subsection (a), an eligible person shall be considered to have filed a claim if the eligible person has notified 1 or more of its insurers of the existence of a claim, or has engaged in active investigation and preparation of a claim, or has filed a lawsuit seeking coverage for eligible costs. Failure to have filed a claim or to have engaged in settlement discussions before January 1, 1994, shall not be considered to preclude an eligible person from receiving an offer from the Fund if the eligible person had not received any notice letter from a governmental authority or 1 or more potentially responsible parties asserting its potential liability under the Com-

prehensive Environmental Response, Compensation, and Liability Act of 1980 at any eligible facility until after January 1, 1993.

(c) ACTIVE PURSUIT OF CLAIMS.—For purposes of this section, an eligible person shall be considered to be actively pursuing a claim if—

(1) the person has filed a lawsuit against an insurer, has filed a motion or another pleading in a lawsuit against an insurer, or has engaged in any discovery in a lawsuit against an insurer during the period beginning January 1, 1993, and ending December 31, 1993, regarding eligible costs at an eligible facility;

(2) the person has engaged in settlement discussions with an insurer during the period beginning January 1, 1993, and ending December 31, 1993, regarding eligible costs at an eligible facility;

(3) the person has engaged in active investigation and preparation of a claim during the period beginning January 1, 1993, and ending December 31, 1993;

(4) if the person has received a letter from an insurer rejecting coverage or reserving its rights to reject coverage regarding eligible costs at an eligible facility, the person has sent within 1 year thereafter an addi-

tional status report or letter apprising an insurer of activities regarding an eligible facility; or

(5) the eligible person has sent a letter to an insurer notifying an insurer of the potential existence of a claim regarding eligible costs at an eligible facility and has received no response from the insurer.

(d) DOCUMENTATION OF COVERAGE.—

(1) EFFECT OF DOCUMENTATION.—Coverage of an eligible person for policy years prior to 1986 and the applicable deductibles and limits on coverage shall be confirmed to the satisfaction of the Fund by the terms of the policies or other documentary proof of insurance provided by, or for, the eligible person in accordance with this subsection.

(2) SUBMISSION OF DOCUMENTARY EVIDENCE.—After promulgation of regulations governing documentation requirements, an eligible person requesting an offer shall submit copies of its insurance policies, or other documentary evidence sufficient to establish the following 6 terms of coverage: insurance company, policy number, type of policy, duration of policy, deductible or self-insured retention, and limit of coverage. Documentary evidence may consist of any documents from an insurance company or broker or documents of the eligible person or other party that are

generally contemporaneous with the term of the policy or with subsequent retrospective rating under the policy. Where documentary evidence (other than a policy) is relied upon as the proof of coverage, an eligible person shall certify that it has undertaken a good faith investigation of its records, that its submission is complete and accurate to the best of its information and belief, and that it does not have a copy of the insurance policy. If an eligible person submits documentary evidence that does not establish all 6 terms of coverage but that does establish the name of the insurance company and 1 or more other terms evidencing coverage, the named insurance company shall undertake a good faith investigation for any policy or other relevant documents evidencing the eligible person's coverage. At the conclusion of the investigation, the named insurance company shall—

(A) provide to the Fund any policies or other documents relevant to the eligible person's claim of coverage; or

(B) certify that it has undertaken a good faith investigation of its records and that it has produced any and all policies or documents available to the insurer and relevant to the eligible person's claim of coverage.

Subsequent to the named insurance company's production or certification, the Fund shall decide whether a person has provided adequate proof of insurance based on the evidence presented. Submission of the 6 terms of coverage referred to in this paragraph shall be treated as adequate proof of insurance.

(3) DEFINITION.—For the purposes of this subsection, the term ''good faith investigation'', used with respect to a company, means a search that can be reasonably conducted in light of the recordkeeping system of the company and the documentary evidence available.

(e) PRIOR SETTLEMENTS.—

(1) DISCLOSURE.—Each eligible person shall be required to disclose and certify the amounts and terms of any settlement reached with an insurer for eligible costs at eligible facilities. In the event that the terms of such a settlement are subject to a protective order or are otherwise confidential, the eligible person may provide evidence of the confidential nature of the settlement information to the Fund. Upon receipt of such evidence, the Fund shall be obligated to preserve the confidentiality of all such settlement information.

(2) EFFECT OF TITLE ON PRIOR SETTLEMENTS.—This title shall have no effect on prior settlements between eligible persons and an insurer.

SEC. 806. AMOUNT OF RESOLUTION OFFERS.

(a) RESOLUTION OFFERS.—The Fund shall make resolution offers to each eligible person equal to the applicable percentage (determined under this section) of the lesser of the following:

(1) The eligible costs actually incurred by an eligible person.

(2) The available coverage, as determined under this section.

(b) APPLICABLE PERCENTAGE.—

(1) IN GENERAL.—For each eligible person that has not established a litigation venue pursuant to subsection (d), the applicable percentage shall be equal to the facility location percentage for that person. For each eligible person that has established 1 or more litigation venues pursuant to subsection (d), the applicable percentage shall be comprised of ⅓ of the facility location percentage for that person plus ⅔ of the venue percentage for that person.

(2) FACILITY LOCATION PERCENTAGE.—

(A) ONE OR MORE ELIGIBLE NATIONAL PRIORITIES LIST FACILITIES.—For each eligible per-

son, the Fund shall establish a facility location percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible National Priorities List facility for which such person has been identified as a potentially responsible party. In determining such weighted average, each such eligible facility shall be accorded equal value, except as provided in paragraph (4).

(B) NO ELIGIBLE NATIONAL PRIORITIES LIST FACILITIES.—For each person not identified as a potentially responsible party at 1 or more eligible National Priorities List facilities but who is, or is alleged to be, liable at any time for removal (as defined in section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(23))) at 1 or more eligible non-National Priorities List facilities, the Fund shall establish a facility location percentage equal to the weighted average of the State percentages for each such eligible non-National Priorities List facility. In determining such weighted average, each such facility shall be accorded equal value.

(3) LITIGATION VENUE PERCENTAGE.—

(A) ONE OR MORE ELIGIBLE NATIONAL PRIORITIES LIST FACILITIES.—For each eligible person that has established 1 or more litigation venues pursuant to subsection (d) with respect to 1 or more eligible National Priorities List facilities, the Fund shall establish a litigation venue percentage. The percentage shall be equal to the weighted average of the State percentages for each eligible National Priorities List facility in each State in which such eligible person has established a litigation venue. In determining such weighted average, each eligible National Priorities List facility with respect to which such person has established a litigation venue shall be accorded equal value.

(B) NO ELIGIBLE NATIONAL PRIORITIES LIST FACILITIES.—For each eligible person that does not have 1 or more eligible National Priorities List facilities and has established litigation venue with respect to 1 or more eligible non-National Priorities List facilities pursuant to subsection (d), the Fund shall establish a litigation venue percentage equal to the weighted average of the State percentages for each eligible non-National Priorities List facility in each State in

which such eligible person has established a litigation venue. In determining such weighted average, each eligible non-National Priorities List facility with respect to which litigation venue has been established shall be accorded equal value.

(4) EXTRA WEIGHTING OF LARGE FACILITIES.—In determining the facility location percentage under paragraph (2)(A), the Fund shall count a facility twice for weighting purposes if—

(A) the facility is located in the same State as the State in which litigation venue has been established;

(B) the facility is included in the eligible person's coverage litigation in that venue; and

(C) total response costs incurred plus estimated response costs exceed $50,000,000, as established by governmental cost summaries or demands, records or decision, or evidence satisfactory to the Fund of costs actually incurred.

(c) STATE PERCENTAGE.—

(1) CONGRESSIONAL FINDINGS.—Congress finds that—

(A) as of January 1, 1994, State law generally is more favorable to eligible persons that

pursue claims concerning eligible costs against insurers in some States;

(B) State law generally is more favorable to insurers with respect to such claims in some States;

(C) in some States the law generally favors neither insurers nor eligible persons with respect to such claims or that there is insufficient information to determine whether such law generally favors insurers or eligible persons with respect to such claims; and

(D) considerations of equity and fairness require that resolution offers made by the Fund shall vary to reflect the relative state of the law among the several States.

(2) STATE PERCENTAGE CATEGORIES.—For purposes of this section, the States are classified into the following percentage categories:

(A) 20 PERCENT.—The State percentage shall be 20 percent for Florida, Maine, Maryland, Massachusetts, Michigan, New York, North Carolina, and Ohio.

(B) 60 PERCENT.—The State percentage shall be 60 percent for California, Colorado,

Georgia, Illinois, New Jersey, Washington, West Virginia, and Wisconsin.

(C) 40 PERCENT.—For all other States the State percentage shall be 40 percent.

(d) LITIGATION VENUE.—For purposes of this section, litigation venue is considered established with respect to an eligible person if—

(1) on or before December 31, 1993, the eligible person had filed a complaint, or third-party complaint, in a court of competent jurisdiction against an insurer with respect to eligible costs at any part of an eligible facility; and

(2) no motion to change venue with respect to such complaint was pending on January 31, 1994.

(e) AVAILABLE COVERAGE.—

(1) IN GENERAL.—The Fund shall determine the available coverage for each eligible person by adding the unexhausted limits of liability contained in all valid insurance contracts of insurance (including per occurrence, aggregate, primary, excess, or other limits) and then by subtracting the total of all deductibles and self-insured retentions applicable to those policies. In calculating the available coverage and the average deductible pursuant to section 808(c), the Fund shall exclude any deductible or self-insured

retention contained in a policy that has already been paid by the eligible person.

(2) PER OCCURRENCE BASIS POLICIES.—For insurance policies with limits or deductibles, or self-insured retentions, expressed on a per occurrence basis without an aggregate limit, the limit or deductible, and the self-insured retention, shall be an amount equal to the limit or deductible, and the self-insured retention, respectively, in the policy multiplied by the number of eligible facilities of the eligible person and by the number of years the policy was in effect. Per occurrence limits or deductibles may be adjusted by the Fund whenever there is an increase in the eligible facilities attributable to an eligible party.

(f) ADJUSTMENT FOR OWNED PROPERTY SITES.—

(1) ADJUSTMENT.—If an eligible person seeks payment of eligible costs for an owned property site, the percentage paid for such site shall be calculated by multiplying by 70 percent the applicable percentage determined under section 806(b)(1) that would otherwise be applicable to such eligible costs (including eligible costs for offsite contamination attributable to the owned property), except that the percentage paid for such site shall not be less than the applicable

percentage determined under section 806(b)(1) minus 12 percentage points.

(2) DEFINITIONS.—For purposes of this subsection:

(A) OWNED PROPERTY SITE.—A facility shall be considered an owned property site if—

(i) an eligible person owned or leased the facility at the time of initial disposal or a predecessor company owned or leased the facility at the time of initial disposal and the predecessor company merged into an eligible person or became the wholly owned subsidiary of an eligible person;

(ii) the property owned or leased by the eligible person or predecessor company represents all or a substantial portion of the facility as specifically designated on the National Priorities List or as subject to a removal covered by this title;

(iii)(I) an eligible person or predecessor company generated substantially all of the hazardous substances that were disposed of during the period such person or predecessor owned or leased the facility; or

(II) an eligible person or predecessor company owned a landfill or other unit that is part of the property on which a manufacturing or industrial facility is situated, the landfill or other unit was used for the treatment, storage, or disposal of waste generated from the manufacturing or industrial facility and from third parties, and the landfill or other unit contains waste that is not primarily municipal solid waste or sewage sludge, as defined in paragraphs (41) and (49), respectively, of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601); and

(iv) the hazardous substances associated with the owned property, either by the initial disposal or subsequent disposal, constitute the basis for liability at the facility.

