

103D CONGRESS  
1ST SESSION

# S. 965

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide relief to local taxpayers, municipalities, and small businesses regarding the cleanup of hazardous substances, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, APRIL 19), 1993

Mr. LAUTENBERG (for himself, Mr. MITCHELL, Mrs. BOXER, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. SARBANES, Mr. SIMON, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide relief to local taxpayers, municipalities, and small businesses regarding the cleanup of hazardous substances, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Toxic Cleanup Equity  
5 Act of 1993”.

1 **SEC. 2. FINDINGS.**

2 Consistent with the policies under the Comprehensive  
3 Environmental Response, Compensation, and Liability Act  
4 of 1980 (CERCLA) (42 U.S.C. 9601 et seq.), the Con-  
5 gress finds that—

6 (1) the polluter should pay for cleanup, and  
7 cleanups must fully protect human health and the  
8 environment;

9 (2) municipalities have traditionally performed  
10 the public service of helping their citizens dispose of  
11 ordinary garbage and sewage, and have at times  
12 been required to perform this function under State  
13 law;

14 (3) municipalities did not operate their waste  
15 disposal services for the purpose of receiving a  
16 profit;

17 (4) many municipal landfills used to dispose of  
18 garbage and sewage sludge also have been used to  
19 dispose of industrial hazardous waste, which has  
20 contaminated the sites and created the need for  
21 Superfund cleanups;

22 (5) the vast majority of the hazardous sub-  
23 stances that are causing threats to human health  
24 and the environment at Superfund sites were pro-  
25 duced by non-municipal operations;

1           (6) third-party contribution suits based on the  
2           generation or transportation of municipal solid waste  
3           and sewage sludge distort the intent of CERCLA  
4           and drain the precious resources of municipalities,  
5           small businesses, and nonprofit associations;

6           (7) many of the Nation's local governments are  
7           facing a financial crisis, and their ability to provide  
8           essential public services is being threatened;

9           (8) municipalities are facing expensive man-  
10          dates imposed by the Federal and State govern-  
11          ments, including some related to environmental pro-  
12          tection; and

13          (9) municipalities that own Superfund sites  
14          bear a double burden: their citizens live near the  
15          sites and these local governments may be forced to  
16          cut back on important public health and safety serv-  
17          ices to help pay for the cleanup.

18 **SEC. 3. MUNICIPALITIES, MUNICIPAL SOLID WASTE, AND**

19 **SEWAGE SLUDGE.**

20          (a) Section 101 of the Comprehensive Environmental  
21          Response, Compensation, and Liability Act of 1980 (42  
22          U.S.C. 9601) is amended by adding the following new  
23          paragraphs at the end thereof:

24                 “(39) The term ‘municipal solid waste’ means  
25                 all waste materials generated by households, includ-

1 ing single and multiple residences, and hotels and  
2 motels. The term also includes waste materials gen-  
3 erated by commercial, institutional, and industrial  
4 sources (A) when such waste materials are essen-  
5 tially the same as waste normally generated by  
6 households, or (B) when such waste materials were  
7 collected and disposed of with other municipal solid  
8 waste or sewage sludge and, regardless of when gen-  
9 erated, would be considered conditionally exempt  
10 small quantity generator waste under section  
11 3001(d) of the Solid Waste Disposal Act (42 U.S.C.  
12 6921(d)). Examples of municipal solid waste include  
13 food and yard waste, paper, clothing, appliances,  
14 consumer product packaging, disposable diapers, of-  
15 fice supplies, cosmetics, glass and metal food con-  
16 tainers, school science laboratory waste, and house-  
17 hold hazardous waste (such as painting, cleaning,  
18 gardening, and automotive supplies). For the pur-  
19 poses of this Act, the term ‘municipal solid waste’  
20 does not include combustion ash generated by re-  
21 source recovery facilities or municipal incinerators,  
22 or waste from manufacturing or processing (includ-  
23 ing pollution control) operations not essentially the  
24 same as waste normally generated by households.

