

104TH CONGRESS  
1ST SESSION

# S. 1285

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

---

## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29 (legislative day, SEPTEMBER 25), 1995

Mr. SMITH (for himself, Mr. CHAFEE, Mr. INHOFE, Mr. KEMPTHORNE, Mr. FAIRCLOTH, Mr. BOND, Mr. THOMAS, Mr. McCONNELL, Mr. WARNER, Mr. LOTT, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To reauthorize and amend the Comprehensive Environmental  
Recovery, Compensation, and Liability Act of 1980, 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; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Accelerated Cleanup and Environmental Restoration Act  
6       of 1995”.

7       (b) TABLE OF CONTENTS.—The table of contents of  
8       this Act is as follows:

Sec. 1. Short title; table of contents.

## TITLE I—COMMUNITY PARTICIPATION

Sec. 101. Community response organizations; technical assistance grants; improvement of public participation in the Superfund decision-making process.

## TITLE II—STATE ROLE

Sec. 201. Delegation to the States of authorities with respect to national priorities list facilities.

## TITLE III—VOLUNTARY CLEANUP

- Sec. 301. Assistance for qualifying State voluntary response programs.
- Sec. 302. Brownfield cleanup assistance.
- Sec. 303. Treatment of security interest holders and fiduciaries as owners or operators.
- Sec. 304. Federal Deposit Insurance Act amendment.
- Sec. 305. Contiguous properties.
- Sec. 306. Prospective purchasers and windfall liens.
- Sec. 307. Safe harbor innocent landholders.

## TITLE IV—SELECTION OF REMEDIAL ACTIONS

- Sec. 401. Definitions.
- Sec. 402. Selection and implementation of remedial actions.
- Sec. 403. Remedy selection methodology.
- Sec. 404. Remedy selection procedures.
- Sec. 405. Completion of remedial action and delisting.
- Sec. 406. Transition rules for facilities currently involved in remedy selection.
- Sec. 407. Judicial review.
- Sec. 408. National priorities list.

## TITLE V—LIABILITY ALLOCATIONS

- Sec. 501. Allocation of liability for multiparty facilities.
- Sec. 502. Liability of response action contractors.
- Sec. 503. Release of evidence.
- Sec. 504. Contribution protection.
- Sec. 505. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.
- Sec. 506. Common carriers.
- Sec. 507. Limitation on liability for response costs.

## TITLE VI—FEDERAL FACILITIES

- Sec. 601. Transfer of authorities.
- Sec. 602. Department of Energy environmental cleanup requirements.
- Sec. 603. Innovative technologies for remedial action at Federal facilities.
- Sec. 604. Federal facility listing.
- Sec. 605. Federal facility listing deferral.
- Sec. 606. Transfers of uncontaminated property.

## TITLE VII—NATURAL RESOURCE DAMAGES

Sec. 701. Restoration of natural resources.

- Sec. 702. Assessment of damages.
- Sec. 703. Consistency between response actions and resource restoration standards and alternatives.
- Sec. 704. Miscellaneous amendments.

#### TITLE VIII—MISCELLANEOUS

- Sec. 801. Result-oriented cleanups.
- Sec. 802. National priorities list.
- Sec. 803. Obligations from the fund for response actions.
- Sec. 804. Remediation waste.

#### TITLE IX—FUNDING

##### Subtitle A—General Provisions

- Sec. 901. Authorization of appropriations from the fund.
- Sec. 902. Orphan share funding.
- Sec. 903. Department of Health and Human Services.
- Sec. 904. Limitations on research, development, and demonstration programs.
- Sec. 905. Authorization of appropriations from general revenues.
- Sec. 906. Additional limitations.
- Sec. 907. Reimbursement of potentially responsible parties.

1                   **TITLE I—COMMUNITY**  
 2                   **PARTICIPATION**  
 3   **SEC. 101. COMMUNITY RESPONSE ORGANIZATIONS; TECH-**  
 4                   **NICAL ASSISTANCE GRANTS; IMPROVEMENT**  
 5                   **OF PUBLIC PARTICIPATION IN THE**  
 6                   **SUPERFUND DECISIONMAKING PROCESS.**

7           (a) AMENDMENT.—Section 117 of the Comprehen-  
 8   sive Environmental Response, Compensation, and Liabil-  
 9   ity Act of 1980 (42 U.S.C. 9617) is amended by striking  
 10 subsection (e) and inserting the following:

11           “(e) COMMUNITY RESPONSE ORGANIZATIONS.—  
 12           “(1) ESTABLISHMENT.—The Administrator  
 13   shall create a community response organization for  
 14   a facility—

1           “(A) if the Administrator determines that  
2           a representative public forum will be helpful in  
3           promoting direct, regular, and meaningful con-  
4           sultation among persons interested in remedial  
5           action at a facility; or

6           “(B) at the request of—

7                 “(i) 50 individuals residing in, or at  
8                 least 20 percent of the population of, the  
9                 area in which the facility is located;

10                “(ii) a representative group of the po-  
11                tentially responsible parties; or

12                “(iii) any local governmental entity  
13                with jurisdiction over the facility.

14           “(2) RESPONSIBILITIES.—A community re-  
15           sponse organization shall—

16                “(A) solicit the views of the local commu-  
17                nity on various issues affecting the development  
18                and implementation of remedial actions at the  
19                facility;

20                “(B) serve as a conduit of information to  
21                and from the community to appropriate Fed-  
22                eral, State, and local agencies and potentially  
23                responsible parties; and

1           “(C) serve as a representative of the local  
2           community during the remedial action planning  
3           and implementation process.

4           “(3) CONSULTATION.—The Administrator shall  
5           consult with a community response organization in  
6           the preparation of a remedial action plan for a facil-  
7           ity.

8           “(4) ACCESS TO DOCUMENTS.—The Adminis-  
9           trator shall provide a community response organiza-  
10          tion access to documents in possession of the Fed-  
11          eral Government regarding response actions at the  
12          facility that do not relate to liability and are not  
13          protected from disclosure as confidential business in-  
14          formation.

15          “(5) PARTICIPATION BY EPA, THE STATE, AND  
16          POTENTIALLY RESPONSIBLE PARTIES.—Representa-  
17          tives of the Administrator, the State, and the poten-  
18          tially responsible parties shall be given reasonable  
19          notice and opportunity to participate in the commu-  
20          nity response organization activities and meetings  
21          and shall periodically report to the community re-  
22          sponse organization on preparation of the remedial  
23          action plan.

24          “(6) COMMUNITY RESPONSE ORGANIZATION  
25          INPUT.—

1           “(A) COMMUNICATION OF INFORMATION;  
2           SOLICITATION OF VIEWS.—The Administrator,  
3           (and if the remedial action plan is being pre-  
4           pared or implemented by a party other than the  
5           Administrator, the other party) shall keep the  
6           community response organization informed of  
7           progress and solicit the views of the community  
8           response organization during development and  
9           implementation of the remedial action plan.

10          “(B) TIMELY SUBMISSION OF COM-  
11          MENTS.—The community response organization  
12          shall provide its comments, information, and  
13          recommendations in a timely manner to the Ad-  
14          ministrator (and other party).

15          “(C) CONSENSUS.—The community re-  
16          sponse organization shall attempt to achieve  
17          consensus among its members before providing  
18          comments and recommendations to the Admin-  
19          istrator (and other party), but if consensus can-  
20          not be reached, the community response organi-  
21          zation shall report or allow presentation of di-  
22          vergent views.

23          “(7) TECHNICAL ASSISTANCE GRANTS.—

24                 “(A) PREFERRED RECIPIENT.—If a com-  
25                 munity response organization exists for a facil-

1           ity, the community response organization shall  
2           be the preferred recipient of a technical assist-  
3           ance grant under subsection (f).

4           “(B) PRIOR AWARD.—A technical assist-  
5           ance grant concerning a facility has been  
6           awarded prior to establishment of a community  
7           response organization—

8                   “(i) the recipient of the grant shall co-  
9                   ordinate its activities and share informa-  
10                  tion and technical expertise with the com-  
11                  munity response organization; and

12                   “(ii) 1 person representing the grant  
13                  recipient shall serve on the community re-  
14                  sponse organization.

15           “(8) MEMBERSHIP.—

16                   “(A) NUMBER.—The Administrator shall  
17                  select not less than 15 nor more than 20 per-  
18                  sons to serve on a community response organi-  
19                  zation.

20                   “(B) NOTICE.—Before selecting members  
21                  of the community response organization, the  
22                  Administrator shall provide a notice of intent to  
23                  establish a community response organization to  
24                  persons who reside in the local community.

1           “(C) REPRESENTED GROUPS.—The Ad-  
2           ministrators shall select members of the commu-  
3           nity response organization from each of the fol-  
4           lowing groups of persons:

5           “(i) Persons who reside or own resi-  
6           dential property near the facility.

7           “(ii) Persons who, although they may  
8           not reside or own property near the facil-  
9           ity, may be adversely affected by a release  
10          from the facility.

11          “(iii) Persons who are members of the  
12          local public health or medical community  
13          and actively practicing in the community.

14          “(iv) Representatives of local Indian  
15          tribes or Indian communities, if such tribes  
16          or communities may be adversely affected.

17          “(v) Local representatives of citizen,  
18          environmental, or public interest groups  
19          with members residing in the community.

20          “(vi) Representatives of local govern-  
21          ments, such as city or county governments,  
22          or both, and any other governmental unit  
23          that regulates land use or land use plan-  
24          ning in the vicinity of the facility.



1           “(vii) Workers employed at the facility  
2           during facility operation, if readily avail-  
3           able.