(B) PROPERTY NOT CONSIDERED OWNED PROPERTY.—A facility shall not be considered owned property of an eligible person for purposes of this section when the eligible person acquired the facility from, or acquired the assets of, a company that engaged in initial disposal of haz-

ardous substances at the facility and the eligible person did not engage in initial disposal of hazardous substances at the facility during its period of ownership. An owned property site shall not include a public or commercial landfill primarily used for disposal, storage, or treatment of municipal solid waste or sewage sludge, as defined in paragraphs (41) and (49), respectively, of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(C) INITIAL DISPOSAL.—For purposes of this paragraph, the term ''initial disposal'' means the spilling, pumping, pouring, emitting, emptying, discharging, injecting, dumping, disposing, placing, or leaking of hazardous substances into the environment caused by the facility owner but does not include—

(i) any continuing or further leaking, escaping, or leaching of hazardous substances into the environment during subsequent periods of ownership that was not caused by the acts of a subsequent owner, or

(ii) any activities undertaken by an owner related to response at the facility.

The term ''initial disposal'' shall not be construed to mean only a single event, but means an event that may occur with each subsequent owner of a facility.

SEC. 807. ACCEPTANCE OF RESOLUTION OFFER.

(a) ACCEPTANCE.—

(1) ELECTION TO ACCEPT.—An eligible person may, when submitting a request for a resolution to the Fund, make a written irrevocable election to accept any resolution to be made by the Fund.

(2) NOTIFICATION.—An eligible person that does not make an election pursuant to paragraph (1) shall, within 60 days after the receipt of a resolution offer from the Fund, notify the Fund in writing of its irrevocable acceptance or rejection of such offer. An eligible person who does not so accept or reject a resolution offer within 60 days shall be deemed to have made an irrevocable election to reject the offer and the provisions of section 809 (relating to rejection of offer) shall apply.

(b) ACCEPTANCE OR REJECTION PRIOR TO OFFER.—Upon expiration of the 60-day period immediately following the date of enactment of this Act, any eligible person may notify the Fund that such eligible person accepts or rejects any offer to be issued by the Fund under this title.

Any such notice shall be signed by a duly authorized officer of the eligible person, as certified by the secretary of the eligible person or by a person with equivalent authority.

(c) WAIVER OF INSURANCE CLAIMS.—Any eligible person accepting a resolution offer from the Fund shall agree in writing, subject to reinstatement described in subsection (d), to waive, stay, or dismiss any of its existing and future claims against any insurer for eligible costs, including bad faith claims pertaining to actions to recover eligible costs, except that this waiver shall not apply to actions brought against insolvent insurers or under environmental impairment liability insurance.

(d) REINSTATEMENT OF INSURANCE CLAIMS.—If the Fund fails to timely fulfill its obligations to an eligible person under the terms of an accepted resolution offer, such eligible person shall be entitled to reinstate any of its existing and future claims under a contract for insurance with respect to eligible costs. A shortfall provided for in section 808(f) shall not be considered a failure of the Fund to timely fulfill its obligations. Whenever any claim is reinstated under this subsection, the person making such claim shall not be treated as rejecting a resolution offer under section 809.

(e) GOOD FAITH ACCEPTANCE.—The acceptance by an eligible person of a resolution offer under subsection (a) or

(b) of section 807 and the waiver of any existing or future claims against an insurer under this section shall constitute the good faith pursuit and resolution of such claims, shall be considered prudent action to minimize the cost exposure of that person, and the amount of the resolution offer shall be considered a reasonably available insurance recovery.

SEC. 808. RESOLUTION PAYMENTS.

(a) TIME OF PAYMENT; PRE-RESOLUTION COSTS.—The Fund shall make equal annual payments over a period of 10 years for the applicable percentage of eligible costs incurred by an eligible person on or before the date such person accepts a resolution offer. The Fund may, in its sole discretion, make such payments over a shorter period if the aggregate eligible costs do not exceed $50,000. An eligible person shall submit to the Fund documentation of such costs as the Fund may require. The initial payment to an eligible person under this paragraph shall be made not later than 60 days after the receipt of documentation satisfactory to the Fund. For eligible facilities that are the subject of insurance coverage litigation or arbitration, interest shall begin to accrue on amounts payable pursuant to a resolution offer commencing on the date on which the eligible person accepts the offer pursuant to subsection (a) or (b) of section 807. For all other eligible facilities, interest shall not accrue on amounts payable pursuant to a resolution offer during the

5-year period beginning on the date of enactment of this Act. In each year, after the commencement of the payment of interest as specified above, interest shall accrue on the unpaid balance of the pre-resolution costs in an amount equal to the rate of interest on 1-year Treasury bills issued on the anniversary of such date of enactment or, if no bills were issued on such date, on the last date such bills were issued prior to such anniversary.

(b) TIME OF PAYMENT; POST-RESOLUTION COSTS.—The Fund shall make payments for eligible costs incurred by an eligible person after the date such person accepts a resolution offer to the eligible person, or to a contractor or other person designated by the eligible person, subject to such documentation as the Fund may require. Payments under this title shall be made not later than 60 days after the receipt of documentation (satisfactory to the Fund) with respect to such costs.

(c) ADJUSTMENT FOR DEDUCTIBLE OR SELF-INSURANCE.—In the case of an eligible person that has submitted to the Fund, as proof of status as an eligible person, a valid insurance contract subject to a self-insured retention or a deductible, payment to such eligible person pursuant to a resolution shall be reduced once by an amount equal to the average of the amounts of self-insured retentions and deductibles in all valid insurance contracts of insurance of

the eligible person. For purposes of determining such average in the case of a per occurrence deductible or self-insured retention, the Fund shall only count such deductible or self-insured retention once for each policy year.

(d) ADJUSTMENT FOR CERTAIN DUTY-TO-DEFEND COSTS.—If an insurer has incurred and paid costs pursuant to a duty-to-defend clause contained in a contract for insurance, and such costs are the subject of a dispute between the eligible person and an insurer, the Fund shall reduce payment of a resolution to an eligible person by an amount equal to such costs and pay such amount to the insurer. If such costs were paid by the insurer on or before the date the eligible person accepted a resolution offer made by the Fund, payment to an insurer under this section shall be made in equal annual installments over a period of 10 years, and interest shall not accrue with respect to such costs. The Fund may, in its sole discretion, make such payments over a shorter period if the aggregate costs do not exceed $50,000.

(e) EFFECT OF PAYMENTS.—

(1) IN GENERAL.—Payments made to an eligible person by the Fund pursuant to a resolution offer shall be treated as payments made by an insurer in satisfaction of the terms and conditions of a contract of insurance. Such payments shall be allocated pro

rata to each year in which proof of insurance has been established. The amount allocated to each coverage year shall be allocated 100 percent to the primary coverage until it is exhausted and then 100 percent to each successively higher layer of coverage until each such layer is exhausted.

(2) RECOVERY.—No insurer shall be allowed to collect recovery pursuant to a reinsurance contract on the basis of a payment by the Fund unless such reinsurer is not subject to the fees under the appropriate section of the Internal Revenue Code of 1986 or has not satisfied its obligations pursuant to such fees.

(3) PROHIBITION ON RETROSPECTIVE RATING.—Payments made to an eligible person by the Fund pursuant to a resolution offer shall not be subject to retrospective rating under a valid insurance contract.

(f) SHORTFALL.—If, in any year during the first 10 years after the date of enactment of this Act, the Chairperson of the Board does not have sufficient funds available to pay all eligible costs of resolution offers accepted by eligible persons, the Fund shall determine the amount of the costs that cannot be paid in that year (referred to in this title as a ''shortfall''). The Fund shall allocate the shortfall to the eligible persons in proportion to the size of their pending claims for reimbursement from the Fund. This shortfall

shall be paid to the eligible person and shall be amortized over the next 5 years, and the amortized amount shall be paid with interest at the rate specified for the amortization of past costs. A shortfall that is being amortized under this subsection shall not be considered a default by the Fund, triggering the reinstatement of claims.

(g) INTERIM ALLOCATIONS.—An eligible person accepting an offer of resolution shall be entitled to receive payment of all eligible costs that have been incurred. If an eligible person obtains reimbursement of such eligible costs as a result of a final allocation, contribution action, or otherwise, the eligible person shall notify the Fund of the amount of the reimbursement and shall either—

(1) reduce its next claim to the Fund for payment of eligible costs by the amount of the reimbursement; or

(2) refund the amount of the reimbursement.

SEC. 809. REJECTION OF RESOLUTION OFFER AND REIMBURSEMENT TO INSURER.

(a) INSURER ACTION AGAINST ELIGIBLE PERSON.—

(1) LIABILITY FOR LITIGATION COSTS.—Any eligible person that rejects a resolution offer (including a person who makes an early rejection pursuant to section 807(b)), litigates a claim with respect to insurance coverage of eligible costs against an insurer,

and obtains a final judgment that is determined by the court with jurisdiction over such litigation to be less favorable than the resolution offered by the Fund (or, in the case of a rejection pursuant to section 807(b), the amount that the Fund would have offered), shall be liable to such insurer for 40 percent of the reasonable attorney's fees, other litigation costs, and direct costs, incurred after the date of the resolution offer by the insurance companies that are attributable to eligible costs at eligible facilities.

(2) LIMIT OF LIABILITY.—Liability of an eligible person under paragraph (1) shall not exceed 160 percent of all of the attorney's fees, other litigation costs, and direct costs of company in-house personnel, incurred after such date by an eligible person in the pursuit of its coverage litigation that are attributable to eligible costs at eligible facilities.

(3) ACTIONS TO RECOVER LITIGATION COSTS.—A court having jurisdiction over any action regarding a claim of insurance shall have original jurisdiction of all actions under this subsection. The court shall reduce any award to an insurer in any such action by the amount, if any, of the costs and fees described in paragraph (1) or (2), as the case may be, and recovered by the insurer pursuant to State law or court

rule. Nothing in this subsection shall be construed to limit or affect in any way the application of State law, or the rule of any court, to such costs or fees. Upon application by a party to any such action, the court may make all determinations necessary to decide whether an award of fees or costs is required hereunder, including the value of the offer made by the Fund and whether the attorney's fees or litigation costs of any insurer were unreasonable. If the court determines that certain fees or costs were unreasonable, the court shall exclude such fees or costs from the calculation described in paragraph (1) or (2), as the case may be.

(b) REIMBURSEMENT TO INSURER.—If an eligible person rejects a resolution offer (including a rejection pursuant to section 807(b)), litigates a claim with respect to eligible costs against 1 or more insurers, and obtains a final judgment against, or enters into a settlement with, any such insurer, the Fund—

(1) shall reimburse to such insurer or insurers the lesser of the amount of the resolution offer made to the eligible person (or, in the case of a rejection pursuant to section 807(b), the amount that the Fund would have offered) or the final judgment or settlement; and

(2) may, if the resolution offer exceeded the final judgment or settlement, reimburse the insurer or insurers for unrecovered reasonable costs and legal fees, except that the total reimbursement under this subsection may not exceed the amount of the resolution offer to the eligible person (or, in the case of a rejection pursuant to section 807(b), the amount that the Fund would have offered).