1           “(40) The term ‘sewage sludge’ refers to any  
2           solid, semisolid, or liquid residue removed during the  
3           treatment of municipal waste water, domestic sew-  
4           age, or other waste waters at or by a publicly-owned  
5           treatment works.

6           “(41) The term ‘municipality’ means any politi-  
7           cal subdivision of a State and may include cities,  
8           counties, villages, towns, townships, boroughs, par-  
9           ishes, schools, school districts, sanitation districts,  
10          water districts, and other local governmental enti-  
11          ties. The term also includes any natural person act-  
12          ing in his or her official capacity as an official, em-  
13          ployee, or agent of a municipality.”.

14          (b) Section 113 of the Comprehensive Environmental  
15          Response, Compensation, and Liability Act of 1980 (42  
16          U.S.C. 9613) is amended by adding the following new sub-  
17          sections at the end thereof:

18          “(m) CONTRIBUTION ACTIONS FOR GENERATORS  
19          AND TRANSPORTERS OF MUNICIPAL SOLID WASTE AND  
20          SEWAGE SLUDGE.—No municipality or other person shall  
21          be liable to any person other than the President for claims  
22          of contribution under this section or for other response  
23          costs, penalties, or damages under this Act for the genera-  
24          tion, transportation, or arrangement for the transpor-

1 tation, treatment, or disposal of municipal solid waste or  
2 sewage sludge.

3 “(n) CONTRIBUTION ACTIONS FOR MUNICIPAL OWN-  
4 ERS AND OPERATORS.—No eligible municipality as de-  
5 fined in section 122(p) shall be liable to any person other  
6 than the President for claims of contribution under this  
7 section or for other response costs, penalties, or damages  
8 under this Act for the ownership or operation of a facility  
9 to the extent that the municipality is an eligible municipal-  
10 ity under section 122(p)(1).

11 “(o) PUBLIC RIGHT-OF-WAY.—In no event shall a  
12 municipality incur liability under this Act for the acts of  
13 owning or maintaining a public right-of-way over which  
14 hazardous substances are transported, or of granting a  
15 business license to a private party for the transportation,  
16 treatment, or disposal of municipal solid waste or sewage  
17 sludge. For the purposes of this subsection, ‘public right-  
18 of-way’ includes, but is not limited to, roads, streets, flood  
19 control channels, or other public transportation routes,  
20 and pipelines used as a conduit for sewage or other liquid  
21 or semiliquid discharges.”.

22 (c) Section 122 of the Comprehensive Environmental  
23 Response, Compensation, and Liability Act of 1980 (42  
24 U.S.C. 9622) is amended by adding the following new sub-  
25 sections at the end thereof:

1       “(n) SETTLEMENT PROCEDURES FOR GENERATORS  
2 AND TRANSPORTERS OF MUNICIPAL SOLID WASTE OR  
3 SEWAGE SLUDGE.—

4           “(1) ELIGIBLE PERSONS.—The term ‘eligible  
5 person’ under this subsection means any person  
6 against whom an administrative or judicial action is  
7 brought, or to whom notice is given of potential li-  
8 ability under this Act, for the generation, transpor-  
9 tation, or arrangement for the transportation, treat-  
10 ment, or disposal of municipal solid waste or sewage  
11 sludge. An eligible person who may be liable under  
12 paragraph (1) or (2) of section 107(a) or for sub-  
13 stances other than municipal solid waste or sewage  
14 sludge is covered by this subsection to the extent  
15 that the person is liable for the generation, transpor-  
16 tation, or arrangement for the transportation, treat-  
17 ment, or disposal of municipal solid waste or sewage  
18 sludge.