4           “(viii) The owner or operator of the  
5           facility and other potentially responsible  
6           parties who represent, if practicable, a bal-  
7           ance of such parties’ interests.

8           “(ix) Members of the local business  
9           community.

10          “(D) PROPORTION.—Local residents shall  
11          comprise not less than 60 percent of the mem-  
12          bership of a community response organization.

13          “(E) PAY.—Members of a community re-  
14          sponse organization shall serve without pay.

15          “(9) PARTICIPATION BY GOVERNMENT REP-  
16          RESENTATIVES.—Representatives of the Adminis-  
17          trator, the Administrator of the Agency for Toxic  
18          Substances and Disease Registry, and the State, as  
19          appropriate, shall participate in community response  
20          organization meetings to provide information and  
21          technical expertise, but shall not be members of the  
22          community response organization.

23          “(10) ADMINISTRATIVE SUPPORT.—The Admin-  
24          istrator shall provide administrative services and

1 meeting facilities for community response organiza-  
2 tions.

3 “(11) FACA.—The Federal Advisory Commit-  
4 tee Act (5 U.S.C. App.) shall not apply to a commu-  
5 nity response organization.

6 “(f) TECHNICAL ASSISTANCE GRANTS.—

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) AFFECTED CITIZEN GROUP.—The  
9 term ‘affected citizen group’ means a group of  
10 2 or more individuals who may be affected by  
11 the release or threatened release of a hazardous  
12 substance, pollutant, or contaminant at any fa-  
13 cility on the State Registry or the National Pri-  
14 orities List.

15 “(B) TECHNICAL ASSISTANCE GRANT.—  
16 The term ‘technical assistance grant’ means a  
17 grant made under paragraph (2).

18 “(2) AUTHORITY.—

19 “(A) IN GENERAL.—In accordance with a  
20 regulation issued by the Administrator, the Ad-  
21 ministrator may make grants available to af-  
22 fected citizen groups.

23 “(B) AVAILABILITY OF APPLICATION  
24 PROCESS.—To ensure that the application proc-  
25 ess for a technical assistance grant is available

1 to all affected citizen groups, the Administrator  
2 shall periodically review the process and, based  
3 on the review, implement appropriate changes  
4 to improve availability.

5 “(3) SPECIAL RULES.—

6 “(A) NO MATCHING CONTRIBUTION.—No  
7 matching contribution shall be required for a  
8 technical assistance grant.

9 “(B) AVAILABILITY IN ADVANCE.—The  
10 Administrator shall make all or a portion (but  
11 not less than \$5,000 or 10 percent of the grant  
12 amount, whichever is greater) of the grant  
13 amount available to a grant recipient in ad-  
14 vance of the total expenditures to be covered by  
15 the grant.

16 “(4) LIMIT PER FACILITY.—

17 “(A) 1 GRANT PER FACILITY.—Not more  
18 than 1 technical assistance grant may be made  
19 with respect to a single facility, but the grant  
20 may be renewed to facilitate public participation  
21 at all stages of response action.

22 “(B) DURATION.—The Administrator shall  
23 set a limit by regulation on the number of years  
24 for which a technical assistance grant may be

1           made available based on the duration, type, and  
2           extent of response action at a facility.

3           “(5) AVAILABILITY FOR FACILITIES NOT YET  
4       LISTED.—Subject to paragraph (6), 1 or more tech-  
5       nical assistance grants shall be made available to af-  
6       fected citizen groups in communities containing fa-  
7       cilities on the State Registry that have been pro-  
8       posed for listing but are not yet listed on the Na-  
9       tional Priorities List as of the date on which the  
10      grant is awarded.

11          “(6) FUNDING LIMIT.—

12               “(A) PERCENTAGE OF TOTAL APPROPRIA-  
13       TIONS.—Not more than 2 percent of the funds  
14       made available to carry out this Act for a fiscal  
15       year may be used to make technical assistance  
16       grants.

17               “(B) ALLOCATION BETWEEN LISTED AND  
18       UNLISTED FACILITIES.—Not more than the  
19       portion of funds equal to one-eighth of the total  
20       amount of funds used to make technical assist-  
21       ance grants for a fiscal year may be used for  
22       technical assistance grants with respect to fa-  
23       cilities not listed on the National Priorities List.

24          “(7) FUNDING AMOUNT.—

1           “(A) IN GENERAL.—The amount of a tech-  
2           nical assistance grant may not exceed \$50,000  
3           for a single grant recipient.

4           “(B) INCREASE.—The Administrator may  
5           increase the amount of a technical assistance  
6           grant, or renew a previous technical assistance  
7           grant, up to an amount not exceeding \$100,000  
8           to reflect the complexity of the response action,  
9           the nature and extent of contamination at the  
10          facility, the level of facility activity, projected  
11          total needs as requested by the grant recipient,  
12          the size and diversity of the affected citizen  
13          group, and the ability of the grant recipient to  
14          identify and raise funds from other non-Federal  
15          sources.

16          “(8) USE OF TECHNICAL ASSISTANCE  
17          GRANTS.—

18               “(A) PERMITTED USE.—A technical assist-  
19               ance grant may be used to obtain technical as-  
20               sistance in interpreting information with regard  
21               to—

22                     “(i) the nature of the hazardous sub-  
23                     stances located at a facility;

24                     “(ii) facility evaluation;

1           “(iii) a proposed remedial action plan  
2           and final remedial design for a facility;

3           “(iv) response actions carried out at  
4           the facility; and

5           “(v) operation and maintenance ac-  
6           tivities at the facility.

7           “(B) PROHIBITED USE.—A technical as-  
8           sistance grant may not be used for the purpose  
9           of collecting field sampling data.

10          “(9) GRANT GUIDELINES.—

11           “(A) IN GENERAL.—Not later than 90  
12           days after the date of enactment of this para-  
13           graph, the Administrator shall develop and pub-  
14           lish guidelines concerning the management of  
15           technical assistance grants by grant recipients.

16           “(B) HIRING OF EXPERTS.—A recipient of  
17           a technical assistance grant shall hire technical  
18           experts and other experts in accordance with  
19           the guidelines under subparagraph (A).

20          “(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN  
21          THE SUPERFUND DECISIONMAKING PROCESS.—

22           “(1) IN GENERAL.—

23           “(A) MEETINGS AND NOTICE.—In order to  
24           provide an opportunity for meaningful public  
25           participation in every significant phase of re-

1        sponse activities under this Act, the Adminis-  
2        trator shall provide the opportunity for, and  
3        publish notice of, public meetings before or dur-  
4        ing performance of—

5                “(i) a facility evaluation, as appro-  
6                priate;

7                “(ii) announcement of a proposed re-  
8                medial action plan; and

9                “(iii) completion of a final remedial  
10              design.

11              “(B) INFORMATION.—A public meeting  
12              under subparagraph (A) shall be designed to  
13              obtain information from the community, and  
14              disseminate information to the community, with  
15              respect to a facility concerning the Administra-  
16              tor’s facility activities and pending decisions.

17              “(2) PARTICIPANTS AND SUBJECT.—The Ad-  
18              ministrator shall provide reasonable notice of an op-  
19              portunity for public participation in meetings in  
20              which—

21              “(A) the participants include Federal offi-  
22              cials (or State officials, if the State is conduct-  
23              ing response actions under a delegated or au-  
24              thorized program or through facility referral)  
25              with authority to make significant decisions af-

fecting a response action, and any other person  
(unless all of such other persons are  
coregulators that are not potentially responsible  
parties or are government contractors); and

“(B) the subject of the meeting involves  
discussions directly affecting—

“(i) a legally enforceable work plan  
document, or any amendment to the docu-  
ment, for a removal, facility evaluation,  
proposed remedial action plan, final reme-  
dial design, or remedial action for a facility  
on the National Priorities List; or

“(ii) the final record 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 that concerns only the poten-  
tial liability or settlement of potential liability  
of any person, whether prior to or following the  
commencement of litigation or administrative  
enforcement action;



1 “(B) to provide for public participation in  
2 or otherwise affect any negotiation, meeting, or  
3 other discussion that is attended only by rep-  
4 resentatives of the United States (or of a de-  
5 partment, agency, or instrumentality of the  
6 United States) with attorneys representing the  
7 United States (or of a department, agency, or  
8 instrumentality of the United States); or

9 “(C) to waive, compromise, or affect any  
10 privilege that may be applicable to a commu-  
11 nication related to an activity described in sub-  
12 paragraph (A) or (B).

13 “(4) EVALUATION.—

14 “(A) IN GENERAL.—To the extent prac-  
15 ticable, before and during the facility evalua-  
16 tion, the Administrator shall solicit and evalu-  
17 ate concerns, interests, and information from  
18 the community.

19 “(B) PROCEDURE.—An evaluation under  
20 subparagraph (A) shall include, as appro-  
21 priate—

22 “(i) face-to-face community surveys to  
23 identify the location of private drinking  
24 water wells, historic and current or poten-

1 tial use of water, and other environmental  
2 resources in the community;

3 “(ii) a public meeting;

4 “(iii) written responses to significant  
5 concerns; and

6 “(iv) other appropriate participatory  
7 activities.

8 “(5) VIEWS AND PREFERENCES.—

9 “(A) SOLICITATION.—During the facility  
10 evaluation study, the Administrator shall solicit  
11 the views and preferences of the community on  
12 the remediation and disposition of hazardous  
13 substances or pollutants or contaminants at the  
14 facility.

15 “(B) CONSIDERATION.—The views and  
16 preferences of the community shall be described  
17 in the facility evaluation study and considered  
18 in the screening of remedial alternatives for the  
19 facility.