Reimbursements pursuant to this subsection shall be subject to such documentation as the Fund may require and shall be made by the Fund not later than 60 days after receipt by the Fund of a complete request for reimbursement satisfactory to the Fund.

(c) REFUSAL TO MAKE RESOLUTION OFFER.—Except with respect to a person that rejects a resolution offer pursuant to section 807(b), no eligible person that has not received a resolution offer shall be treated as rejecting an offer for purposes of this section.

SEC. 810. FINANCIAL CONTROLS; AUDITS, INVESTIGATIONS AND INSPECTIONS.

(a) IN GENERAL.—

(1) SPECIAL FUND ACCOUNT.—

(A) IN GENERAL.—Except as may be expressly authorized by the Secretary of the Treasury, amounts equal to all fees and assessments

collected pursuant to the appropriate section of the Internal Revenue Code of 1986 shall be maintained in the Treasury of the United States in a Special Fund Account (referred to in this subsection as the 'Account'). Amounts deposited into such Account shall be considered to be budget receipts and withdrawals from such Account shall be considered to be budget outlays, for purposes of the Congressional Budget Act of 1974.

(B) INVESTMENT.—The Secretary of the Treasury shall invest amounts in the Account not needed to fund withdrawals from the Account in interest bearing securities of the United States. Interest earned from such investments shall be credited to the Account. Such securities shall be redeemed as necessary to fund withdrawals from the Account.

(C) USE.—No amounts shall be deposited in or credited to the Account except as provided in this paragraph. All expenditures by or on behalf of the Fund shall be paid out of amounts in such Account.

(2) WITHDRAWALS FROM ACCOUNT.—

(A) CERTIFICATION.—Subject to section 803(d)(3)(B), all amounts withdrawn from the

Account by or on behalf of the Fund shall be certified by a federally authorized certifying officer who is an employee of a Federal agency represented by a governmental member of the Board.

(B) OTHER TERMS.—The Secretary of the Treasury may prescribe such other procedures, terms, and conditions governing withdrawals from the Account as the Secretary considers to be appropriate.

(b) ANNUAL BUDGETS.—The Fund shall prepare annual budgets consistent with the requirements of section 9103 of title 31, United States Code. Not later than March 31 of each year, the Chairperson of the Board shall transmit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a budget for the following fiscal year.

(c) AUDITS OF RESOLUTION OFFERS AND PAYMENTS.—

(1) IN GENERAL.—The regulations required by section 812(a) shall provide that each request for a resolution payment that exceeds such amount as the Board may determine shall be accompanied by an independent audit of such request.

(2) RANDOM AUDITS.—

(A) IN GENERAL.—The Fund shall provide for the random audit of requests for resolution offers and requests for resolution payments.

(B) OVERPAYMENTS OR UNDERPAYMENTS.—To the extent the Fund determines, on the basis of an audit or otherwise, that an overpayment or underpayment has been made in connection with a resolution offer, the Fund shall decrease or increase (as the case may be) subsequent payments pursuant to such offer.

(C) REFERRAL OF CERTAIN REQUESTS.—The Board shall refer to the Attorney General any request for a resolution offer or resolution payment that the Board determines, on the basis of an audit or otherwise, may be subject to the penalties described in section 813(b).

(d) FINANCIAL STATEMENTS.—The financial statements of the Fund shall be prepared in accordance with generally accepted accounting principles and shall be audited annually by an independent certified public accountant in accordance with the auditing standards issued by the Comptroller General. Such auditing standards shall be consistent with the private sector's generally accepted auditing standards.

(e) INVESTIGATIONS AND OTHER AUDITS.—The Inspector General of the Environmental Protection Agency is authorized to conduct such audits and investigations of the activity of the Fund as the Inspector General determines to be necessary or appropriate. For purposes of the preceding sentence, the provisions of the Inspector General Act of 1978 (5 U.S.C. App.) shall apply to the Fund and to the Inspector General to the same extent as they apply to the Environmental Protection Agency.

SEC. 811. STAY OF PENDING LITIGATION.

(a) ENACTMENT OPERATES AS STAY.—Except as provided in this section, enactment of this title shall operate as a stay, applicable to all persons other than the United States, of the commencement or continuation, including the issuance or employment of process or service of any pleading, motion, or notice, of any judicial, administrative, or other action with respect to claims for indemnity or other claims arising from a valid insurance contract of qualified insurance concerning insurance coverage for eligible costs.

(b) ACTIONS NOT AFFECTED.—Nothing in this title shall be construed to authorize a stay of any of the following:

(1) Any action involving claims that do not concern eligible costs or a valid insurance contract of qualified insurance. Any such claim shall be severed

by operation of law from claims involving eligible costs or valid contracts of insurance of qualified insurance, and the insured party may proceed with the prosecution of the severed claims not involving eligible costs or not involving qualified insurance.

(2) Any action for which a trial date has been scheduled prior to June 1, 1994, for a trial to commence during the 60-day period immediately following the date of enactment of this Act.

(3) Any action in which a trial has begun prior to such period and has continued without interruption into such period.

(c) TERMINATION OF STAY.—

(1) EVENTS.—The stay established by subsection (a) shall terminate with respect to an eligible person upon the earliest of the following:

(A) The rejection of a resolution offer (including an early rejection) by such eligible person pursuant to section 807.

(B) A determination by the Fund that an offer will not be made to such eligible person or that such person is not an eligible person.

(C) A determination pursuant to section 816(b) that the minimum participation level has not been achieved.

(D) A failure by the Fund at any time after the date that is 10 years after the date of enactment of this Act to timely pay to such eligible person a resolution payment equal to the total amount of eligible costs (including shortfalls from prior years) required to be paid to such person under a resolution offer in any year after such date.

(2) PERSONS.—The stay established by subsection (a) shall terminate on the date that is 10 years after the date of enactment of this Act with respect to—

(A) a person that becomes an eligible person on or after such date; and

(B) an eligible person that has not filed a request for a resolution offer and has not rejected a resolution offer pursuant to section 807(b) before such date.

(d) AUTHORITY OF UNITED STATES UNAFFECTED.—Nothing in this section shall be construed to limit or affect in any way the discretion or authority of the United States or any party to commence or continue any allocation process, cost recovery, or other action pursuant to the authority of sections 101 through 122, and 129, of the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(e) STATUTE OF LIMITATION TOLLED.—Notwithstanding any other provision of Federal or State law, any Federal or State statute of limitation concerning the filing or prosecution of an action by an eligible person against an insurer, or by an insurer against an eligible person, with respect to eligible costs shall be tolled during the pendency of the stay of pending litigation established by this title.

SEC. 812. REGULATIONS.

(a) PROCEDURES AND DOCUMENTATION.—Not later than 120 days after the date of enactment of this Act, the Chairperson of the Board shall publish in the Federal Register for public comment of not more than 60 days interim final regulations concerning procedures and documentation for the submission of requests for resolution offers and the payment of accepted resolution offers. Not later than 60 days after the close of the public comment period, the Chairperson of the Board shall publish in the Federal Register final regulations concerning such procedures and documentation, which may be amended by the Chairperson from time to time. The Fund in its discretion may require that requests for resolution offers made before the issuance of final regulations pursuant to this subsection be revised to conform to the requirements of such final regulations.

(b) OTHER REGULATIONS.—The Fund may prescribe such other regulations, rules, and procedures as the Fund determines to be appropriate from time to time.

(c) JUDICIAL REVIEW.—No regulation, rule, or procedure prescribed by the Fund shall be subject to review by any court except to the extent such regulation, rule, or procedure is not consistent with a provision of this title. No resolution offer made by the Fund shall be subject to review by any court.

SEC. 813. COURT JURISDICTION AND PENALTIES.

(a) JURISDICTION OF FEDERAL COURTS.—Notwithstanding section 1349 of title 28, United States Code—

(1) the Fund shall be deemed to be an agency of the United States for purposes of sections 1345 and 1442 of title 28, United States Code;

(2) all civil actions to which the Fund is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value;

(3) any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which the Fund is a party may at any time before the trial thereof be removed by the Fund, without the giving of any

bond or security, to the district court of the United States for the district and division embracing the place where the same is pending or, if there is no such district court, to the district court of the United States for the district in which the principal office of the Fund is located, by following any procedure for removal of causes in effect at the time of such removal; and

(4) no attachment or execution shall be issued against the Fund or any of its property before final judgment in any Federal, State, or other court.

(b) FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.—

(1) CRIMINAL PENALTIES.—

(A) FALSE, FICTITIOUS, OR FRAUDULENT CLAIMS; BRIBERY.—For purposes of section 287 of title 18, United States Code, the Fund shall be considered an agency of the United States and any officer or employee of the Fund shall be considered a person in the civil service of the United States.

(B) FRAUD AND FALSE STATEMENTS.—For purposes of section 1001 of title 18, United States Code, the Fund shall be considered an agency of the United States.

(C) BRIBERY.—For purposes of section 201 of title 18, United States Code, the Fund shall be considered an agency of the United States, and a member of the Board and any officer or employee of the Fund shall be considered to be an officer or employee or person acting for or on behalf of an agency of the United States.

(2) CIVIL PENALTIES.—Officers and employees of the Fund shall be considered officers and employees of the United States for purposes of section 3729 of title 31, United States Code.

SEC. 814. MISCELLANEOUS PROVISIONS.

(a) ADMISSIBILITY OF RESOLUTION OFFER.—No resolution offered by the Fund shall be admissible in any legal action brought by an eligible person against an insurer or by an insurer against an eligible person.

(b) RESOLUTION PROCESS NOT ADMISSION OF LIABILITY.—No provision of this title, and no action by an eligible person undertaken in connection with any provision of this title, shall in any way constitute an admission of liability in connection with the disposal of a hazardous substance.

(c) PRECEDENTIAL EFFECT.—No provision of this title shall affect or be construed to establish a precedent with respect to any insurance dispute between any person and insurer not subject to a stay under this title.

(d) SOVEREIGN IMMUNITY OF THE UNITED STATES.—No obligation or liability of the Fund shall constitute an obligation or liability of the United States, or of any department, agency, instrumentality, officer, or employee thereof. No person shall have a cause of action of any kind against the United States, or any department, agency, instrumentality, officer, or employee thereof with respect to any obligation, liability, or activity of the Fund.

SEC. 815. REPORTS.

(a) REPORT ON POTENTIAL FOR ESCALATION OF EIRF LIABILITY.—Not later than the end of the 5th year after the date of enactment of this Act, the President shall submit a report to Congress assessing the potential liability of the Fund over the next 5-year period. The report shall include recommendations for amendments to address any shortfalls between the projected potential liability of the Fund and the amounts authorized to be raised over such 5-year period.

(b) REPORT ON NON-NATIONAL PRIORITIES LIST FACILITIES.—The President shall conduct a study of the number of non-National Priorities List facilities and the average cleanup cost per non-National Priorities List facility and shall report his findings not later than 3 years after the date of enactment of this Act.

(c) ANNUAL REPORTS.—

(1) IN GENERAL.—The Fund shall report annually to the President and Congress not later than January 15 of each year on its activities for the prior fiscal year. The report shall include—

(A) a financial statement audited by an independent auditor; and

(B) a determination of whether the fees and assessments imposed by the appropriate section of the Internal Revenue Code of 1986 will be sufficient to meet the anticipated obligations of the Fund.