19           “(2) NEGOTIATION OF SETTLEMENTS; MORATO-  
20 RIUM.—Eligible persons under this subsection may  
21 offer to settle their potential liability with the Presi-  
22 dent by stating in writing their ability and willing-  
23 ness to settle their potential liability in accordance  
24 with this subsection. Upon receipt of such good faith  
25 offer to settle, no further administrative or judicial

1 action shall be taken against the eligible person, un-  
2 less the President determines that the eligible per-  
3 son's offer or position during negotiations is not in  
4 good faith or otherwise not in accordance with this  
5 subsection or that the matters addressed include li-  
6 ability not related to the generation, transportation,  
7 or arrangement for the transportation, treatment, or  
8 disposal of municipal solid waste or sewage sludge.  
9 Nothing in this subsection shall limit or modify the  
10 President's authority under section 104(e).

11 “(3) TIMING.—Eligible persons may tender of-  
12 fers under this subsection within 180 days after re-  
13 ceiving a notice of potential liability or becoming  
14 subject to administrative or judicial action, or within  
15 180 days after a record of decision is issued for the  
16 portion of the response action that is the subject of  
17 the person's settlement offer, whichever is later. If  
18 the President notifies an eligible person that he or  
19 she may be a potentially responsible party, no fur-  
20 ther administrative or judicial action may be taken  
21 by any party for 120 days against such person.

22 “(4) EXPEDITED FINAL SETTLEMENT.—The  
23 President shall make a good faith effort to reach  
24 final settlements as promptly as possible under this  
25 subsection, and such settlements shall—



1           “(A) allocate to all generation, transpor-  
2           tation, or arrangement for the transportation,  
3           treatment, or disposal of municipal solid waste  
4           or sewage sludge a combined total of no more  
5           than 4 percent of the total response costs for  
6           the facility: *Provided, however,* That the Presi-  
7           dent shall reduce this percentage when the vol-  
8           ume of municipal solid waste and sewage sludge  
9           present at the facility is not significant;

10           “(B) require an eligible person under this  
11           subsection to pay only for his or her equitable  
12           share of the maximum 4 percent portion of re-  
13           sponse costs described in subparagraph (A);

14           “(C) reduce an eligible person’s payments  
15           based on such person’s inability to pay,  
16           litigative risks, public interest considerations,  
17           precedential value, and equitable factors;

18           “(D) permit an eligible person to provide  
19           appropriate in-kind services with regard to the  
20           response action in lieu of cash contributions  
21           and to be credited at market rates for such  
22           services;

23           “(E) reduce a publicly owned treatment  
24           works’ payments if it has promoted the bene-  
25           ficial reuse of sewage sludge through land appli-

1 cation when the basis of liability arises from  
2 sewage sludge generated 36 months after the  
3 date of enactment of this subsection or there-  
4 after; and

5 “(F) be reached even in the event that an  
6 eligible person may be liable under paragraph  
7 (1) or (2) of section 107(a) or for substances  
8 other than municipal solid waste or sewage  
9 sludge.

10 “(5) COVENANT NOT TO SUE.—The President  
11 may provide a covenant not to sue with respect to  
12 the facility concerned to any person who has entered  
13 into a settlement under this subsection unless such  
14 a covenant would be inconsistent with the public in-  
15 terest as determined under subsection (f).

16 “(6) EFFECT OF AGREEMENT.—A person that  
17 has resolved his or her liability to the United States  
18 under this subsection shall not be liable for claims  
19 of contribution or for other response costs, penalties,  
20 or damages under this Act regarding matters ad-  
21 dressed in the settlement. Such settlement does not  
22 discharge any of the other potentially responsible  
23 parties unless the terms of the settlement so provide,  
24 but the settlement reduces the potential liability of  
25 the other parties by the amount of the settlement.

1           “(7) DE MINIMIS SETTLEMENTS.—Nothing in  
2 this subsection shall alter or diminish a person’s  
3 ability to reach a settlement with the President  
4 under subsection (g).

5           “(8) JUDICIAL REVIEW.—Any judicial review of  
6 a settlement reached with the President under this  
7 subsection shall be limited to the administrative  
8 record. Otherwise applicable principles of adminis-  
9 trative law shall govern whether any supplemental  
10 materials may be considered by the court. In consid-  
11 ering objections raised to such a settlement, the  
12 court shall uphold the President’s decision to enter  
13 into the settlement unless the objecting party can  
14 demonstrate, on the administrative record, that the  
15 decision was arbitrary, capricious, or otherwise not  
16 in accordance with law.