20 “(6) ALTERNATIVES.—Members of the commu-  
21 nity may propose remedial action alternatives, and  
22 the Administrator shall consider such alternatives in  
23 the same manner as the Administrator considers al-  
24 ternatives proposed by potentially responsible par-  
25 ties.

1 “(7) INFORMATION.—

2 “(A) THE COMMUNITY.—The Adminis-  
3 trator, with the assistance of the community re-  
4 sponse organization under subsection (g) if  
5 there is one, shall provide information to the  
6 community and seek comment from the commu-  
7 nity throughout all significant phases of the re-  
8 sponse action at the facility.

9 “(B) TECHNICAL STAFF.—The Adminis-  
10 trator shall ensure that information gathered  
11 from the community during community out-  
12 reach efforts reaches appropriate technical staff  
13 in a timely and effective manner.

14 “(C) RESPONSES.—The Administrator  
15 shall ensure that reasonable written or other  
16 appropriate responses will be made to such in-  
17 formation.

18 “(8) NONPRIVILEGED INFORMATION.—  
19 Throughout all phases of response action at a facil-  
20 ity, the Administrator shall make all nonprivileged  
21 information relating to a facility available to the  
22 public for inspection and copying without the need  
23 to file a formal request, subject to reasonable service  
24 charges as appropriate.

25 “(9) PRESENTATION.—

1 “(A) DOCUMENTS.—

2 “(i) IN GENERAL.—The Adminis-  
3 trator, in carrying out responsibilities  
4 under this Act, shall ensure that the pres-  
5 entation of information on risk is complete  
6 and informative.

7 “(ii) RISK.—To the extent feasible,  
8 documents prepared by the Administrator  
9 and made available to the public that pur-  
10 port to describe the degree of risk to  
11 human health shall, at a minimum, state—

12 “(I) the upperbound and  
13 lowerbound estimates of the incremen-  
14 tal risk;

15 “(II) the population or popu-  
16 lations addressed by any estimates of  
17 the risk;

18 “(III) the expected risk or  
19 central estimate of the risk for the  
20 specific population;

21 “(IV) the reasonable range or  
22 other description of uncertainties in  
23 the assessment process; and

24 “(V) the assumptions that form  
25 the basis for any estimates of such

1 risk posed by the facility and a brief  
2 explanation of the assumptions.

3 “(B) COMPARISONS.—The Administrator,  
4 in carrying out responsibilities under this Act,  
5 shall provide comparisons of the level of risk  
6 from hazardous substances found at the facility  
7 to comparable levels of risk from those hazard-  
8 ous substances ordinarily encountered by the  
9 general public through other sources of expo-  
10 sure.

11 “(10) REQUIREMENTS.—

12 “(A) LENGTHY REMOVAL ACTIONS.—Not-  
13 withstanding any other provision of this sub-  
14 section, in the case of a removal action taken  
15 in accordance with section 104 that is expected  
16 to require more than 180 days to complete, and  
17 in any case in which implementation of a re-  
18 moval action is expected to obviate or that in  
19 fact obviates the need to conduct a long-term  
20 remedial action, the Administrator shall, to the  
21 maximum extent practicable, allow for public  
22 participation consistent with paragraph (1).

23 “(B) OTHER REMOVAL ACTIONS.—In the  
24 case of all other removal actions, the Adminis-  
25 trator may provide the community with notice

1 of the anticipated removal action and a public  
2 comment period, as appropriate.”.

3 (b) ISSUANCE OF GUIDELINES.—The Administrator  
4 of the Environmental Protection Agency shall issue guide-  
5 lines under section 117(e)(9) of the Comprehensive Envi-  
6 ronmental Response, Compensation, and Liability Act of  
7 1980, as added by subsection (a), not later than 90 days  
8 after the date of enactment of this Act.

## 9 **TITLE II—STATE ROLE**

### 10 **SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES**

#### 11 **WITH RESPECT TO NATIONAL PRIORITIES**

#### 12 **LIST FACILITIES.**

13 (a) IN GENERAL.—Title I of the Comprehensive En-  
14 vironmental Response, Compensation, and Liability Act of  
15 1980 (42 U.S.C. 9601 et seq.), as amended by section  
16 302, is amended by adding at the end the following:

### 17 **“SEC. 135. DELEGATION TO THE STATES OF AUTHORITIES**

#### 18 **WITH RESPECT TO NATIONAL PRIORITIES**

#### 19 **LIST FACILITIES.**

20 “(a) DEFINITIONS.—In this section:

21 “(1) COMPREHENSIVE DELEGATION STATE.—

22 The term ‘comprehensive delegation State’, with re-  
23 spect to a facility, means a State to which the Ad-  
24 ministrator has delegated authority to perform all of  
25 the categories of delegable authority.

1           “(2) DELEGABLE AUTHORITY.—The term ‘dele-  
2       gable authority’ means authority to perform (or en-  
3       sure performance of) all of the authorities included  
4       in any 1 or more of the categories of authority:

5           “(A) CATEGORY A.—All authorities nec-  
6       essary to perform technical investigations, eval-  
7       uations, and risk analyses, including—

8           “(i) a preliminary assessment or facil-  
9       ity inspection under section 104;

10          “(ii) facility characterization under  
11       section 104;

12          “(iii) a remedial investigation under  
13       section 104;

14          “(iv) A facility-specific risk evaluation  
15       under section 129(b)(4); and

16          “(v) any other authority identified by  
17       the Administrator under subsection (b).

18          “(B) CATEGORY B.—All authorities nec-  
19       essary to perform alternatives development and  
20       remedy selection, including—

21          “(i) a feasibility study under section  
22       104; and

23          “(ii)(I) remedial action selection  
24       under section 121 (including issuance of a  
25       record of decision); or

1 “(II) remedial action planning under  
2 section 129(b)(5); and

3 “(iii) any other authority identified by  
4 the Administrator under subsection (b).

5 “(C) CATEGORY C.—All authorities nec-  
6 essary to perform remedial design, including—

7 “(i) remedial design under section  
8 121; and

9 “(ii) any other authority identified by  
10 the Administrator under subsection (b).

11 “(D) CATEGORY D.—All authorities nec-  
12 essary to perform remedial action and operation  
13 and maintenance, including—

14 “(i) a removal under section 104;

15 “(ii) a remedial action under section  
16 104 or section 10 (a) or (b);

17 “(iii) operation and maintenance  
18 under section 104(c); and

19 “(iv) any other authority identified by  
20 the Administrator under subsection (b).

21 “(E) CATEGORY E.—All authorities nec-  
22 essary to perform information collection and al-  
23 location of liability, including—

24 “(i) information collection activity  
25 under section 104(e);



1 “(ii) allocation of liability under sec-  
2 tion 132;

3 “(iii) a search for potentially respon-  
4 sible parties under section 104 or 107;

5 “(iv) settlement under section 122;  
6 and

7 “(v) any other authority identified by  
8 the Administrator under subsection (b).

9 “(F) CATEGORY F.—All authorities nec-  
10 essary to perform enforcement, including—

11 “(i) issuance of an order under sec-  
12 tion 106(a);

13 “(ii) a response action cost recovery  
14 under section 107;

15 “(iii) imposition of a civil penalty or  
16 award under section 109 (a)(1)(D) or  
17 (b)(4);

18 “(iv) settlement under section 122;  
19 and

20 “(v) any other authority identified by  
21 the Administrator under subsection (b).

22 “(3) DELEGATED STATE.—The term ‘delegated  
23 State’ means a State to which delegable authority  
24 has been delegated under subsection (c), except as  
25 may be provided in a delegation agreement in the

1 case of a limited delegation of authority under sub-  
2 section (c)(5).

3 “(4) DELEGATED AUTHORITY.—The term ‘dele-  
4 gated authority’ means a delegable authority that  
5 has been delegated to a delegated State under this  
6 section.

7 “(5) DELEGATED FACILITY.—The term ‘dele-  
8 gated facility’ means a non-Federal listed facility  
9 with respect to which a delegable authority has been  
10 delegated to a State under this section.

11 “(6) NONCOMPREHENSIVE DELEGATION  
12 STATE.—The term ‘noncomprehensive delegation  
13 State’, with respect to a facility, means a State to  
14 which the Administrator has delegated authority to  
15 perform fewer than all of the categories of delegable  
16 authority.

17 “(7) NONDELEGABLE AUTHORITY.—The term  
18 ‘nondelegable authority’ means authority to—

19 “(A) make grants to community response  
20 organizations under section 117; and

21 “(B) conduct research and development ac-  
22 tivities under any provision of this Act.

23 “(8) NON-FEDERAL LISTED FACILITY.—The  
24 term ‘non-Federal listed facility’ means a facility  
25 that—

1           “(A) is not owned or operated by and is  
2           not under the jurisdiction, custody, or control of  
3           a department, agency, or instrumentality of the  
4           United States in any branch of the Govern-  
5           ment; and

6           “(B) is listed on the National Priorities  
7           List.

8           “(b) IDENTIFICATION OF DELEGABLE AUTHORI-  
9           TIES.—

10           “(1) IN GENERAL.—The Secretary shall by reg-  
11           ulation identify all of the authorities of the Adminis-  
12           trator that shall be included in a delegation of any  
13           category of delegable authority described in sub-  
14           section (a)(2).

15           “(2) LIMITATION.—The Administrator shall not  
16           identify a nondelegable authority for inclusion in a  
17           delegation of any category of delegable authority.

18           “(c) DELEGATION OF AUTHORITY.—

19           “(1) IN GENERAL.—On application by a State,  
20           the Administrator shall delegate authority to per-  
21           form 1 or more delegable authorities with respect to  
22           1 or more non-Federal listed facilities in the State.