(2) APPEARANCES BEFORE CONGRESS.—Not later than 60 days after the submission of each annual report required by paragraph (1), the members of the Board shall appear before the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives to report on the matters contained in the annual report and such other matters concerning the Fund as each such committee may require.

(d) SPECIAL REPORTS.—The Fund shall promptly report to the President and Congress at any time the Fund determines that the fees and assessments imposed by the appropriate section of the Internal Revenue Code of 1986 will

be insufficient to meet the anticipated obligations of the Fund.

SEC. 816. EFFECTIVE DATE.

(a) IN GENERAL.—This title shall take effect on the date of enactment of this Act.

(b) MINIMUM PARTICIPATION LEVEL BY ELIGIBLE PERSONS.—

(1) IDENTIFICATION OF ELIGIBLE PERSONS.—

(A) SUBMISSION OF LIST.—Each insurance company providing coverage to eligible persons under a valid insurance contract shall submit to the Fund, within 30 days after the date of enactment of this Act, a list of all eligible persons that have filed suit against that company for eligible costs, or that have made a claim against that company for eligible costs and are actively pursuing such claim.

(B) NOTIFICATION.—Each insurance company submitting such list to the Fund shall immediately notify each eligible person that is identified on the list and provide to each such eligible person a copy of this title together with an explanation of this subsection.

(2) RESPONSE TO THE FUND.—Each eligible person notified pursuant to paragraph (1) shall re-

spond to the Fund by either filing a declaration of intent or by requesting an applicable percentage.

(3) DECLARATION OF INTENT.—Unless the eligible person files a request for an applicable percentage under paragraph (4), the eligible person shall file a declaration of intent not earlier than 60 days, and not later than 90 days, after the date of enactment of this Act. A declaration of intent filed by the eligible person shall—

(A) state whether or not such eligible person intends to accept participation in the Fund; and

(B) identify each eligible National Priorities List facility for which such person has been identified as a potentially responsible party, whether or not such eligible person intends to accept participation in the Fund.

A declaration of intent to accept participation in the Fund shall constitute acceptance of a Fund offer for purposes of this title.

(4) REQUEST FOR APPLICABLE PERCENTAGE.—Each eligible person identified on a list under paragraph (1) may file a request for its applicable percentage (as determined under section 806(b)) with the Fund within 60 days after the date of enactment of this Act. A request filed by an eligible person shall—

(A) identify each eligible National Priorities List facility (including the State in which such facility is located) at which such eligible person has incurred or will incur eligible costs; and

(B) in the case of an eligible person that has established at least 1 litigation venue pursuant to section 806(d), identify the State or States in which such venue has been established and identify any National Priorities List facility described in section 806(b)(4) (relating to large sites) at which such eligible person has incurred or will incur eligible costs.

(5) RENOTIFICATION OF ELIGIBLE PERSONS.—Within 90 days after the date of enactment of this Act, the Fund shall notify (by certified mail, return receipt requested) each eligible person identified on the list under paragraph (1) that did not file a declaration of intent or a request for applicable percentage within the time period prescribed in paragraph (3) or (4), as appropriate. Each eligible person notified pursuant to this paragraph shall respond to the Fund not later than 120 days after the date of enactment of this Act by either filing a declaration of intent in accordance with paragraph (3) or by request-

ing an applicable percentage in accordance with paragraph (4).

(6) RESPONSE BY THE FUND.—The Fund shall respond not later than 150 days after the date of enactment of this Act to an eligible person that has made such a request for an applicable percentage. The response from the Fund shall include the applicable percentage, calculated in accordance with section 806(b). An eligible person receiving such response from the Fund shall file a declaration of intent with the Fund in accordance with paragraph (3) not later than 180 days after the date of enactment of this Act.

(7) MINIMUM PARTICIPATION LEVEL.—

(A) DETERMINATION.—Within 210 days after the date of enactment of this Act, the Fund shall determine—

(i) the number of eligible persons identified on the lists submitted under paragraph (1), and the weighted average of such eligible persons, that have accepted participation in the Fund; and

(ii) the number, and weighted average, of such eligible persons that have rejected participation in the Fund.

An eligible person that has not responded in accordance with paragraph (2) to an initial notification or in accordance with paragraph (5) to a renotification shall be deemed to have irrevocably accepted participation in the Fund for the purposes of this title. An eligible person that has made an early acceptance or rejection pursuant to section 807(b) shall be deemed to have accepted or rejected, as the case may be, its applicable percentage and shall submit the information required by paragraph (3) not later than 120 days after the date of enactment of this Act.

(B) TERMINATION OF PROGRAM.—If more than a weighted average of 20 percent of the eligible persons identified on such list reject participation in the Fund, the program under this title and under the insurance fee provisions added by title IX shall terminate, and any fees paid by insurance companies under such provisions that have not been utilized for administration of the Fund shall be refunded pro rata to those companies.

(C) CONDITIONAL TERMINATION OF PROGRAM.—

(i) IN GENERAL.—Except as provided in clause (ii), if more than a weighted average of 15 percent but not more than a weighted average of 20 percent of the eligible persons identified on such list reject participation in the Fund, the program under this title and under the insurance fee provisions added by title IX shall terminate, and any fees paid by insurance companies under such provisions that have not been utilized for administration of the Fund shall be refunded pro rata to those companies.

(ii) DETERMINATION.—Such program shall not terminate and such fees shall not be refunded if, not later than 225 days after the date of enactment of this Act, the Chairperson of the Board, in consultation with the other members of the Board, determines that the weighted average of eligible persons that have elected to accept participation in the Fund is likely to substantially eliminate the insurance coverage litigation between insurance companies and eligible persons at a cost that is fair to the companies subject

to the fees imposed by provisions added by title IX.

(8) WEIGHTED AVERAGE.—For purposes of this subsection, the weighted average of eligible persons accepting, or rejecting, participation in the Fund shall be determined by dividing—

(A) the product obtained by multiplying—

(i) the acceptances or rejections, as appropriate, by eligible persons listed under paragraph (1); by

(ii) the number of eligible National Priorities List facilities of the eligible persons accepting or rejecting, as appropriate, such participation (without regard to whether or not any such facility is the subject of a lawsuit or insurance claim); by

(B) the total number of eligible National Priorities List facilities for all persons either accepting or rejecting such participation.

SEC. 817. TERMINATION OF AUTHORITY TO OFFER AND ACCEPT RESOLUTION.

(a) AUTHORITY TO ACCEPT REQUEST FOR RESOLUTION.—The authority of the Fund to accept requests for resolution shall terminate on the date that is 10 years after the date of enactment of this Act.

(b) AUTHORITY TO OFFER RESOLUTIONS.—The authority of the Fund to offer resolutions to eligible persons shall terminate after the date that is 10 years and 180 days after the date of enactment of this Act.

(c) CONTINUING OBLIGATIONS.—Until termination of the Fund, the Fund shall continue to—

(1) make payments pursuant to resolution offers for any eligible facility that is identified at the time of acceptance of the resolution offer or within 10 years after the date of enactment of this Act; or

(2) reimburse insurers with respect to litigation commenced or continued in connection with a resolution offer made on or before the date that is 10 years after the date of enactment of this Act, where the resolution offer was rejected by an eligible person or not acted upon by an eligible person.

SEC. 818. TERMINATION OF FUND.

If, during any 2-year calendar period commencing after the date that is 10 years after the date of enactment of this Act, no eligible person makes a claim to the Fund for payment of eligible costs, the Fund shall terminate, and all amounts remaining in the Fund shall be deposited in the general fund of the Treasury.

~~TITLE IX—TAXES~~

~~SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.~~

~~(a) Section 59A(e)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking "January 1, 1996" and inserting instead "January 1, 2001".~~

~~(b) Section 4611(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4611(e)) is amended—~~

~~(1) in paragraph (1) by striking "December 31, 1986" and inserting instead "December 31, 1995";~~

~~(2) in paragraph (2)—~~

~~(A) by striking "December 31, 1993 or December 31, 1994" and inserting instead "December 31, 1998 or December 31, 1999";~~

~~(B) by striking "December 31, of 1994 or 1995, respectively" and inserting instead "December 31 of 1999 or 2000, respectively"; and~~

~~(C) by striking "1994 or 1995" the last place it appears and inserting instead "1999 or 2000";~~

~~(3) in paragraph (3)(A), by striking "January 1, 1987, and ending December 31, 1995" and inserting instead "January 1, 1996, and ending December 31, 2000"; and~~

~~(4) in paragraph (3)(B)—~~

~~(A) in the title thereof, by striking "January 1, 1996" and inserting "January 1, 2001"; and~~

~~(B) by striking "Fund before January 1, 1996" and inserting instead "Fund before January 1, 2001".~~

~~SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON INSURANCE COMPANIES.~~

~~(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by inserting after section the following new section:~~

~~"SEC. . ENVIRONMENTAL FEES AND ASSESSMENTS ON INSURANCE COMPANIES.~~

~~[RESERVED]"~~

~~(b) CLERICAL AMENDMENT.—The table of sections for chapter of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section the following:~~

~~"Sec. . Environmental Fees and Assessments on Insurance Companies.".~~

~~SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL INSURANCE RESOLUTION FUND.~~

~~(a) IN GENERAL.—~~

~~(1) Except as provided in section 802(f)(7) of this Act, all expenditures of the Resolution Fund shall be paid out of the fees and assessments imposed by section of the Internal Revenue Code.~~

~~(2) Except as may be expressly authorized by the Secretary of the Treasury, all funds of the Resolution Fund shall be maintained in the Treasury of the United States. The Secretary may provide for the disbursement of such funds to the Resolution Fund or on behalf of the Resolution Fund under such procedures, terms and conditions as the Secretary may prescribe.~~

~~(b) TRANSFER TO RESOLUTION FUND.—The Secretary of the Treasury shall transfer to the Resolution Fund on October 1 of fiscal years 1995, 1996, 1997, 1998 and 1999, an amount equal to the fees and assessments anticipated to be collected pursuant to section of the~~

~~Internal Revenue Code of 1986 during the then current fiscal year.~~

~~(c) ADJUSTMENTS.—In each succeeding fiscal year the Secretary of the Treasury shall adjust the amounts transferred pursuant to paragraph (2) to reflect actual collections of fees and assessments during the prior fiscal year, except that with respect to the transfer made on October 1, 1999, the Resolution Fund shall reimburse the Secretary the amount of such transfer subsequently determined by the Secretary to have exceeded actual collections of fees and assessments during such fiscal year.~~

~~SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.~~

~~The Resolution Fund, including its capital, reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States (including any territory, dependency or possession thereof) or any State, county, municipality or local taxing authority.~~

TITLE IX—ENVIRONMENTAL INSURANCE RESOLUTION TAXES AND TRUST FUND; 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND

Subtitle A—Environmental Insurance Resolution Taxes and Trust Fund

SEC. 901. ENVIRONMENTAL INSURANCE RESOLUTION TAXES.

(a) GENERAL RULE.—Chapter 38 of the Internal Revenue Code of 1986 (relating to environmental taxes) is amended by adding at the end the following new subchapter:

"Subchapter E—Environmental Insurance Resolution Taxes

"Part I. Tax on persons with base-period exposure.
"Part II. Tax on current-year premiums.
"Part III. Assessment on direct insurers resolving claims with Environmental Insurance Resolution Fund.
"Part IV. Termination; administrative provisions.