17           “(o) FUTURE DISPOSAL PRACTICES.—This sub-  
18 section applies only to the generation, transportation, or  
19 arrangement for the transportation, treatment, or disposal  
20 of municipal solid waste or sewage sludge occurring 36  
21 months after the date of enactment of this subsection or  
22 thereafter. Beginning at such time and with regard to  
23 such future municipal solid waste or sewage sludge, eligi-  
24 ble persons who are municipalities or operators of publicly

1 owned treatment works may assert the provisions of sub-  
2 section (n) only under the following circumstances:

3 “(1) If liability arises from municipal solid  
4 waste collected and disposed of 36 months or later  
5 after the date of enactment of this subsection and  
6 the eligible person is a municipality, a qualified  
7 household hazardous waste collection program must  
8 have been operating while such municipal solid waste  
9 was collected and disposed.

10 “(2) If liability arises from sewage sludge gen-  
11 erated 36 months or later after the date of enact-  
12 ment of this subsection and the eligible person is an  
13 owner or operator of a publicly owned treatment  
14 works, a qualified publicly owned treatment works  
15 must have been operating while such sewage sludge  
16 was generated at such treatment works.

17 “(3) The term ‘qualified household hazardous  
18 waste collection program’ means a program that in-  
19 cludes—

20 “(A) at least semiannual, well-publicized  
21 collections at conveniently located collection  
22 points with an intended goal of participation by  
23 ten percent of community households;

24 “(B) a public education program that iden-  
25 tifies potentially hazardous household products,

1 safer substitutes (source reduction), and proper  
2 use and disposal of consumer products;

3 “(C) efforts to collect hazardous waste  
4 from conditionally exempt small quantity gen-  
5 erators under section 3001(d) of the Solid  
6 Waste Disposal Act (42 U.S.C. 6921(d)), with  
7 an intended goal of collecting wastes from 20  
8 percent of such generators doing business with-  
9 in the jurisdiction of the municipality; and

10 “(D) a comprehensive plan, which may in-  
11 clude regional compacts or joint ventures, that  
12 outlines how the program will be accomplished.

13 “(4) To satisfy the criterion of having a quali-  
14 fied household hazardous waste collection program  
15 in operation, a municipality may operate its own  
16 program or may certify that other persons are, joint-  
17 ly or individually, operating each of the elements of  
18 a qualified program which serves the municipality’s  
19 jurisdiction, and such other persons may include,  
20 but are not limited to, private contractors and busi-  
21 nesses, other municipalities, and States.

22 “(5) A person that operates a ‘qualified house-  
23 hold hazardous waste collection program’ and col-  
24 lects hazardous waste from conditionally exempt  
25 small quantity generators under section 3001(d) of

1 the Solid Waste Disposal Act (42 U.S.C. 6921(d))  
2 must transport or arrange to transport such waste  
3 in accordance with the Solid Waste Disposal Act (42  
4 U.S.C. 6901 et seq.) and must dispose of such waste  
5 at a hazardous waste treatment, storage, or disposal  
6 facility with a permit under section 3005 of the  
7 Solid Waste Disposal Act (42 U.S.C. 6925), but  
8 such person is otherwise deemed to be handling only  
9 household waste under the Solid Waste Disposal Act  
10 when the person operates a qualified household haz-  
11 ardous waste collection program.

12 “(6) Nothing in this Act is intended to prohibit  
13 a person from assessing fees to persons whose waste  
14 is accepted during household hazardous waste collec-  
15 tions, or shall prohibit a person from refusing to ac-  
16 cept waste that the person believes is being disposed  
17 of in violation of the Solid Waste Disposal Act (42  
18 U.S.C. 6901 et seq.).