23           “(2) APPLICATION.—An application under  
24           paragraph (1) shall—

1           “(A) identify each non-Federal listed facil-  
2           ity for which delegation is requested;

3           “(B) identify each delegable authority that  
4           is requested to be delegated for each non-Fed-  
5           eral listed facility for which delegation is re-  
6           quested; and

7           “(C) certify that the State has adequate  
8           legal authority, financial and personnel re-  
9           sources, organization, and expertise to perform  
10          the requested delegable authority.

11         “(3) APPROVAL OF APPLICATION.—

12                 “(A) IN GENERAL.—Not later than 60  
13                 days after receiving an application under para-  
14                 graph (2) by a State that is authorized to ad-  
15                 minister and enforce the corrective action re-  
16                 quirements of a hazardous waste program  
17                 under section 3006 of the Solid Waste Disposal  
18                 Act (42 U.S.C. 6926), and not later than 120  
19                 days after receiving an application from any  
20                 other State, the Administrator shall—

21                         “(i) issue a notice of approval of the  
22                         application (including approval or dis-  
23                         approval regarding any or all of the facili-  
24                         ties with respect to which a delegation of  
25                         authority is requested or with respect to

1 any or all of the authorities that are re-  
2 quested to be delegated); or

3 “(ii) if the Administrator determines  
4 that the State does not have adequate legal  
5 authority, financial and personnel re-  
6 sources, organization, or expertise to ad-  
7 minister and enforce any of the requested  
8 delegable authority, issue a notice of dis-  
9 approval, including an explanation of the  
10 basis for the determination.

11 “(B) FAILURE TO ACT.—If the Adminis-  
12 trator does not issue a notice of approval or no-  
13 tice of disapproval of all or any portion of an  
14 application within the applicable time period  
15 under subparagraph (A), the application shall  
16 be deemed to have been granted.

17 “(C) RESUBMISSION OF APPLICATION.—

18 “(i) IN GENERAL.—If the Adminis-  
19 trator disapproves an application under  
20 paragraph (1), the State may resubmit the  
21 application at any time after receiving the  
22 notice of disapproval.

23 “(ii) FAILURE TO ACT.—If the Ad-  
24 ministrator does not issue a notice of ap-  
25 proval or notice of disapproval of a resub-

mitted application within the applicable time period under subparagraph (A), the resubmitted application shall be deemed to have been granted.

“(D) NO ADDITIONAL TERMS OR CONDITIONS.—The Administrator shall not impose any term or condition on the approval of an application that meets the requirements stated in paragraph (2) (except that any technical deficiencies in the application be corrected).

“(E) JUDICIAL REVIEW.—

“(i) IN GENERAL.—A disapproval of a resubmitted application shall be subject to judicial review under section 113(b).

“(ii) STANDARD OF REVIEW.—In a proceeding on review of a disapproval of a resubmitted application, the court shall, notwithstanding section 706(2)(E) of title 5, United States Code, hold unlawful and set aside actions, findings, and conclusions found to be unsupported by substantial evidence.

“(4) DELEGATION AGREEMENT.—On approval of a delegation of authority under this section, the Administrator and the delegated State shall enter

1 into a delegation agreement that identifies each cat-  
2 egory of delegable authority that is delegated with  
3 respect to each delegated facility.

4 “(5) LIMITED DELEGATION.—

5 “(A) IN GENERAL.—In the case of a State  
6 that does not meet the requirements of para-  
7 graph (2)(C) the Administrator may delegate to  
8 the State limited authority to perform, ensure  
9 the performance of, or supervise or otherwise  
10 participate in the performance of 1 or more del-  
11 egable authorities, as appropriate in view of the  
12 extent to which the State has the required legal  
13 authority, financial and personnel resources, or-  
14 ganization, and expertise.

15 “(B) SPECIAL PROVISIONS.—In the case of  
16 a limited delegation of authority to a State  
17 under subparagraph (A), the Administrator  
18 shall specify the extent to which the State shall  
19 be considered to be a delegated State for the  
20 purposes of this Act.

21 “(d) PERFORMANCE OF DELEGATED AUTHORI-  
22 TIES.—

23 “(1) IN GENERAL.—A delegated State shall  
24 have sole authority (except as provided in paragraph  
25 (6)(B), subsection (e)(4), and subsection (g)) to per-

1 form a delegated authority with respect to a dele-  
2 gated facility.

3 “(2) AGREEMENTS.—A delegated State may  
4 enter into an agreement with a political subdivision  
5 of the State, an interstate body comprised of that  
6 State and another delegated State or States, or a  
7 combination of such subdivisions or interstate bod-  
8 ies, providing for the performance of any category of  
9 delegated authority with respect to a delegated facil-  
10 ity in the State if the parties to the agreement agree  
11 in the agreement to undertake response actions that  
12 are consistent with this Act.

13 “(3) COMPLIANCE WITH ACT.—

14 “(A) NONCOMPREHENSIVE DELEGATION  
15 STATES.—A noncomprehensive delegation State  
16 shall implement each applicable provision of  
17 this Act (including regulations and guidance is-  
18 sued by the Administrator) so as to perform  
19 each delegated authority with respect to a dele-  
20 gated facility in the same manner as would the  
21 Administrator with respect to a facility that is  
22 not a delegated facility.

23 “(B) COMPREHENSIVE DELEGATION  
24 STATES.—



1           “(i) IN GENERAL.—A comprehensive  
2           delegation State shall implement applicable  
3           provisions of this Act or of similar provi-  
4           sions of State law in a manner comporting  
5           with State policy, so long as the remedial  
6           action that is selected protects human  
7           health and the environment to the same  
8           extent as would a remedial action selected  
9           by the Administrator under section 121.

10          “(ii) COSTLIER REMEDIAL ACTION.—

11                 “(I) IN GENERAL.—A delegated  
12                 State may select a remedial action for  
13                 a delegated facility that has a greater  
14                 response cost (including operation and  
15                 maintenance costs) than the response  
16                 cost for a remedial action that would  
17                 be selected by the Administrator  
18                 under section 121, if the State pays  
19                 for the difference in cost.

20                 “(II) NO COST RECOVERY.—If a  
21                 delegated State selects a more costly  
22                 remedial action under subclause (I),  
23                 the State shall not be entitled to seek  
24                 cost recovery under this Act or any

1                   other Federal or State law from any  
2                   other person for the difference in cost.

3           “(4) JUDICIAL REVIEW.—

4                   “(A) IN GENERAL.—An order that is is-  
5                   sued under section 106 by a delegated State  
6                   with respect to a delegated facility shall be sub-  
7                   ject to judicial review under section 113(b).

8                   “(B) STANDARD OF REVIEW.—In a pro-  
9                   ceeding on review of an order under subpara-  
10                  graph (A), the court shall, notwithstanding sec-  
11                  tion 706(2)(E) of title 5, United States Code,  
12                  hold unlawful and set aside actions, findings,  
13                  and conclusions found to be unsupported by  
14                  substantial evidence.

15           “(5) DELISTING OF NATIONAL PRIORITIES LIST  
16           FACILITIES.—

17                   “(A) DELISTING.—After notice and an op-  
18                   portunity for public comment, a delegated State  
19                   may remove from the National Priorities List  
20                   all or part of a delegated facility—

21                           “(i) if the State makes a finding that  
22                           no further action is needed to be taken at  
23                           the facility (or part of the facility) under  
24                           any applicable law to protect human health

1 and the environment consistent with sec-  
2 tion 121(a) (1) and (2);

3 “(ii) with the concurrence of the po-  
4 tentially responsible parties, if the State  
5 has an enforceable agreement to perform  
6 all required remedial action and operation  
7 and maintenance for the facility or if the  
8 cleanup will proceed at the facility under  
9 the Solid Waste Disposal Act (42 U.S.C.  
10 6901 et seq.); or

11 “(iii) if the State is a comprehensive  
12 delegation State with respect to the facil-  
13 ity.

14 “(B) EFFECT OF DELISTING.—A delisting  
15 under subparagraph (A)(iii) shall not affect—

16 “(i) the authority or responsibility of  
17 the State to complete remedial action and  
18 operation and maintenance; or

19 “(ii) the eligibility of the State for  
20 funding under this Act.

21 “(C) NO RELISTING.—The Administrator  
22 shall not relist on the National Priorities List  
23 a facility or part of a facility that has been re-  
24 moved from the National Priorities List under  
25 subparagraph (A).

1 “(6) COST RECOVERY.—

2 “(A) DEPOSIT IN FUND.—Any response  
3 costs recovered from a responsible party by a  
4 delegated State for a delegated facility under  
5 section 107 shall be deposited in the Hazardous  
6 Substances Superfund established under sub-  
7 chapter A of chapter 98 of the Internal Reve-  
8 nue Code of 1986.

9 “(B) RECOVERY BY THE ADMINIS-  
10 TRATOR.—

11 “(i) IN GENERAL.—The Administrator  
12 may take action under section 107 to re-  
13 cover response costs from a responsible  
14 party for a delegated facility if the dele-  
15 gated State notifies the Administrator in  
16 writing that the delegated State does not  
17 intend to pursue action for recovery of re-  
18 sponse costs under section 107 against the  
19 responsible party.

20 “(ii) NO FURTHER ACTION.—If the  
21 Administrator takes action against a po-  
22 tentially responsible party under section  
23 107, the delegated State may not take any  
24 other action for recovery of response costs

1 under this Act or any other Federal or  
2 State law.