"PART I—TAX ON PERSONS WITH BASE-PERIOD EXPOSURE

"Sec. 4691. Imposition of tax.
"Sec. 4692. Adjusted base-period commercial direct premiums.
"Sec. 4693. Adjusted base-period commercial reinsurance premiums.
"Sec. 4694. Other definitions and special rules.

"SEC. 4691. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed on each assessable person engaged in any trade or business during any calendar year a tax for such calendar year equal to the sum of—

"(1)(A) such person's adjusted base-period commercial direct premiums, multiplied by

"(B) the applicable direct funding rate, and

"(2)(A) such person's adjusted base-period commercial reinsurance premiums, multiplied by

"(B) the applicable reinsurance funding rate.

"(b) APPLICABLE FUNDING RATES.—For purposes of subsection (a)—

"(1) APPLICABLE DIRECT FUNDING RATE.—The applicable direct funding rate is—

"(A) 0.22 percent for 1995, 1996, 1997, and 1998, and

"(B) zero thereafter.

"(2) APPLICABLE REINSURANCE FUNDING RATE.—The applicable reinsurance funding rate is 0.48 percent.

"(c) TIME FOR PAYMENT OF TAX.—

"(1) MONTHLY INSTALLMENTS.—The tax imposed by subsection (a) on any assessable person for any calendar year shall be paid in equal monthly installments during such calendar year.

"(2) DUE DATE FOR INSTALLMENT.—Any installment under paragraph (1) for any month shall be paid on or before the last day of such month.

"(d) ASSESSABLE PERSON.—For purposes of this part, the term 'assessable person' means any person—

"(1) which has direct premiums or reinsurance premiums for any base-period year; and

"(2) which is—

"(A) a United States person, or

"(B) a person (other than a United States person) if—

"(i) such person, during the calendar year for which the tax

would be assessed, is engaged in a substantial trade or business within the United States and has substantial assets in the United States, and

"(ii) such person's taxable income which is effectively connected with the conduct of such business is subject to tax under section 871(b) or 882(a) and is not exempt from such tax under a treaty obligation of the United States.

"(e) CERTAIN PERSONS TREATED AS ENGAGED IN TRADE OR BUSINESS.—For purposes of subsection (a), a person shall be treated as engaged in a trade or business if any other person, who with such person is treated as a single employer under subsection (a) or (b) of section 52, is engaged in a trade or business.

"SEC. 4692. ADJUSTED BASE-PERIOD COMMERCIAL DIRECT PREMIUMS.

"(a) GENERAL RULE.—For purposes of this part, the adjusted base-period commercial di-

rect premiums of any person is the excess (if any) of—

"(1) the aggregate inflation-adjusted direct premiums of such person for all base-period years, over

"(2) the exemption amount.

"(b) DIRECT PREMIUMS; INFLATION-ADJUSTED DIRECT PREMIUMS.—For purposes of this part—

"(1) DIRECT PREMIUMS.—The term 'direct premiums' means, with respect to any base-period year, the net premiums written for such year from qualified commercial policies (other than reinsurance policies).

"(2) INFLATION-ADJUSTED DIRECT PREMIUMS.—The inflation-adjusted direct premiums of any person for any base-period year shall be an amount equal to the direct premiums of such person for such year multiplied by the inflation adjustment factor for such year.

"(c) EXEMPTION AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The exemption amount for any person is $200,000,000.

"(2) PHASEOUT OF EXEMPTION.—The $200,000,000 amount under paragraph (1) for any person shall be reduced (but not below zero) by the amount by which the amount determined under subsection (a)(1) for such person exceeds $200,000,000.

"(3) AGGREGATION RULES.—For purposes of this subsection—

"(A) IN GENERAL.—All persons treated as a single employer as of February 2, 1994, under subsection (a) or (b) of section 52 shall be treated as 1 person.

"(B) JOINT UNDERWRITING.—

"(i) IN GENERAL.—In the case of any joint underwriting operation of insurance—

"(I) under which the participating persons assume a portion of the business written and take into account the premiums, losses, expenses, and

profits attributable to such portion, and

"(II) which is under the management of 1 or more managing underwriters,

such participating persons as of February 2, 1994, shall be treated as 1 person.

"(ii) COMMONLY GOVERNED UNDERWRITING OPERATIONS.—If more than 1 operation referred to in clause (i) is governed by a common board of directors, council, or similar body, all such operations shall be treated as 1 operation for purposes of clause (i).

"(C) ALLOCATION OF EXEMPTION AMOUNT.—The exemption amount determined under paragraph (1) (after application of paragraph (2)) shall be allocated among persons treated as 1 person—

"(i) under subparagraph (A) or (B)(i) in proportion to each such person's respective share of

the aggregate of the amounts described in subsection (a)(1) of all such persons, and

"(ii) in any other case, using any other method permitted by the Secretary.

"SEC. 4693. ADJUSTED BASE-PERIOD COMMERCIAL REINSURANCE PREMIUMS.

"(a) ADJUSTED REINSURANCE PREMIUMS.—For purposes of this part—

"(1) IN GENERAL.—The adjusted base-period commercial reinsurance premiums of any person is the aggregate inflation-adjusted reinsurance premiums of such person for all base-period years. In no event shall such premiums be treated as less than zero.

"(2) DE MINIMIS AMOUNT.—The Secretary may provide that the adjusted base-period commercial reinsurance premiums of a person shall be treated as zero if such premiums do not exceed a de minimis amount.

"(b) REINSURANCE PREMIUMS; INFLATION-ADJUSTED REINSURANCE PREMIUMS.—For purposes of this part—

"(1) REINSURANCE PREMIUMS.—The term 'reinsurance premiums' means, with respect to any base-period year, the sum of—

"(A) the net premiums written for such year from allocated reinsurance of qualified commercial policies, and

"(B) 33 percent of the net premiums written for such year from unallocated reinsurance.

"(2) INFLATION-ADJUSTED REINSURANCE PREMIUMS.—The inflation-adjusted reinsurance premiums of any person for any base-period year shall be an amount equal to the reinsurance premiums for such year multiplied by the inflation adjustment factor for such year.

"(c) ALLOCATED REINSURANCE.—For purposes of this part, the term 'allocated reinsurance' means any reinsurance the net premiums written for which were reported on the underwriting and investment exhibit of the an-

nual statement by the line of business related to the underlying policies covered by such reinsurance (or, in the case of a person not filing an annual statement, would have been required to be so reported) and were not reported as part of the reinsurance line of business.

"(d) UNALLOCATED REINSURANCE.—For purposes of this part, the term 'unallocated reinsurance' means any reinsurance the net premiums written for which were reported in the line of the underwriting and investment exhibit of the annual statement relating to the reinsurance line of business (or, in the case of a person not filing an annual statement, would have been required to be so reported).

"(e) REINSURANCE BY RELATED PARTY TREATED AS NOT REINSURANCE.—For purposes of this part, if—

"(1) a policy of insurance (other than a reinsurance policy) is issued by a member of a controlled group, and

"(2) such policy is reinsured by 1 or more reinsurance policies issued by 1 or more other members of such controlled

group before such policy is reinsured by a person who is not such a member,

premiums written on any such reinsurance policy shall be treated as direct premiums and not as reinsurance premiums. For purposes of the preceding sentence, the term 'controlled group' means all persons treated as a single employer under section 52(a). To the extent provided by the Secretary, rules similar to the rules of this subsection shall apply in the case of an agency arrangement.

"SEC. 4694. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) INFLATION ADJUSTMENT FACTOR.—For purposes of this part, the inflation adjustment factor for any base-period year shall be determined in accordance with the following table:

"In the case of the following base-period years:	*The inflation adjustment factor is:*
1968	*3.09*
1969	*2.93*
1970	*2.77*
1971	*2.66*
1972	*2.57*
1973	*2.42*
1974	*2.18*
1975	*2.00*
1976	*1.89*
1977	*1.78*
1978	*1.65*
1979	*1.48*
1980	*1.31*
1981	*1.18*
1982	*1.12*
1983	*1.08*
1984	*1.04*
1985	*1.00*

1 ***"(b) QUALIFIED COMMERCIAL POLICIES.—For***
2 ***purposes of this subchapter—***
3 ***"(1) IN GENERAL.—The term 'qualified***
4 ***commercial policy' means any insurance***
5 ***policy against, or with respect to, haz-***
6 ***ards, risks, losses, or liabilities wholly or***
7 ***partly within the United States if pre-***
8 ***miums or liabilities under such policy are***
9 ***of a type required to be reported in the***
10 ***line of the underwriting and investment***
11 ***exhibit of the annual statement relating***
12 ***to—***
13 ***"(A) the commercial multiple peril***
14 ***line of business, or***
15 ***"(B) the other liability line of busi-***
16 ***ness.***

"(2) EXCLUSION OF CERTAIN TYPES OF POLICIES.—Subparagraph (B) of paragraph (1) shall not apply to—

"(A) any policy providing only noncommercial coverage, or

"(B) any other policy which provides neither comprehensive general liability coverage nor environmental liability coverage.

"(c) OTHER GENERAL DEFINITIONS.—For purposes of this part—

"(1) BASE PERIOD.—

"(A) IN GENERAL.—The term 'base period' means the 18-calendar year period beginning with calendar year 1968 and ending with calendar year 1985.

"(B) BASE-PERIOD YEAR.—The term 'base-period year' means any calendar year in the base period.

"(2) NET PREMIUMS WRITTEN.—

"(A) IN GENERAL.—The determination of the net premiums written of any person for any year shall be made on the basis of the underwriting and

investment exhibit of the annual statement filed by such person for such year (or, if such person did not file such a statement, the determination shall be made on a basis consistent with the annual statement requirements applicable to such year).

"(B) ONLY CERTAIN PREMIUMS TAKEN INTO ACCOUNT.—Net premiums written shall be determined by taking into account only premiums attributable to insurance or reinsurance against, or with respect to, hazards, risks, losses, or liabilities within the United States.

"(C) AMOUNTS MAY BE LESS THAN ZERO.—The amount taken into account as the net premiums written with respect to any type of policy for any year may be less than zero.

"(3) ANNUAL STATEMENT.—The term 'annual statement' means the annual statement approved by the National Association of Insurance Commissioners which is required to be filed with the in-

surance regulatory authorities of a State. If any person was required to file an annual statement with the authorities of 2 or more different States for any base-period year, the annual statement used for purposes of this part shall be the annual statement in which the net premiums written related to reinsurance were reported and identified in the most specific manner in the underwriting and investment exhibit.

"(4) POLICY.—The term 'policy' includes any policy or other instrument by whatever name called whereby a contract of insurance or reinsurance is made, continued, or renewed.

"(5) UNITED STATES.—

"(A) IN GENERAL.—The term 'United States', when used in a geographical sense, has the meaning given such term by section 4612(a)(4).

"(B) UNITED STATES PERSON.—Subparagraph (A) shall not apply for purposes of determining whether any person is a United States person.

"(d) SPECIAL RULE FOR INSURERS NOT REQUIRED TO FILE ANNUAL STATEMENT.—If any person—

"(1) was not required to file an annual statement for any year,

"(2) establishes to the satisfaction of the Secretary that, despite the best efforts of such person, such person has inadequate records to make determinations consistent with the annual statement reporting requirements of this part for such year, and

"(3) provides a reasonable estimate, acceptable to the Secretary, of such determinations,

then such person shall be treated as meeting such requirements for such year.