19 “(7) The term ‘qualified publicly owned treat-  
20 ment works’ means a publicly owned treatment  
21 works that complies with section 405 of the Federal  
22 Water Pollution Control Act (33 U.S.C. 1345).

23 “(8) The President may determine that a  
24 household hazardous waste collection program or a  
25 publicly owned treatment works is not qualified

1 under this subsection. Minor instances of noncompli-  
2 ance do not render a household hazardous waste col-  
3 lection program or publicly owned treatment works  
4 unqualified under this subsection.

5 “(9) If the President determines that a house-  
6 hold hazardous waste collection program is not  
7 qualified, the provisions of subsection (n) shall not  
8 apply, but only with regard to the municipal solid  
9 waste disposed of during the period of disqualifica-  
10 tion.

11 “(10) If a municipality or operator of a publicly  
12 owned treatment works is notified by the President  
13 or by a State with a program approved under sec-  
14 tion 402(b) of the Federal Water Pollution Control  
15 Act (33 U.S.C. 1342(b)) that the publicly owned  
16 treatment works of the municipality or operator is  
17 not in compliance with the requirements of para-  
18 graph (7), and if such noncompliance is not rem-  
19 edied within twelve months, the provisions of sub-  
20 section (n) shall not apply, but only with regard to  
21 the sewage sludge generated or disposed of during  
22 the period of noncompliance.

23 “(p) SETTLEMENT PROCEDURES FOR MUNICIPAL  
24 OWNERS AND OPERATORS.—

1           “(1) ELIGIBLE MUNICIPALITIES.—The term ‘el-  
2           igible municipality’ under this subsection means any  
3           municipality against which an administrative or judi-  
4           cial action is brought, or to which notice is given of  
5           potential liability, under paragraph (1) or (2) of sec-  
6           tion 107(a) with respect to a facility that does not  
7           contain, by overall volume, predominantly wastes  
8           produced by municipal operations that are wastes  
9           other than municipal solid waste or sewage sludge,  
10          and which meets all of the following conditions:

11                   “(A) Before the date of enactment of this  
12                   subsection, the municipality owned or operated  
13                   the facility or an identifiable unit at such  
14                   facility.

15                   “(B) Such facility or identifiable unit at  
16                   such facility was or is subject to a response  
17                   action.

18                   “(C) Such facility or identifiable unit at  
19                   such facility, with respect to which the munici-  
20                   pality seeks to resolve its liability under this  
21                   subsection, does not receive any waste after the  
22                   date of enactment of this subsection.

23          A municipality that may be liable under paragraph  
24          (3) or (4) of section 107(a) is covered by this sub-



1 section to the extent that the municipality is eligible  
2 under this paragraph.

3 “(2) NEGOTIATION OF SETTLEMENTS; MORATO-  
4 RIUM.—Eligible municipalities under this subsection  
5 may offer to settle their potential liability with the  
6 President by stating in writing their ability and will-  
7 ingness to settle their potential liability in accord-  
8 ance with this subsection. Upon receipt of such good  
9 faith offer to settle, no further administrative or ju-  
10 dicial action shall be taken against the eligible mu-  
11 nicipality, unless the President determines that the  
12 eligible municipality’s offer or position during nego-  
13 tiations is not in good faith or otherwise not in ac-  
14 cordance with this subsection. Nothing in this sub-  
15 section shall limit or modify the President’s author-  
16 ity under section 104(e).

17 “(3) TIMING.—Eligible municipalities may ten-  
18 der offers under this subsection within 180 days  
19 after receiving a notice of potential liability or be-  
20 coming subject to administrative or judicial action,  
21 or within 180 days after a record of decision is is-  
22 sued for the portion of the response action that is  
23 the subject of the municipality’s settlement offer,  
24 whichever is later. If the President notifies an eligi-  
25 ble municipality that it may be a potentially respon-

1 sible party, no further administrative or judicial ac-  
2 tion may be taken by any party for 120 days against  
3 such municipality.