3 “(e) FEDERAL RESPONSIBILITIES AND AUTHORI-  
4 TIES.—

5 “(1) REVIEW USE OF FUNDS.—

6 “(A) IN GENERAL.—The Administrator  
7 shall review the certification submitted by the  
8 Governor under subsection (f)(8) not later than  
9 120 days after the date of its submission.

10 “(B) FINDING OF USE OF FUNDS INCON-  
11 SISTENT WITH THIS ACT.—If the Administrator  
12 finds that funds were used in a manner that is  
13 inconsistent with this Act, the Administrator  
14 shall notify the Governor in writing not later  
15 than 120 days after receiving the Governor’s  
16 certification.

17 “(C) EXPLANATION.—Not later than 30  
18 days after receiving a notice under subpara-  
19 graph (B), the Governor shall—

20 “(i) explain why the Administrator’s  
21 finding is in error; or

22 “(ii) explain to the Administrator’s  
23 satisfaction how any misapplication or mis-  
24 use of funds will be corrected.

1           “(D) FAILURE TO EXPLAIN.—If the Gov-  
2           ernor fails to make an explanation under sub-  
3           paragraph (C) to the Administrator’s satisfac-  
4           tion, the Administrator may request reimburse-  
5           ment of such amount of funds as the Adminis-  
6           trator finds was misapplied or misused.

7           “(E) WITHHOLDING OF FURTHER FUNDS;  
8           CIVIL ACTION.—If the Administrator fails to ob-  
9           tain reimbursement from the State within a  
10          reasonable period of time, the Administrator  
11          may, after 30 days’ notice to the State, bring  
12          a civil action in United States district court to  
13          recover from the delegated State any funds  
14          from that were advanced for a purpose or were  
15          used for a purpose or in a manner that is in-  
16          consistent with this Act.

17          “(2) WITHDRAWAL OF DELEGATION OF AU-  
18          THORITY.—

19               “(A) DELEGATED STATES.—If at any time  
20               the Administrator finds that contrary to a cer-  
21               tification made under subsection (c)(2), a dele-  
22               gated State—

23                       “(i) lacks the required financial and  
24                       personnel resources, organization, or exper-

1           tise to administer and enforce the re-  
2           requested delegated authorities;

3           “(ii) does not have adequate legal au-  
4           thority to request and accept delegation; or

5           “(iii) is failing to materially carry out  
6           the State’s delegated authorities,  
7           the Administrator may withdraw a delegation of  
8           authority with respect to a delegated facility  
9           after providing notice and opportunity to cor-  
10          rect deficiencies under subparagraph (D).

11          “(B) STATES WITH LIMITED DELEGATIONS  
12          OF AUTHORITY.—If the Administrator finds  
13          that a State to which a limited delegation of au-  
14          thority was made under subsection (c)(5) has  
15          materially breached the delegation agreement,  
16          the Administrator may withdraw the delegation  
17          after providing notice and opportunity to cor-  
18          rect deficiencies under subparagraph (D).

19          “(C) NO WITHDRAWAL WITH 1 YEAR OF  
20          APPROVAL.—The Administrator shall not with-  
21          draw a delegation of authority within 1 year  
22          after the date on which the application for dele-  
23          gation is approved (including approval under  
24          subsection (b)(3) (B) or (C)(ii)).

1           “(D) NOTICE AND OPPORTUNITY TO COR-  
2           RECT.—If the Administrator proposes to with-  
3           draw a delegation of authority for any or all  
4           delegated facilities, the Administrator shall give  
5           the State written notice and allow the State at  
6           least 90 days after the date of receipt of the no-  
7           tice to correct the deficiencies cited in the no-  
8           tice.

9           “(E) FAILURE TO CORRECT.—If the Ad-  
10          ministrator finds that the deficiencies have not  
11          been corrected within the time specified in a no-  
12          tice under subparagraph (D), the Administrator  
13          may withdraw delegation of authority after pro-  
14          viding public notice and opportunity for com-  
15          ment.

16          “(F) JUDICIAL REVIEW.—

17               “(i) IN GENERAL.—A decision of the  
18               Administrator to withdraw a delegation of  
19               authority shall be subject to judicial review  
20               under section 113(b).

21               “(ii) STANDARD OF REVIEW.—In a  
22               proceeding on review of a decision by the  
23               Administrator to withdraw a delegation of  
24               authority, the court shall, notwithstanding  
25               section 706(2)(E) of title 5, United States



1 Code, hold unlawful and set aside actions,  
2 findings, and conclusions found to be un-  
3 supported by substantial evidence.

4 “(3) RULE OF CONSTRUCTION.—Nothing in  
5 this section shall be construed to affect the authority  
6 of the Administrator under this Act to—

7 “(A) take a response action at a facility  
8 listed on the National Priorities List in a State  
9 to which a delegation of authority has not been  
10 made under this section or at a facility not in-  
11 cluded in a delegation of authority; or

12 “(B) perform a delegable authority with  
13 respect to a facility that is not included among  
14 the authorities delegated to a State with respect  
15 to the facility.

16 “(4) EMERGENCY REMOVAL.—

17 “(A) NOTICE.—Before performing an  
18 emergency removal action under section 104 at  
19 a delegated facility, the Administrator shall no-  
20 tify the delegated States of the Administrator’s  
21 intention to perform the removal.

22 “(B) STATE ACTION.—If, after receiving a  
23 notice under subparagraph (A), the delegated  
24 State notifies the Administrator within 48  
25 hours that the State intends to take action to

1 perform an emergency removal at the delegated  
2 facility, the Administrator shall not perform the  
3 emergency removal action unless the Adminis-  
4 trator determines that the delegated State has  
5 failed to act within a reasonable period of time  
6 to perform the emergency removal.

7 “(C) IMMEDIATE AND SIGNIFICANT DAN-  
8 GER.—If the Administrator finds that an emer-  
9 gency at a delegated facility poses an immediate  
10 and significant danger to human health or the  
11 environment, the Administrator shall not be re-  
12 quired to provide notice under subparagraph  
13 (A).

14 “(5) PROHIBITED ACTIONS.—Except as pro-  
15 vided in subsections (d)(6)(B), (e)(4), and (g), the  
16 President, the Administrator, and the Attorney Gen-  
17 eral shall not take any action under section 104,  
18 106, 107, 109, 121, or 122 with respect to a dele-  
19 gated facility.

20 “(f) FUNDING.—

21 “(1) IN GENERAL.—The Administrator shall  
22 provide grants to delegated States to carry out this  
23 section.

24 “(2) NO CLAIM AGAINST FUND.—Notwithstand-  
25 ing any other law, funds to be granted under this

1 subsection shall not constitute a claim against the  
2 Fund.

3 “(3) DETERMINATION OF COSTS ON A FACIL-  
4 ITY-SPECIFIC BASIS.—The Administrator shall—

5 “(A) determine—

6 “(i) the delegable authorities the costs  
7 of performing which it is practicable to de-  
8 termine on a facility-specific basis; and

9 “(ii) the delegable authorities the  
10 costs of performing which it is not prac-  
11 ticable to determine on a facility-specific  
12 basis; and

13 “(B) publish a list describing the delegable  
14 authorities in each category.

15 “(4) FACILITY-SPECIFIC GRANTS.—The costs  
16 described in paragraph (3)(A)(i) shall be funded as  
17 such costs arise with respect to each delegated facil-  
18 ity.

19 “(5) NON-FACILITY-SPECIFIC GRANTS.—

20 “(A) IN GENERAL.—The costs described in  
21 paragraph (1)(A)(ii) shall be funded through  
22 non-facility-specific grants under this para-  
23 graph.

24 “(B) FORMULA.—The Administrator shall  
25 establish a formula under which funds available

1 for non-facility-specific grants shall be allocated  
2 among the delegated States, taking into consid-  
3 eration—

4 “(i) the cost of administering the dele-  
5 gated authority;

6 “(ii) the number of sites for which the  
7 State has been delegated authority;

8 “(iii) the types of activities for which  
9 the State has been delegated authority;

10 “(iv) the number of facilities within  
11 the State that are listed on the National  
12 Priorities List or are delegated facilities  
13 under section 127(d)(5);

14 “(v) the number of other high priority  
15 facilities within the State;

16 “(vi) the need for the development of  
17 the State program;

18 “(vii) the need for additional person-  
19 nel;

20 “(viii) the amount of resources avail-  
21 able through State programs for the clean-  
22 up of contaminated sites; and

23 “(ix) the benefit to human health and  
24 the environment of providing the funding.

1           “(6) PERMITTED USE OF GRANT FUNDS.—A  
2       delegated State may use grant funds to take any ac-  
3       tion or perform any duty necessary to implement the  
4       authority delegated to the State under this section.

5           “(7) COST SHARE.—

6           “(A) ASSURANCE.—A delegated State to  
7       which a grant is made under this subsection  
8       shall provide an assurance that the State will  
9       pay any amount required under section  
10      104(c)(3).

11          “(B) PROHIBITED USE OF GRANT  
12      FUNDS.—A delegated State to which a grant is  
13      made under this subsection may not use grant  
14      funds to pay any amount required under section  
15      104(c)(3).

16          “(8) CERTIFICATION OF USE OF FUNDS.—Not  
17      later than 1 year after the date on which a delegated  
18      State receives funds under this subsection, and an-  
19      nually thereafter, the Governor of the State shall  
20      submit to the Administrator—

21           “(A) a certification that the State has used  
22      the funds in accordance with the requirements  
23      of this Act; and

24           “(B) information describing the manner in  
25      which the State used the funds.