"(e) ADJUSTMENT FOR CERTAIN ACQUISITIONS, ETC.—Except as otherwise provided by the Secretary—

"(1) ACQUISITIONS.—If, after the beginning of the base period, a person acquires any portion of a commercial insurance business of another person (hereafter in this subsection referred to as the 'prede-

cessor'), the inflation-adjusted direct and reinsurance premiums of the acquiring person shall include the inflation-adjusted direct and reinsurance premiums of such predecessor which are attributable to the portion of such insurance business so acquired.

"(2) DISPOSITIONS.—If, after the beginning of the base period—

"(A) a person disposes of any portion of a commercial insurance business in a transaction to which paragraph (1) applies, and

"(B) such person furnishes the acquiring person with such information as is necessary for the application of paragraph (1),

then the inflation-adjusted direct and reinsurance premiums of the person making such disposition shall be reduced by the portion of such premiums attributable to the portion of such insurance business involved in such disposition.

"(3) TREATMENT OF REINSURANCE TRANSACTIONS.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a reinsurance transaction shall not be treated as the disposition of a portion of an insurance business by the reinsured nor as an acquisition of such a portion by the reinsurer if, as a result of such transaction, there is—

"(i) a reduction in the net premiums written of the reinsured, and

"(ii) an increase (in an amount equal to the amount of such reduction) in the net premiums written of the reinsurer.

"(B) TREATMENT OF CERTAIN REINSURANCE TRANSACTIONS.—If, after December 31, 1985, and before February 2, 1994, any person transferred any insurance business in an assumption reinsurance transaction with respect to qualified commercial policies that

were issued during the base period whereby the reinsurer becomes directly liable on the qualified commercial policies transferred, such transaction shall be treated for purposes of paragraphs (1) and (2) as a disposition of a portion of a commercial insurance business by the reinsured and as an acquisition of such a portion by the reinsurer.

"(C) TREATMENT OF CERTAIN TERMINATIONS OF REINSURANCE TRANSACTIONS.—If, after the beginning of the base period and before February 2, 1994, a reinsurance transaction with respect to qualified commercial policies is terminated in accordance with a commutation agreement whereby the reinsurer is no longer liable for any potential claim under the reinsurance agreement, the determination of the adjusted base-period commercial direct and reinsurance premiums of the reinsured and the reinsurer shall

be made as if such reinsurance transaction had not occurred.

"(4) SPECIAL RULES.—

"(A) ADJUSTMENT OF ADJUSTED BASE-PERIOD PREMIUMS FOR ACQUISITIONS AND DISPOSITIONS ON OR AFTER FEBRUARY 2, 1994.—In the case of an acquisition or disposition on or after February 2, 1994, paragraphs (1) and (2) shall be applied by substituting 'adjusted base-period commercial direct and reinsurance premiums' for 'inflation-adjusted direct and reinsurance premiums' each place it appears.

"(B) TIMING OF EFFECT OF TRANSACTIONS ON COMPUTATION OF TAXES.—If any acquisition or disposition referred to in paragraph (1) or (2) occurs after December 31, 1994, the provisions of this subsection shall apply only for purposes of determining the amount of the tax imposed by section 4691 for calendar years beginning after the date of such transaction.

"(C) DETERMINATION OF PREMIUMS ATTRIBUTABLE TO PORTION OF INSURANCE BUSINESS.—The determination of inflation-adjusted direct and reinsurance premiums and adjusted base-period commercial direct and reinsurance premiums attributable to the transferred portion of a commercial insurance business shall be made based on the ratio of assets transferred in connection with the commercial insurance business to total assets of the transferor immediately before such transfer.

"(D) TRANSFERORS REMAIN SECONDARILY LIABLE.—Notwithstanding any reduction in the inflation-adjusted direct and reinsurance premiums or adjusted base-period commercial direct and reinsurance premiums of any person by reason of the disposition of any portion of such person's commercial insurance business, such person shall be secondarily liable for the tax imposed by section 4691

with respect to the adjusted base-period commercial direct and reinsurance premiums attributable to such portion.

"(E) COMMERCIAL INSURANCE BUSINESS.—For purposes of this subsection, the term 'commercial insurance business' means any liability or potential liability under any policy with respect to which direct or reinsurance premiums were written and the assets associated with such a liability.

"(f) TREATMENT OF FOREIGN INSURERS.—

"(1) IMPOSITION OF TAX.—

"(A) IN GENERAL.—There is hereby imposed a tax on any policy described in paragraph (2) on which any premium is written by a foreign person. Such tax shall be an amount equal to 0.50 percent of the maximum limit of liability of such person under such policy.

"(B) LIMITATION.—The amount of tax imposed by subparagraph (A) on

any policy shall not exceed the excess (if any) of—

"(i) the direct premiums written from the policy, over

"(ii) the tax (if any) imposed by section 4695(a) on such premiums.

For purposes of this subparagraph, the term 'direct premiums written' has the meaning given such term by section 4695(e), except that such section shall be treated as also applying to reinsurance premiums.

"(2) POLICIES SUBJECT TO TAX.—For purposes of paragraph (1), a policy is described in this paragraph if such policy is—

"(A) a policy of casualty insurance against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or

"(B) a policy of reinsurance with respect to a policy described in subparagraph (A).

"(3) EXCEPTIONS.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any policy if the foreign person writing the premium on such policy is an assessable person (as defined in section 4691(d)) as of the withholding date.

"(B) NO DOUBLE TAXATION.—Paragraph (1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy demonstrates that the tax imposed by paragraph (1) has been paid on a policy covering the same hazards, risks, losses, or liabilities within the United States as those covered by such policy.

"(C) CLOSING AGREEMENT.—

"(i) IN GENERAL.—Paragraph (1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy has in effect an agreement with the Secretary which—

"(I) provides that such person shall be treated as an assessable person for purposes of this part, and

"(II) contains such provisions as the Secretary determines to be necessary to ensure proper computation and payment of the tax imposed by section 4691 and the assessment imposed by section 4696.

"(ii) PERIOD OF AGREEMENT.—Any closing agreement entered into under clause (i) shall take effect on the date specified in such agreement and shall apply for all subsequent periods unless revoked by the Secretary or revoked by the foreign person with the consent of the Secretary.

"(iii) TREATMENT OF RELATED PERSONS.—The Secretary shall not enter into an agreement under clause (i) with any foreign person unless such foreign person estab-

lishes to the satisfaction of the Secretary that all persons which are, or become, related persons to such foreign person and which have direct or reinsurance premiums for any base-period year are subject to such an agreement.

"(iv) CLOSING AGREEMENT NOT REQUIRED IN CERTAIN CASES.—No closing agreement shall be required to be filed by any person meeting the requirements of subparagraph (E).

"(D) PERIOD BEFORE CLOSING AGREEMENT.—Paragraph (1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy—

"(i) has in effect an election to be treated as an assessable person for purposes of this part,

"(ii) gives such bond or other security as the Secretary may require for the collection of any tax imposed by section 4691 and any

assessment imposed by section 4696, and

"(iii) meets such other requirements as the Secretary may require.

If such person fails to enter into an agreement referred to in subparagraph (C)(i) in a timely manner after making such election (including any period during which a proceeding under section 7479 is pending), such election shall be treated as never being in effect.

"(E) NO ADJUSTED BASE-PERIOD COMMERCIAL PREMIUMS.—Paragraph (1) shall not apply to any policy if, as of the withholding date, the foreign person writing the premium on such policy has established to the satisfaction of the Secretary that neither it nor any related person has adjusted base-period commercial direct or reinsurance premiums.

"(F) WITHHOLDING DATE.—The term 'withholding date' means the date as

of which an amount would otherwise be required to be deducted or withheld under paragraph (5) with respect to any policy.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) FOREIGN PERSON.—The term 'foreign person' means any person which is not a United States person.

"(B) POLICY OF CASUALTY INSURANCE.—The term 'policy of casualty insurance' means any policy other than a policy of life, sickness, or accident insurance, or annuity contract (as defined in section 4372(e)).

"(C) RELATED PERSON.—The term 'related person' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting 'the person with respect to whom the determination is being made' for 'controlled foreign corporation' each place it appears.

"(D) MAXIMUM LIMIT OF LIABILITY.—The term 'maximum limit of liability'

means the total amount for which the foreign person would be liable—

"(i) in the case of a policy described in paragraph (2)(A), if each person insured under such policy were simultaneously entitled to the maximum recovery allowed under the policy, and

"(ii) in the case of a policy described in paragraph (2)(B), if each person insured under a policy described in paragraph (2)(A) which is directly or indirectly reinsured by the policy described in paragraph (2)(B) were simultaneously entitled to the maximum recovery allowed under the policy described in paragraph (2)(A).

Such maximum limit of liability shall not be reduced by any liability which is reinsured.

"(5) COLLECTION OF TAX.—All persons, in whatever capacity acting, having control, receipt, custody, disposal, or payment of any premium or other amount for any

policy on which a tax is imposed under paragraph (1) shall deduct and withhold from such premium or other amount the amount of such tax. Every person required to so deduct and withhold such tax is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount so deducted and withheld.

"PART II—TAX ON CURRENT-YEAR PREMIUMS

"Sec. 4695. Tax on current-year premiums.

"SEC. 4695. TAX ON CURRENT-YEAR PREMIUMS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on each policy described in subsection (b) a tax equal to—

"(1) the direct premiums written under such policy, multiplied by

"(2) the applicable funding rate.

"(b) POLICIES SUBJECT TO TAX.—

"(1) IN GENERAL.—A policy is described in this subsection if—

"(A) such policy is issued against, or with respect to, hazards, risks, losses, or liabilities wholly or partly

within the United States (as defined in section 4612(a)(4)), and

"(B) the premiums or liabilities under such policy are of a type required to be reported in the line of the exhibit of premiums and losses of the annual statement relating to any of the following lines of business:

"(i) Fire.

"(ii) Commercial multiple peril.

"(iii) Other liability.

"(iv) Products liability.

"(v) Allied lines.

"(vi) Inland marine.

"(vii) Commercial auto no-fault.

"(viii) Other commercial auto liability.

"(ix) Commercial auto physical damage.

"(x) Farmowners multiple peril.

"(xi) Ocean marine.

"(xii) Aircraft.

"(xiii) Surety.

"(xiv) Glass.

"(xv) Burglary and theft.

"(xvi) Boiler and machinery.

The Secretary may modify the lines of business under subparagraph (B) to the extent necessary to ensure that such lines of business continue to describe the coverage under subparagraph (B) which was in effect on the date of the enactment of this paragraph.

"(2) EXCEPTION.—Paragraph (1) shall not apply to any policy which the issuer establishes is of any of the following insurance policies:

"(A) Directors and officers liability insurance.

"(B) Professional liability insurance.

"(C) Property damage and liability insurance on residential or farm owner-occupied housing units.

"(D) Personal liability umbrella insurance.

"(E) Insurance on personal articles.

"(F) Property damage and liability insurance on boats or aircraft held predominantly for personal, nonbusiness use by the owner.

"(G) Property damage and liability insurance purchased by associations of owners of condominiums held as personal residences.

"(3) ANNUAL STATEMENT; POLICY.—For purposes of this section, the terms 'annual statement' and 'policy' have the respective meanings given such terms by section 4694(c). The provisions of section 4694(d) shall apply for purposes of this section.