4 “(4) EXPEDITED FINAL SETTLEMENT.—The  
5 President shall make a good faith effort to reach  
6 final settlements as promptly as possible under this  
7 subsection, and such settlements shall conform to  
8 the following criteria:

9 “(A) Such settlements shall take into ac-  
10 count the public interest factors normally con-  
11 sidered by the President in formulating settle-  
12 ments under this Act.

13 “(B) The amount demanded in settlement  
14 shall not exceed the municipality’s ability to  
15 pay. The municipality’s ‘ability to pay’ shall be  
16 determined by the President through a consid-  
17 eration of factors, including but not limited to  
18 the following: (i) the ratio of debt service to op-  
19 erating revenues, other than obligated or en-  
20 cumbered revenues, (ii) the ratio of total funds,  
21 other than dedicated funds, to total expenses,  
22 (iii) the ratio of total revenues, other than obli-  
23 gated or encumbered revenues, to total ex-  
24 penses, (iv) the ratio of debt service to popu-  
25 lation, (v) the ratio of operating revenues, other

1 than obligated or encumbered revenues, to pop-  
2 ulation, (vi) the ratio of total expenses to popu-  
3 lation, (vii) the ratio of total funds, other than  
4 dedicated funds, to total revenues, (viii) the  
5 ratio of total funds, other than dedicated funds,  
6 to population, (ix) the impact of the settlement  
7 on essential services the municipality must pro-  
8 vide, and (x) the feasibility of making delayed  
9 payments and payments over time.

10 “(C) A municipality shall not be deemed to  
11 possess the ability to pay to the extent that  
12 such payment would create a significant, de-  
13 monstrable risk that the municipality will de-  
14 fault on existing debt obligations, be forced into  
15 bankruptcy, be forced to dissolve, or be forced  
16 to make budgetary cutbacks that unduly impede  
17 the protection of public health and safety by the  
18 municipality. Municipal activities that protect  
19 ‘public health and safety’ include all operations  
20 that can protect the environment, human and  
21 animal health, and public safety, including but  
22 not limited to environmental protection and res-  
23 toration, police and fire protection, hospitals  
24 and medical services, human services, and  
25 water, sewage, and solid waste services. Such

1 municipal activities do not include operations  
2 that are primarily intended to provide rec-  
3 reational activities or aesthetic civic improve-  
4 ments.

5 “(D) A municipality shall not be deemed to  
6 possess the ability to pay to the extent that the  
7 President determines that raising the funds for  
8 such payment would violate legal requirements  
9 or limitations of general applicability concerning  
10 the assumption and maintenance of municipal  
11 fiscal obligations: *Provided*, That for the pur-  
12 poses of this subparagraph, a legal requirement  
13 or limitation of general applicability means a  
14 legislative enactment that governs a municipal-  
15 ity’s financial affairs generally and that is not  
16 limited to the payment of claims for costs or  
17 damages under this Act.

18 “(E) If a municipality asserts that it has  
19 obligations under any applicable environmental  
20 law besides the municipality’s potential liability  
21 under this Act, such municipality may create a  
22 list of the obligations and estimate the costs of  
23 complying with each obligation, and, if re-  
24 quested by the municipality, the President shall  
25 provide assistance with these tasks and shall

1 consider the total cost of these obligations in  
2 determining whether the municipality has an  
3 ability to pay.

4 “(F) Once the appropriate settlement  
5 amount has been determined, the President  
6 shall permit an eligible municipality to provide  
7 appropriate in-kind services with regard to the  
8 response action in lieu of cash contributions  
9 and to be credited at market rates for such  
10 services.

11 “(G) Notwithstanding the entry of consent  
12 decrees by the President with other potentially  
13 responsible parties, the provisions of this para-  
14 graph shall apply to the remaining allocation of  
15 response costs, penalties, and damages to eligi-  
16 ble municipalities.