1       “(g) COOPERATIVE AGREEMENTS.—Nothing in this  
 2 section shall affect the authority of the Administrator  
 3 under section 104(d)(1) to enter into a cooperative agree-  
 4 ment with a State, a political subdivision of a State, or  
 5 an Indian tribe to carry out actions under section 104.

6       “(h) NON-NATIONAL PRIORITIES LIST FACILI-  
 7 TIES.—

8               “(1) DEFINITIONS.—In this subsection, the  
 9 term ‘non-National Priorities List facility’ means a  
 10 facility that is not, and never has been, listed on the  
 11 National Priorities List and that is not owned or op-  
 12 erated by a department, agency, or instrumentality  
 13 of the United States.

14              “(2) FINALITY.—

15                   “(A) IN GENERAL.—Except as provided in  
 16 subparagraph (B), a determination that a re-  
 17 sponse action at a non-National Priorities List  
 18 facility or portion of a non-National Priorities  
 19 List facility is complete under State law is  
 20 final, and the facility shall not be subject to  
 21 further response action notwithstanding any  
 22 provision of this Act or any other Federal law.

23                   “(B) EXCEPTION FOR EMERGENCY REMOV-  
 24 ALS.—The Administrator may conduct an  
 25 emergency removal action under the authority

1 of section 104 subject to the notice requirement  
2 of section 135(e)(4) at a non-National Prior-  
3 ities List facility.

4 “(3) PROHIBITION.—The President shall not  
5 take any action under section 106 at a non-National  
6 Priorities List facility.”.

7 (b) USES OF FUND.—Section 111(a) of the Com-  
8 prehensive Environmental Response, Compensation, and  
9 Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by  
10 inserting after paragraph (6) the following:

11 “(7) GRANTS TO DELEGATED STATES.—Making  
12 a grant to a delegated State under section 135(f).”.

13 (c) RELATIONSHIP TO OTHER LAWS.—

14 (1) IN GENERAL.—Section 114 of the Com-  
15 prehensive Environmental Response, Compensation,  
16 and Liability Act of 1980 (42 U.S.C. 9614) is  
17 amended—

18 (A) by striking subsection (a); and

19 (B) by redesignating subsections (b), (c),  
20 and (d) as subsections (a), (b), and (c), respec-  
21 tively.

22 (2) CONFORMING AMENDMENT.—Section  
23 101(37)(B) of the Comprehensive Environmental  
24 Response, Compensation, and Liability Act of 1980

1 (42 U.S.C. 9601(37)(B)) is amended by striking  
2 “section 114(c)” and inserting “section 114(b)”.

3 **TITLE III—VOLUNTARY**  
4 **CLEANUP**

5 **SEC. 301. ASSISTANCE FOR QUALIFYING STATE VOL-**  
6 **UNTARY RESPONSE PROGRAMS.**

7 (a) Section 101 of the Comprehensive Environmental  
8 Response, Compensation, and Liability Act of 1980 (42  
9 U.S.C. 9601) is amended by adding at the end the follow-  
10 ing:

11 “(39) QUALIFYING STATE VOLUNTARY RE-  
12 SPONSE PROGRAM.—The term ‘qualifying State vol-  
13 untary response program’ means a State program  
14 that includes the elements described in section  
15 133(b).”.

16 (b) QUALIFYING STATE VOLUNTARY RESPONSE PRO-  
17 GRAMS.—Title I of the Comprehensive Environmental Re-  
18 sponse, Compensation, and Liability Act of 1980 (42  
19 U.S.C. 9601 et seq.), as amended by section 501, is  
20 amended by adding at the end the following:

21 **“SEC. 133. QUALIFYING STATE VOLUNTARY RESPONSE PRO-**  
22 **GRAMS.**

23 “(a) ASSISTANCE TO STATES.—The Administrator  
24 shall provide technical and other assistance to States to  
25 establish and expand qualifying State voluntary response



1 programs that include the elements listed in subsection  
2 (b).

3 “(b) ELEMENTS.—The elements of a qualifying State  
4 voluntary response program are the following:

5 “(1) Opportunities for technical assistance for  
6 voluntary response actions.

7 “(2) Adequate opportunities for public partici-  
8 pation, including prior notice and opportunity for  
9 comment, in appropriate circumstances, in selecting  
10 response actions.

11 “(3) Streamlined procedures to ensure expedi-  
12 tious voluntary response actions.

13 “(4) Oversight and enforcement authorities that  
14 are adequate to ensure that—

15 “(A) voluntary response actions are protec-  
16 tive of human health and the environment and  
17 are conducted in accordance with an appro-  
18 priate response action plan; and

19 “(B) if the person conducting the vol-  
20 untary response action fails to complete the  
21 necessary response activities, including oper-  
22 ation and maintenance or long-term monitoring  
23 activities, the necessary response activities are  
24 completed.

1           “(5) Mechanisms for approval of a voluntary re-  
2       sponse action plan.

3           “(6) A requirement for certification or similar  
4       documentation from the State to the person conduct-  
5       ing the voluntary response action indicating that the  
6       response is complete.”.

7       (c) FUNDING.—Section 111(a) of the Comprehensive  
8       Environmental Response, Compensation, and Liability Act  
9       of 1980 (42 U.S.C. 9611), as amended by section 201(b),  
10      is amended by inserting after paragraph (7) the following:

11           “(8) QUALIFYING STATE VOLUNTARY RE-  
12       SPONSE PROGRAMS.—For assistance to States to es-  
13       tablish and administer qualifying State voluntary re-  
14       sponse programs, during the first 5 full fiscal years  
15       following the date of enactment of this subpara-  
16       graph, in a total amount to all States that is not less  
17       than 2 percent and not more than 5 percent of the  
18       amount available in the Fund for each such fiscal  
19       year, distributed among each of the States that noti-  
20       fies the Administrator of the State’s intent to estab-  
21       lish a qualifying State voluntary response program  
22       and each of the States with a qualifying State vol-  
23       untary response program in the amount that is  
24       equal to the total amount multiplied by a fraction—

1           “(A) the numerator of which is the number  
 2           of facilities in the State that, as of September  
 3           29, 1995, were listed on the Comprehensive En-  
 4           vironmental Response, Compensation, and Li-  
 5           ability Information System (not including facili-  
 6           ties that are listed on the National Priorities  
 7           List); and

8           “(B) the denominator of which is the total  
 9           number of such facilities in the United States.”.

10 **SEC. 302. BROWNFIELD CLEANUP ASSISTANCE.**

11       Title I of the Comprehensive Environmental Re-  
 12       sponse, Compensation, and Liability Act of 1980 (42  
 13       U.S.C. 9601 et seq.), as amended by section 301(b), is  
 14       amended by adding at the end the following:

15 **“SEC. 134. BROWNFIELD CLEANUP ASSISTANCE**

16       “(a) DEFINITIONS.—In this section:

17           “(1) ADMINISTRATIVE COST.—The term ‘ad-  
 18           ministrative cost’ does not include the cost of—

19               “(A) investigation and identification of the  
 20               extent of contamination;

21               “(B) design and performance of a response  
 22               action; or

23               “(C) monitoring of natural resources.

24           “(2) BROWNFIELD FACILITY.—The term  
 25           ‘brownfield facility’ means—

1           “(A) a parcel of land that contains or at  
2           any time contained abandoned or underused  
3           commercial or industrial property, the expan-  
4           sion or redevelopment of which is complicated  
5           by the presence or potential presence of a haz-  
6           ardous substance; but

7           “(B) does not include—

8           “(i) a facility that is the subject of a  
9           removal or planned removal under title I;

10          “(ii) a facility that is listed or has  
11          been proposed for listing on the National  
12          Priorities List or that has been delisted  
13          under section 135(d)(5);

14          “(iii) a facility that is subject to cor-  
15          rective action under section 3004(u) or  
16          3008(h) of the Solid Waste Disposal Act  
17          (42 U.S.C. 6924(u) or 6928(h)) at the  
18          time at which an application for a grant or  
19          loan concerning the facility is submitted  
20          under this section;

21          “(iv) a land disposal unit with respect  
22          to which—

23                  “(I) a closure notification under  
24                  subtitle C of the Solid Waste Disposal

1 Act (42 U.S.C. 6921 et seq.) has been  
2 submitted; and

3 “(II) closure requirements have  
4 been specified in a closure plan or  
5 permit;

6 “(v) a facility with respect to which  
7 an administrative order on consent or judi-  
8 cial consent decree requiring cleanup has  
9 been entered into by the United States  
10 under the Solid Waste Disposal Act (42  
11 U.S.C. 6901 et seq.), the Federal Water  
12 Pollution Control Act (33 U.S.C. 1251 et  
13 seq.), the Toxic Substances Control Act  
14 (15 U.S.C. 2601 et seq.), or title XIV of  
15 the Public Health Service Act (commonly  
16 known as the ‘Safe Drinking Water Act’)  
17 (42 U.S.C. 300f et seq.);

18 “(vi) a facility that is owned or oper-  
19 ated by a department, agency, or instru-  
20 mentality of the United States; or

21 “(vii) a portion of a facility, for which  
22 portion, assistance for response activity  
23 has been obtained under subtitle I of the  
24 Solid Waste Disposal Act (42 U.S.C. 6991  
25 et seq.) from the Leaking Underground

1 Storage Tank Trust Fund established  
2 under section 9508 of the Internal Reve-  
3 nue Code of 1986.

4 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-  
5 tity’ means—

6 “(A) a general purpose unit of local gov-  
7 ernment;

8 “(B) a land clearance authority or other  
9 quasi-governmental entity that operates under  
10 the supervision and control of or as an agent of  
11 a general purpose unit of local government;

12 “(C) a regional council or group of general  
13 purpose units of local government; and

14 “(D) an Indian tribe.