"(c) APPLICABLE FUNDING RATE.—For purposes of this section—

"(1) IN GENERAL.—The applicable funding rate is—

"(A) 0.37 percent for direct premiums written during 1995, 1996, 1997, or 1998, and

"(B) 0.69 percent thereafter.

"(2) SPECIAL RULE FOR CERTAIN FOREIGN INSURERS.—In the case of any premiums to which subsection (f)(2) applies, paragraph (1)(A) shall apply to such premiums written during the first 48 months after the close of the contingency period (as determined under section 816 of the Superfund Reform Act of 1994) and paragraph (1)(B) shall apply thereafter.

"(d) EXEMPTION AMOUNT.—

"(1) IN GENERAL.—No tax shall be imposed by subsection (a) on any premium under a policy to which subsection (b) applies which is included in direct premiums written during any calendar year to the extent that the amount of such premium, when added to the aggregate amount of all prior direct premiums written on such policies during such calendar year, does not exceed the exemption amount.

"(2) EXEMPTION AMOUNT.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The exemption amount for any person is $5,000,000.

"(B) CONTROLLED GROUP RULES.—For purposes of subparagraph (A), the rules of section 4692(c)(3) shall apply (determined without regard to the date therein).

"(e) DIRECT PREMIUMS WRITTEN.—For purposes of this section, the determination of the direct premiums written of any person for any year shall be made on the basis of the exhibit of premiums and losses of the annual statement filed by such person for such year (or, if such person did not file such a statement, the determination shall be made on a basis consistent with the annual statement requirements applicable to such year). Notwithstanding the preceding sentence, direct premiums written shall include the gross amount of premiums and other consideration (including advance premiums, deposits, fees, and assessments) arising from policies issued by a person acting as the direct writer, adjusted for any return or additional premiums arising from endorsements, cancellations, premium audits, or retrospective rating. Amounts returned where the amount is not fixed in the contract by for-

mula or otherwise but depends on the experience of the insurer or the discretion of management shall not be included in return premiums.

"(f) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2)—

"(A) TAX PAID BY ISSUER.—The tax imposed by subsection (a) shall be paid by the person issuing the policy.

"(B) DUE DATE.—Any tax payable under subparagraph (A) shall be paid on or before the 30th day after the close of the calendar quarter in which the premium is included in direct premiums written.

"(C) DEPOSITS REQUIRED.—Any issuer liable for tax payable under subparagraph (A) shall make monthly deposits of such tax on or before the 14th day after the close of the month in which the premium is included in direct premiums written.

"(2) SPECIAL RULES FOR FOREIGN INSURERS.—

"(A) IN GENERAL.—If any premium is written by a foreign person (as defined in section 4694(f)(4)) on any policy described in subsection (b), all persons, in whatever capacity acting, having control, receipt, custody, disposal, or payment of any premium or other amount for such policy shall deduct and withhold from such premium or other amount the amount of the tax imposed by subsection (a). Every person required to so deduct and withhold such tax is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount so deducted and withheld.

"(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any premium or other amount the income from which is effectively connected with the conduct of a trade or business within the United States, unless such income is exempt from the application of sections 871(b) and 882(a)

pursuant to a treaty obligation of the United States.

"PART III—ASSESSMENT ON DIRECT INSURERS RESOLVING CLAIMS WITH ENVIRONMENTAL INSURANCE RESOLUTION FUND

"Sec. 4696. Imposition of assessment.

"SEC. 4696. IMPOSITION OF ASSESSMENT.

"(a) IN GENERAL.—There is hereby imposed on each insurer to which this section applies an assessment for each calendar year in the amount determined under subsection (c).

"(b) INSURERS TO WHICH SECTION APPLIES.—This section shall apply to any insurer for any calendar year if such insurer issued any policy which, for such calendar year, is an assessable direct policy.

"(c) AMOUNT OF ASSESSMENT.—

"(1) IN GENERAL.—The assessment imposed by this section on any insurer for any calendar year shall be an amount equal to such insurer's EIRF-certified percentage of the direct insurance limit.

"(2) LIMIT.—For purposes of paragraph (1), the direct insurance limit for each calendar year is $85,000,000.

"(d) TIME FOR PAYMENT OF ASSESSMENT.—The assessment imposed by subsection (a) for any calendar year shall be paid on or before September 30 of such calendar year.

"(e) DEFINITIONS.—For purposes of this section—

"(1) ASSESSABLE DIRECT POLICY.—The term 'assessable direct policy' means, for any calendar year, any policy (other than a policy of reinsurance) if—

"(A) the Environmental Insurance Resolution Fund determined that such policy was a valid insurance contract of an eligible person,

"(B) such contract (or documentary evidence of such contract) was submitted (whether or not within the calendar year or the applicable period with respect thereto) under section 804 of the Superfund Reform Act of 1994 to such Fund by or for such eligible person, and

"(C) such Fund, during the applicable period with respect to such calendar year, made 1 or more payments

to such eligible person under title VIII of such Act.

"(2) EIRF-CERTIFIED PERCENTAGE.—The term 'EIRF-certified percentage' means, with respect to the direct limit of any insurer for any calendar year, the percentage determined by the Environmental Insurance Resolution Fund which—

"(A) the aggregate of the coverage limits contained in assessable direct policies issued by such insurer, bears to

"(B) the aggregate of the coverage limits contained in all assessable direct policies issued by all insurers.

"(3) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any calendar year, the period of the 4 calendar years preceding such year.

"(4) COVERAGE LIMIT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'coverage limit' means, with respect to any policy, the aggregate limit on coverage under the policy.

"(B) ANNUAL LIMIT.—If the limit on coverage under any policy is an annual limit, the term 'coverage limit' means, with respect to such policy, an amount equal to such annual limit multiplied by the number of years such contract was in effect.

"(C) PER OCCURRENCE LIMITS.—If the limit on coverage under an insurance policy is expressed on a per occurrence basis without an aggregate or annual limit, the term 'coverage limit' means, with respect to such policy, an amount equal to—

"(i) the limit on coverage under the policy for 1 occurrence, multiplied by

"(ii) the number of eligible facilities of the eligible person that were taken into account in determining the applicable percentage under section 806 of the Superfund Reform Act of 1994 of such person, multiplied by

"(iii) the number of years such contract was in effect.

"(D) EXCESS COVERAGE.—If the policy provides excess coverage without an aggregate, annual, or per occurrence limit, the term 'coverage limit' means, with respect to such policy, an amount equal to—

"(i) 10 times the amount that must be paid by an insurer to the eligible person before such person is entitled to submit a claim for such excess coverage, multiplied by

"(ii) the number of years such contract was in effect.

"(E) OTHER CASES.—If the coverage limit under any policy is not determinable under the preceding provisions of this paragraph, such limit shall be determined by the Environmental Insurance Resolution Fund under a method prescribed by the Secretary.

"(F) DEDUCTIBLES DISREGARDED.—The determination under this paragraph of any coverage limit under any assessable direct policy shall be made without regard to any deductible or self-insured retention of an eligible person.

"(G) TREATMENT OF REINSURANCE.—

"(i) IN GENERAL.—The coverage limit (determined without regard to this clause) under any assessable direct policy shall be reduced by 80 percent of the portion of such limit which is reinsured, but only if the related reinsurance premiums are not treated as direct premiums under section 4693(e).

"(ii) REINSURER MUST BE IDENTIFIED.—A policy shall be treated as not reinsured for any period unless the Environmental Insurance Resolution Fund is notified of such reinsurance (in such form and manner, and at such time or

times, as is specified by such Fund).

"(5) ELIGIBLE FACILITY; ELIGIBLE PERSON; VALID INSURANCE CONTRACT.—The terms 'eligible facility', 'eligible person', and 'valid insurance contract' have the respective meanings given to such terms by section 802 of the Superfund Reform Act of 1994.

"(6) POLICY.—The term 'policy' has the meaning given such term by section 4694(c)(4).

"(f) NO REVIEW OF EIRF-CERTIFIED PERCENTAGES.—

"(1) IN GENERAL.—No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to review any final determination of any percentage under subsection (e)(3). No such final determination shall be subject to review by the Secretary in an administrative proceeding.

"(2) FINAL DETERMINATION.—For purposes of paragraph (1), the percentages determined under subsection (e)(3) by the

Environmental Insurance Resolution Fund as of August 1st of any calendar year shall be treated as final determinations of such percentages for such year.

"(g) SECTION 4694(f) TAX TO APPLY TO CERTAIN ASSESSABLE INSURERS WITHOUT CLOSING AGREEMENT.—If—

"(1) paragraph (1) of section 4694(f) does not apply to any foreign person solely by reason of paragraph (3)(E) thereof, and

"(2) any policy issued by such person is an assessable direct policy under this section,

subparagraphs (C)(iv) and (E) of section 4694(f)(3) shall cease to apply to such person with respect to such policy.

"(h) ADMINISTRATIVE PROVISIONS.—

"(1) IN GENERAL.—All assessments imposed by this section are excise taxes, and shall be assessed and collected in the same manner as other excise taxes imposed by this chapter.

"(2) CERTAIN PROVISIONS MADE APPLICABLE.—All provisions of law, including pen-

alties and provisions providing for interest, shall apply to the assessments imposed by this section in the same manner as other excise taxes imposed by this chapter.

"(i) APPLICATION OF SECTION.—This section shall apply to calendar years after 1998.

"PART IV—TERMINATION; ADMINISTRATIVE PROVISIONS

"Sec. 4697. Termination.
"Sec. 4698. Return requirements; regulations.

"SEC. 4697. TERMINATION.

"(a) IN GENERAL.—Except as provided in subsections (b) and (c), this subchapter shall not apply to any calendar year after 2004.

"(b) PREMIUMS OF CERTAIN FOREIGN INSURERS.—In the case of premiums to which section 4694(f)(5) or 4695(f)(2) applies, the tax imposed by section 4694(f) or 4695, respectively, shall not apply to such premiums paid after the close of the 10-year period beginning on the date such tax takes effect with respect to such premiums.

"(c) AGGREGATE LIMITATIONS ON TAXES.—

"(1) ESTIMATES.—

"(A) IN GENERAL.—The Secretary shall, before the beginning of any calendar year in each limitation period, make an estimate of the aggregate amounts of each applicable tax which will be credited to the Environmental Insurance Resolution Trust Fund during the limitation period. The Secretary shall publish such estimate in the Federal Register.

"(B) LIMITATION PERIOD.—For purposes of subparagraph (A), the term 'limitation period' means—

"(i) the period from January 1, 1995, through December 31, 1998, and

"(ii) the period from January 1, 1999, through December 31, 2004.

"(C) APPLICABLE TAX.—For purposes of subparagraph (A), the term 'applicable tax' means—

"(i) the tax imposed by section 4691(a)(1),

"(ii) the tax imposed by section 4691(a)(2) on assessable persons described in section 4691(d)(2)(A),

"(iii) the tax imposed by section 4691(a)(2) on assessable persons described in section 4691(d)(2)(B), and

"(iv) the tax imposed by section 4695(a).

"(2) TERMINATION.—

"(A) IN GENERAL.—If the Secretary estimates under paragraph (1) that the applicable limit for any applicable tax for any limitation period will be first exceeded during any month in the calendar year for which the estimate is being made—

"(i) such applicable tax shall not be imposed during any month in such limitation period following such month, and

"(ii) in the case of any applicable tax other than the tax described in subparagraph (C)(iv)—

"(I) no installment payment of such applicable tax shall be due for any month in such limitation period following such month, and

"(II) the amount of such applicable tax for such calendar year shall be proportionately reduced to reflect the termination of such tax under clause (i).