17 “(5) EFFECT OF AGREEMENT.—An eligible mu-  
18 nicipality that has resolved its liability to the United  
19 States under this subsection shall not be liable for  
20 claims of contribution or for other response costs,  
21 penalties, or damages under this Act regarding mat-  
22 ters addressed in the settlement. Such settlement  
23 does not discharge any of the other potentially re-  
24 sponsible parties unless the terms of the settlement  
25 so provide, but the settlement reduces the potential

1 liability of the other parties by the amount of the  
2 settlement.

3 “(6) CONSOLIDATED SETTLEMENTS.—If a mu-  
4 nicipality is an eligible municipality under this sub-  
5 section and an eligible person under subsection (n)  
6 with regard to the same facility, the President  
7 should attempt to reach a single, expeditious settle-  
8 ment with the municipality covering all liability that  
9 may be addressed by settlements under subsection  
10 (n) or (p).

11 “(7) ONGOING WASTE DISPOSAL; BURDEN OF  
12 PROOF.—If an eligible municipality receives waste  
13 after the date of enactment of this subsection at  
14 units adjacent to those units of the facility for which  
15 the municipality is eligible under paragraph (1), and  
16 if releases or threatened releases into the environ-  
17 ment on or beneath the open units are threatened or  
18 occur, then the municipality shall bear the burden of  
19 proving that such releases are caused by the closed  
20 units in any judicial or administrative proceeding in  
21 which the municipality’s liability is at issue under  
22 environmental law.

23 “(8) JUDICIAL REVIEW.—Any judicial review of  
24 a settlement reached with the President under this  
25 subsection shall be limited to the administrative

1 record. Otherwise applicable principles of adminis-  
2 trative law shall govern whether any supplemental  
3 materials may be considered by the court. In consid-  
4 ering objections raised to such a settlement, the  
5 court shall uphold the President’s decision to enter  
6 into the settlement unless the objecting party can  
7 demonstrate, on the administrative record, that the  
8 decision was arbitrary, capricious, or otherwise not  
9 in accordance with law.”.

10 (d) Section 122(g)(1)(A)(i) of the Comprehensive En-  
11 vironmental Response, Compensation, and Liability Act of  
12 1980 (42 U.S.C. 9622(g)(1)(A)(i)) is amended by adding  
13 the following new sentence at the end thereof: “The  
14 amount of hazardous substances in municipal solid waste  
15 and sewage sludge shall refer to the quantity of hazardous  
16 substances which are constituents within municipal solid  
17 waste and sewage sludge, not the overall volume of munic-  
18 pal solid waste and sewage sludge present at the facility.”.

19 (e) Nothing in this section or the amendments made  
20 by this section shall modify the meaning or interpretation  
21 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

22 (f) Nothing in this section or the amendments made  
23 by this section shall modify a State’s ability under the  
24 Comprehensive Environmental Response, Compensation,  
25 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) to

1 carry out actions authorized in such Act and to enter into  
2 a contract or cooperative agreement with the President to  
3 carry out such actions.

4 (g) The settlement procedures and bar on judicial  
5 and administrative proceedings addressed in this section  
6 and the amendments made by this section shall apply even  
7 if any constituent component of municipal solid waste or  
8 sewage sludge may be considered a hazardous substance  
9 under the Comprehensive Environmental Response, Com-  
10 pensation, and Liability Act of 1980 (42 U.S.C. 9601 et  
11 seq.) when the constituent component exists apart from  
12 municipal solid waste or sewage sludge.

13 (h) This section and the amendments made by this  
14 section shall apply to each municipality and other person  
15 against whom administrative or judicial action has been  
16 commenced before the date of enactment of this Act, un-  
17 less a final court judgment has been rendered against such  
18 municipality or other person or final court approval of a  
19 settlement agreement including such municipality or other  
20 person as a party has been granted. If a final court judg-  
21 ment has been rendered or court-approved settlement  
22 agreement has been reached that does not resolve all con-  
23 tested issues, this section and the amendments made by  
24 this section shall apply to all contested issues not expressly  
25 resolved by such court judgment or settlement agreement.





S 965 IS—2