15 “(b) BROWNFIELD CLEANUP ASSISTANCE PRO-  
16 GRAM.—

17 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-  
18 ministrator shall establish a program to provide in-  
19 terest-free loans for the site characterization and as-  
20 sessment of brownfield facilities.

21 “(2) ASSISTANCE FOR SITE CHARACTERIZATION  
22 AND ASSESSMENT.—

23 “(A) IN GENERAL.—On approval of an ap-  
24 plication made by an eligible entity, the Admin-  
25 istrator may make interest-free loans out of the

1 Fund to the eligible entity to be used for the  
2 site characterization and assessment of 1 or  
3 more brownfield facilities.

4 “(B) APPROPRIATE INQUIRY.—A site char-  
5 acterization and assessment carried out with  
6 the use of a loan under subparagraph (A) shall  
7 be performed in accordance with section  
8 101(35)(B).

9 “(C) REPAYMENT.—

10 “(i) IN GENERAL.—An eligible entity  
11 that receives a loan under subparagraph  
12 (A) shall agree to repay the full amount of  
13 the loan within 10 years after the date on  
14 which the loan is made.

15 “(ii) DEPOSIT IN FUND.—Repayments  
16 on a loan under subparagraph (A) shall be  
17 deposited in the Fund.

18 “(3) HAZARDOUS SUBSTANCE SUPERFUND.—  
19 Notwithstanding section 111 of this Act or any pro-  
20 vision of the Superfund Amendments and Reauthor-  
21 ization Act of 1986 (100 Stat. 1613), there is au-  
22 thorized to be appropriated out of the Fund  
23 \$15,000,000 for each of the first 5 fiscal years be-  
24 ginning after the date of enactment of this section,

1 to be used for making interest-free loans under  
2 paragraph (2).

3 “(4) MAXIMUM LOAN AMOUNT.—A loan under  
4 subparagraph (A) shall not exceed, with respect to  
5 each brownfield facility covered by the loan,  
6 \$100,000 for any fiscal year or \$200,000 in total.

7 “(5) SUNSET.—No amount shall be available  
8 from the Fund for purposes of this section after the  
9 fifth fiscal year after the date of enactment of this  
10 section.

11 “(6) PROHIBITION.—No part of a loan under  
12 this section may be used for payment of penalties,  
13 fines, or administrative costs.

14 “(7) AUDITS.—The Inspector General of the  
15 Environmental Protection Agency shall audit all  
16 loans made under paragraph (2) to ensure that all  
17 funds are used for the purposes described in this  
18 section and that all loans are repaid in accordance  
19 with paragraph (2).

20 “(8) AGREEMENTS.—Each loan made under  
21 this section shall be subject to an agreement that—

22 “(A) requires the eligible entity to comply  
23 with all applicable State laws (including regula-  
24 tions);



1           “(B) requires that the eligible entity shall  
2           use the loan exclusively for purposes specified  
3           in paragraph (2); and

4           “(C) contains such other terms and condi-  
5           tions as the Administrator determines to be  
6           necessary to protect the financial interests of  
7           the United States and to carry out the purposes  
8           of this section.

9           “(9) LEVERAGING.—An eligible entity that re-  
10          ceives a loan under paragraph (1) may use the  
11          loaned funds for part of a project at a brownfield fa-  
12          cility for which funding is received from other  
13          sources, but the loan funds shall be used only for the  
14          purposes described in paragraph (2).

15          “(c) LOAN APPLICATIONS.—

16               “(1) IN GENERAL.—Any eligible entity may  
17               submit an application to the Administrator, through  
18               a regional office of the Environmental Protection  
19               Agency and in such form as the Administrator may  
20               require, for a loan under this section for 1 or more  
21               brownfield facilities.

22               “(2) APPLICATION REQUIREMENTS.—An appli-  
23               cation for a loan under this section shall include—

24                       “(A) an identification of each brownfield  
25                       facility for which the loan is sought and a de-

1       scription of the redevelopment plan for the area  
2       or areas in which each facility is located, includ-  
3       ing a description of the nature and extent of  
4       any known or suspected environmental contami-  
5       nation within the area; and

6               “(B) an analysis that demonstrates the po-  
7       tential of the grant to stimulate economic devel-  
8       opment on completion of the planned response  
9       action, including a projection of the number of  
10      jobs expected to be created at the facility after  
11      remediation and redevelopment and, to the ex-  
12      tent feasible, a description of the type and skill  
13      level of the jobs and a projection of the in-  
14      creases in revenues accruing to Federal, State,  
15      and local governments from the jobs.

16      “(3) APPROVAL.—

17              “(A) INITIAL LOANS.—On or about March  
18      30 and September 30 of the first fiscal year fol-  
19      lowing the date of enactment of this section, the  
20      Administrator shall make loans under this sec-  
21      tion to eligible entities that submit applications  
22      before those dates that the Administrator deter-  
23      mines have the highest rankings under ranking  
24      criteria established under paragraph (4).

1           “(B) SUBSEQUENT LOANS.—Beginning  
2           with the second fiscal year following the date of  
3           enactment of this section, the Administrator  
4           shall make an annual evaluation of each appli-  
5           cation received during the prior fiscal year and  
6           make loans under this section to eligible entities  
7           that submit applications during the prior year  
8           that the Administrator determines have the  
9           highest rankings under the ranking criteria es-  
10          tablished under paragraph (4).

11          “(4) RANKING CRITERIA.—The Administrator  
12          shall establish a system for ranking loan applications  
13          that includes the following criteria:

14               “(A) The extent to which a loan will stimu-  
15               late the availability of other funds for environ-  
16               mental remediation and subsequent redevelop-  
17               ment of the area in which the brownfield facili-  
18               ties are located.

19               “(B) The potential of the development plan  
20               for the area in which the brownfield facilities  
21               are located to stimulate economic development  
22               of the area on completion of the cleanup, such  
23               as the following:

1           “(i) The relative increase in the esti-  
2           mated fair market value of the area as a  
3           result of any necessary response action.

4           “(ii) The potential of a loan to create  
5           new or expand existing business and em-  
6           ployment opportunities (particularly full-  
7           time employment opportunities) on comple-  
8           tion of any necessary response action.

9           “(iii) The estimated additional tax  
10          revenues expected to be generated by eco-  
11          nomic redevelopment in the area in which  
12          a brownfield facility is located.

13          “(iv) The estimated extent to which a  
14          loan would facilitate the identification of or  
15          facilitate a reduction of health and envi-  
16          ronmental risks.

17          “(v) The financial involvement of the  
18          State and local government in any re-  
19          sponse action planned for a brownfield fa-  
20          cility and the extent to which the response  
21          action and the proposed redevelopment is  
22          consistent with any applicable State or  
23          local community economic development  
24          plan.

“(vi) The extent to which the site characterization and assessment or response action and subsequent development of a brownfield facility involves the active participation and support of the local community.

“(vii) Such other factors as the Administrator considers appropriate to carry out the purposes of this section.”.

**SEC. 303. TREATMENT OF SECURITY INTEREST HOLDERS  
AND FIDUCIARIES AS OWNERS OR OPERATORS.**

(a) DEFINITION OF OWNER OR OPERATOR.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 301(a), is amended—

(1) in paragraph (20)—

(A) in subparagraph (A) by striking the second sentence; and

(B) by adding at the end the following:

“(E) SECURITY INTEREST HOLDERS.—

“(i) IN GENERAL.—The term ‘owner or operator’ does not include a person that, without participating in the management of a vessel or facility, holds an indicium of

1 ownership primarily to protect the person's  
2 security interest in a vessel or facility.

3 “(ii) PARTICIPATING IN MANAGE-  
4 MENT.—A security interest holder—

5 “(I) shall be considered to be  
6 participating in management of a ves-  
7 sel or facility only if the security in-  
8 terest holder has undertaken—

9 “(aa) responsibility for the  
10 hazardous substance handling or  
11 disposal practices of the vessel or  
12 facility; or

13 “(bb) overall management of  
14 the vessel or facility encompass-  
15 ing day-to-day decisionmaking  
16 over environmental compliance or  
17 over an operational function (in-  
18 cluding functions such as those  
19 of a plant manager, operations  
20 manager, chief operating officer,  
21 or chief executive officer), as op-  
22 posed to financial and adminis-  
23 trative aspects, of a vessel or fa-  
24 cility; and

1 “(II) shall not be considered to  
2 be participating in management solely  
3 on the ground that the security inter-  
4 est holder—

5 “(aa) serves in a capacity or  
6 has the ability to influence or the  
7 right to control the operation of  
8 a vessel or facility if that capac-  
9 ity, ability, or right is not exer-  
10 cised;

11 “(bb) acts, or causes or re-  
12 quires another person to act, to  
13 comply with an applicable law or  
14 to respond lawfully to disposal of  
15 a hazardous substance;

16 “(cc) performs an act or  
17 omits to act in any way with re-  
18 spect to a vessel or facility prior  
19 to the time at which a security  
20 interest is created in a vessel or  
21 facility;

22 “(dd) holds, abandons, or  
23 releases a security interest;

24 “(ee) includes in the terms  
25 of an extension of credit, or in a

1 contract or security agreement  
2 relating to an extension of credit,  
3 a covenant, warranty, or other  
4 term or condition that relates to  
5 environmental compliance;

6 “(ff) monitors or enforces a  
7 term or condition of an extension  
8 of credit or a security interest;

9 “(gg) monitors or under-  
10 takes 1 or more inspections of a  
11 vessel or facility;

12 “(hh) requires or conducts a  
13 response action or other lawful  
14 means of addressing a release or  
15 threatened release of a hazardous  
16 substance in connection with a  
17 vessel or facility prior to, during,  
18 or on the expiration of the term  
19 of an extension of credit;

20 “(ii) provides financial or  
21 other advice or counseling in an  
22 effort to mitigate, prevent, or  
23 cure a default or diminution in  
24 the value of a vessel or facility;



1                   “(jj) exercises forbearance  
2                   by restructuring, renegotiating,  
3                   or otherwise agreeing to alter a  
4                   term or condition of an extension  
5                   of credit or a security interest; or

6                   “(kk) exercises any remedy  
7                   that may be available under law  
8                   for the breach of a term or condi-  
9                   tion of an extension of credit or  
10                  a security agreement.