"(B) APPLICABLE LIMIT.—For purposes of subparagraph (A), the applicable limit shall be determined as follows:

"(i) 1995 THROUGH 1998.—In the case of the limitation period described in paragraph (1)(B)(i), the applicable limit is:

"If the tax is in the following clause of paragraph (1)(C)	The applicable limit (in millions) is:
(i)	$1,496
(ii)	444
(iii)	308
(iv)	992.

"(ii) 1999 THROUGH 2004.—In the case of the limitation period

described in paragraph (1)(B)(ii), the applicable limit is:

"If the tax is in the following clause of paragraph (1)(C)	*The applicable limit (in millions) is:*
(ii)	*$666*
(iii)	*462*
(iv)	*3,222.*

"SEC. 4698. RETURN REQUIREMENTS; REGULATIONS.

"(a) RETURN REQUIREMENTS.—

"(1) IN GENERAL.—Each person liable for any tax or assessment under this subchapter shall make such returns, and furnish such other statements and information to the Secretary, as the Secretary determines to be necessary to carry out the purposes of this subchapter.

"(2) INITIAL RETURN.—The initial return made with respect to the tax imposed by section 4691 shall include such information as the Secretary shall by forms require for purposes of computing the adjusted base-period commercial premiums of the person making such return and for purposes of identifying certain reinsurers and reinsurance premiums.

"(b) NO COVER OVER TO POSSESSIONS.—Notwithstanding any other provision of law, no

amount collected under this subchapter shall be covered over to any possession of the United States.

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subchapter, including such regulations as may be appropriate to prevent the avoidance of any tax or assessment imposed by this subchapter and such regulations as may be appropriate to treat joint underwriting operations or groups thereof as persons liable for tax under this subchapter."

(b) DECLARATORY JUDGMENTS.—

(1) IN GENERAL.—Part IV of subchapter C of chapter 76 of the Internal Revenue Code of 1986 (relating to declaratory judgments) is amended by adding at the end the following new section:

"SEC. 7479. DECLARATORY JUDGMENTS RELATING TO CLOSING AGREEMENTS INVOLVING FOREIGN INSURERS.

"(a) CREATION OF REMEDY.—

"(1) IN GENERAL.—In a case of actual controversy involving a failure by the Sec-

retary to enter into a closing agreement described in section 4691(f)(3)(C), upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to the liability of the petitioner for the tax imposed by section 4691.

"(2) SCOPE OF DECLARATION.—The declaration referred to in paragraph (1) shall, if the Tax Court determines that the Secretary's failure to approve the petitioner's last written proposal for a closing agreement was, solely on the basis of the administrative record—

"(A) clearly unreasonable, establish the taxpayer's liability described in paragraph (1) on the basis of such last written proposal, or

"(B) not clearly unreasonable, establish the petitioner's liability described in paragraph (1) on the basis of the Secretary's last written proposal (or, if no such written proposal was made, solely on the basis of the administrative record).

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by a person subject to the tax imposed by section 4691(f)(1).

"(2) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to the petitioner within the Internal Revenue Service. A petitioner shall be deemed to have exhausted the petitioner's administrative remedies with respect to a failure by the Secretary to enter into a closing agreement on the earlier of—

"(A) the date which is 2 years after the petitioner filed with the Secretary a completed application for a closing agreement (or such later date as the parties may agree to), or

"(B) the date on which the Secretary notifies the petitioner by certified or registered mail that no agreement may be reached.

"(3) TIME FOR BRINGING ACTION.—No proceeding may be initiated under this section by any person unless the pleading is filed before the 91st day after the earlier of the dates described in paragraph (2).

"(c) EFFECT OF DECISION.—Any declaration under subsection (a)(1) shall have the force and effect of a decision of the Tax Court, and shall be reviewable as such."

(2) CONFORMING AMENDMENT.—The table of sections for part IV of subchapter C of chapter 76 of such Code is amended by adding at the end the following new item:

"Sec. 7479. Declaratory judgments relating to closing agreements involving foreign insurers."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Subchapter E. Environmental insurance resolution taxes."

(d) STUDY OF FINANCING.—During 2002, the Secretary of the Treasury shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Com-

mittee on Finance of the Senate a study of the financing for the Environmental Insurance Resolution Fund, including in such study—

(1) an analysis of the distribution of the benefits of the Fund and of the sources of financing for the Fund, and

(2) any recommendations that the Secretary may have with respect to such financing after 2004.

SEC. 902. ENVIRONMENTAL INSURANCE RESOLUTION TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following new section:

"SEC. 9512. ENVIRONMENTAL INSURANCE RESOLUTION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Environmental Insurance Resolution Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Environmental Insurance Resolution Trust Fund amounts equivalent to—

"(1) the taxes received in the Treasury under subchapter E of chapter 38 (relating to environmental insurance resolution taxes), and

"(2) amounts recovered by, and fees paid to, the Environmental Insurance Resolution Fund under title VIII of the Superfund Reform Act of 1994.

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Environmental Insurance Resolution Trust Fund shall be available for purposes of making expenditures to carry out title VIII of the Superfund Reform Act of 1994 (as in effect on the date of the enactment of such Act) and only for such purposes.

"(2) REPORTS.—Before July 1, 1997, and every second year thereafter, the Secretary shall publish a report of the liabilities incurred by the Trust Fund (as of the close of the preceding year) for eligible

sites for which eligible persons have accepted offers under title VIII of the Superfund Reform Act of 1994.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are appropriated to the Environmental Insurance Resolution Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of the Trust Fund.

"(2) LIMITATIONS.—

"(A) IN GENERAL.—Repayable advances shall be made under paragraph (1) only—

"(i) for short-term cash management, and

"(ii) with the approval of the Secretary.

"(B) AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Trust Fund which is outstanding at any one time shall not exceed $350,000,000.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Trust Fund shall be repaid, and

interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Trust Fund after December 31, 2003, and all advances to the Trust Fund shall be repaid on or before such date and shall have priority over any other obligation of the Trust Fund.

"(C) RATE OF INTEREST.—Interest on advances made to the Trust Fund shall be at a rate determined by the Secretary (as of the close of the calendar month preceding the month in which the advance is made).

"(e) LIABILITY OF UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) IN GENERAL.—Any expenditure or obligation incurred by the Environmental Insurance Resolution Fund may be paid only out of the Environmental Insurance Resolution Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Superfund Reform Act of 1994 or in any other provision of law shall authorize the payment by the United States Government of any amount with respect to any such expenditure or obligation out of any source other than the Environmental Insurance Resolution Trust Fund, and the United States Government shall not be liable for any such expenditure or obligation to the extent not paid from such Trust Fund.

"(3) FINAL YEAR.—If, as of December 31, 2004, the Secretary estimates that the Environmental Insurance Resolution Trust Fund has insufficient funds to pay all of the amounts payable out of the such Trust Fund, amounts payable out of such Trust Fund after such date shall be proportionately reduced to reflect such insufficiency.

"(f) APPROVAL.—No financial instrument may be received by the United States under the authority of section 122(o) of the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980 unless the Secretary approves such receipt."

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter A is amended by adding at the end the following new item:

"Sec. 9512. Environmental Insurance Resolution Trust Fund."

SEC. 903. EXEMPTION FROM INCOME TAX FOR ENVIRONMENTAL INSURANCE RESOLUTION FUND.

Subsection (l) of section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by adding at the end the following new paragraph:

"(4) The Environmental Insurance Resolution Fund established by section 803 of the Superfund Reform Act of 1994."

SEC. 904. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle shall take effect on January 1, 1995.

(b) CURRENT YEAR PREMIUMS.—The amendments made by this subtitle to the extent related to section 4695 of the Internal Revenue Code of 1986, as added by such amendments, shall

apply to premiums written after December 31, 1994.

(c) CONTINGENCY PERIOD.—

(1) IN GENERAL.—The amendments made by this subtitle (other than section 903) shall not take effect unless, as of August 15, 1995—

(A) title VIII of this Act is in effect, and

(B) the contingency period has expired.

(2) DELAY IN DUE DATE FOR TAXES.—If the due date for any tax imposed by subchapter E of chapter 38 of the Internal Revenue Code of 1986 would, but for this paragraph, be on or before the close of the contingency period, such due date shall be the 14th day of the first month beginning after the close of such period.

(d) PREMIUMS OF CERTAIN FOREIGN INSURERS.—In the case of premiums to which section 4694(f)(5) or 4695(f)(2) of the Internal Revenue Code of 1986, as added by this title, applies, the taxes imposed by sections 4694(f) and 4695 of such Code, as so added, shall apply only to a

policy for which any such premiums are written after the close of the contingency period.

(e) CONTINGENCY PERIOD.—For purposes of this section, the term "contingency period" means the period specified in section 816 of the Superfund Reform Act of 1994 during which title VIII of such Act is in effect on a contingent basis.

Subtitle B—5-Year Extension of Hazardous Substance Superfund

SEC. 911. 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXTENSION OF TAXES.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "January 1, 1996" each place it appears and inserting "January 1, 2001":

(A) Section 59A(e)(1) (relating to application of environmental tax).

(B) Paragraphs (1) and (3) of section 4611(e) (relating to application of Hazardous Substance Superfund financing rate).

(2) Paragraph (2) of section 4611(e) of such Code is amended—

(A) by striking "1993" and inserting "1998",

(B) by striking "1994" each place it appears and inserting "1999", and

(C) by striking "1995" each place it appears and inserting "2000".

(b) INCREASE IN AGGREGATE TAX WHICH MAY BE COLLECTED.—Paragraph (3) of section 4611(e) of such Code is amended by striking "$11,970,000,000" each place it appears and inserting "$22,000,000,000" and by striking "December 31, 1995" and inserting "December 31, 2000".

(c) EXTENSION OF REPAYMENT DEADLINE FOR SUPERFUND BORROWING.—Subparagraph (B) of section 9507(d)(3) of such Code is amended by striking "December 31, 1995" and inserting "December 31, 2000".

(d) EXTENSION OF TRUST FUND PURPOSES.—Subparagraph (A) of section 9507(c)(1) of such Code is amended—

(1) by striking clause (i) and inserting the following:

"(i) paragraphs (1), (2), (5), (6), (7), (8), (9), and (10) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Reform Act of 1994,", and

(2) by striking clause (iii) and inserting the following:

"(iii) subsections (m), (n), (q), (r), (s), and (t) of section 111 of CERCLA (as so in effect), or".

(e) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS TO TRUST FUND.—Subsection (b) of section 517 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507 note) is amended by striking "and" at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting a comma, and by adding at the end the following new paragraphs:

"(10) 1996, $250,000,000,

"(11) 1997, $250,000,000,

"(12) 1998, $250,000,000, and

"(13) 1999, $250,000,000,".

(f) COORDINATION WITH OTHER PROVISIONS.—Paragraph (2) of section 9507(e) of the

Internal Revenue Code of 1986 is amended by striking "CERCLA" and all that follows through "Acts)" and inserting "CERCLA, the Superfund Amendments and Reauthorization Act of 1986, and the Superfund Reform Act of 1994 (or in any amendment made by any of such Acts)".