11                  “(iii) FORECLOSURE.—Legal or equi-  
12                  table title acquired by a security interest  
13                  holder through foreclosure (or the equiva-  
14                  lent of foreclosure) shall be considered to  
15                  be held primarily to protect a security in-  
16                  terest if the holder undertakes to sell, re-  
17                  lease, or otherwise divest the vessel or fa-  
18                  cility in a reasonably expeditious manner  
19                  on commercially reasonable terms.

20                  “(iv) DEFINITION OF SECURITY IN-  
21                  TEREST.—In this subparagraph, the term  
22                  ‘security interest’ includes a right under a  
23                  mortgage, deed of trust, assignment, judg-  
24                  ment lien, pledge, security agreement, fac-  
25                  toring agreement, or lease, or any other

1 right accruing to a person to secure the re-  
 2 payment of money, the performance of a  
 3 duty, or any other obligation.

4 “(F) FIDUCIARIES.—

5 “(i) IN GENERAL.—The term ‘owner  
 6 or operator’ does not include a fiduciary  
 7 that holds legal or equitable title to, is the  
 8 mortgagee or secured party with respect  
 9 to, controls, or manages, directly or indi-  
 10 rectly, a vessel or facility for the purpose  
 11 of administering an estate or trust of  
 12 which the vessel or facility is a part.”; and

13 (2) by adding at the end the following:

14 “(40) FIDUCIARY.—The term ‘fiduciary’ means  
 15 a person that is acting in the capacity of—

16 “(A) an executor or administrator of an es-  
 17 tate, including a voluntary executor or a vol-  
 18 untary administrator;

19 “(B) a guardian;

20 “(C) a conservator;

21 “(D) a trustee under a will or a trust  
 22 agreement under which the trustee takes legal  
 23 or equitable title to, or otherwise controls or  
 24 manages, a vessel or facility for the purpose of

1 protecting or conserving the vessel or facility  
 2 under the rules applied in State court;

3 “(E) a court-appointed receiver;

4 “(F) a trustee appointed in proceedings  
 5 under title 11, United States Code;

6 “(G) an assignee or a trustee acting under  
 7 an assignment made for the benefit of creditors;  
 8 or

9 “(H) a trustee, or a successor to a trustee,  
 10 under an indenture agreement, trust agreement,  
 11 lease, or similar financing agreement, for debt  
 12 securities, certificates of interest of participa-  
 13 tion in debt securities, or other forms of indebt-  
 14 edness as to which the trustee is not, in the ca-  
 15 pacity of trustee, the lender.”.

16 (b) LIABILITY OF FIDUCIARIES AND LENDERS.—  
 17 Section 107 of the Comprehensive Environmental Re-  
 18 sponse, Compensation, and Liability Act of 1980 (42  
 19 U.S.C. 9607) is amended by adding at the end the  
 20 following:

21 “(n) LIABILITY OF FIDUCIARIES.—

22 “(1) IN GENERAL.—The liability of a fiduciary  
 23 that is liable under any other provision of this Act  
 24 for the release or threatened release of a hazardous  
 25 substance from a vessel or facility held by a fidu-

1       ciary may not exceed the assets held by the fiduciary  
2       that are available to indemnify the fiduciary.

3       “(2) NO INDIVIDUAL LIABILITY.—Subject to  
4       the other provisions of this subsection, a fiduciary  
5       shall not be liable in an individual capacity under  
6       this Act.

7       “(3) EXCEPTIONS.—This subsection does not  
8       preclude a claim under this Act against—

9               “(A) the assets of the estate or trust ad-  
10              ministered by a fiduciary;

11             “(B) a nonemployee agent or independent  
12             contractor retained by a fiduciary; or

13             “(C) a fiduciary that causes or contributes  
14             to a release or threatened release of a hazard-  
15             ous substance.

16       “(4) SAFE HARBOR.—Subject to paragraph (5),  
17       a fiduciary shall not be liable in an individual capac-  
18       ity under this Act for—

19             “(A) undertaking or directing another to  
20             undertake a response action under section  
21             107(d)(1) or under the direction of an on-scene  
22             coordinator;

23             “(B) undertaking or directing another to  
24             undertake any other lawful means of addressing

1 a hazardous substance in connection with a ves-  
2 sel or facility;

3 “(C) terminating the fiduciary relationship;

4 “(D) including, modifying, or enforcing a  
5 covenant, warranty, or other term or condition  
6 in the terms of a fiduciary agreement that re-  
7 lates to compliance with environmental laws;

8 “(E) monitoring or undertaking 1 or more  
9 inspections of a vessel or facility;

10 “(F) providing financial or other advice or  
11 counseling to any party to the fiduciary rela-  
12 tionship, including the settlor or beneficiary;

13 “(G) restructuring, renegotiating, or other-  
14 wise altering a term or condition of the fidu-  
15 ciary relationship;

16 “(H) administering a vessel or facility that  
17 was contaminated before the period of service of  
18 the fiduciary began; or

19 “(I) declining to take any of the actions  
20 described in subparagraphs (B) through (H).

21 “(5) DUE CARE.—This subsection does not  
22 limit the liability of a fiduciary if the fiduciary fails  
23 to exercise due care and the failure causes or con-  
24 tributes to the release of a hazardous substance.

1           “(6) RULE OF CONSTRUCTION.—Nothing in  
2       this subsection shall be construed to—

3           “(A) affect the rights or immunities or  
4       other defenses that are available under this Act  
5       or other applicable law to any person;

6           “(B) create any liability for any person; or

7           “(C) create a private right of action  
8       against a fiduciary or against a Federal agency  
9       that regulates lenders.

10       “(o) LIABILITY OF LENDERS.—

11       “(1) DEFINITIONS.—In this subsection:

12       “(A) ACTUAL BENEFIT.—The term ‘actual  
13       benefit’ means the net gain, if any, realized by  
14       a lender due to an action.

15       “(B) EXTENSION OF CREDIT.—The term  
16       ‘extension of credit’ includes a lease finance  
17       transaction—

18           “(i) in which the lessor does not ini-  
19       tially select the leased vessel or facility and  
20       does not during the lease term control the  
21       daily operations or maintenance of the ves-  
22       sel or facility; or

23           “(ii) that conforms to all regulations  
24       issued by any appropriate Federal banking  
25       agency (as defined in section 3(q) of the

1 Federal Deposit Insurance Act (12 U.S.C.  
2 1813(q))) and any appropriate State bank-  
3 ing regulatory authority.

4 “(C) FORECLOSURE.—The term ‘fore-  
5 closure’ means the acquisition of a vessel or fa-  
6 cility through—

7 “(i) purchase at sale under a judg-  
8 ment or decree, a power of sale, a  
9 nonjudicial foreclosure sale, or from a  
10 trustee, deed in lieu of foreclosure, or simi-  
11 lar conveyance, or through repossession, if  
12 the vessel or facility was security for an ex-  
13 tension of credit previously contracted;

14 “(ii) conveyance under an extension of  
15 credit previously contracted, including the  
16 termination of a lease agreement; or

17 “(iii) any other formal or informal  
18 manner by which a person acquires, for  
19 subsequent disposition, possession of collat-  
20 eral in order to protect the security inter-  
21 est of the person.

22 “(D) LENDER.—The term ‘lender’  
23 means—

1           “(i) a person that makes a bona fide  
2           extension of credit to, or takes a security  
3           interest from, another party;

4           “(ii) the Federal National Mortgage  
5           Association, the Federal Home Loan Mort-  
6           gage Corporation, the Federal Agricultural  
7           Mortgage Corporation, or any other entity  
8           that in a bona fide manner is engaged in  
9           the business of buying or selling loans or  
10          interests in loans;

11          “(iii) a person engaged in the business  
12          of insuring or guaranteeing against a de-  
13          fault in the repayment of an extension of  
14          credit, or acting as a surety with respect to  
15          an extension of credit, to another party;  
16          and

17          “(iv) a person regularly engaged in  
18          the business of providing title insurance  
19          that acquires a vessel or facility as a result  
20          of an assignment or conveyance in the  
21          course of underwriting a claim or claim  
22          settlement.

23          “(E) NET GAIN.—The term ‘net gain’  
24          means an amount not in excess of the amount  
25          realized by a lender on the sale of a vessel or



1 facility less acquisition, holding, and disposition  
2 costs.

3 “(F) VESSEL OR FACILITY ACQUIRED  
4 THROUGH FORECLOSURE.—The term ‘vessel or  
5 facility acquired through foreclosure’—

6 “(i) means a vessel or facility that is  
7 acquired by a lender through foreclosure  
8 from a person that is not affiliated with  
9 the lender; but

10 “(ii) does not include such a vessel or  
11 facility if the lender does not seek to sell  
12 or otherwise divest the vessel or facility at  
13 the earliest practicable, commercially rea-  
14 sonable time, on commercially reasonable  
15 terms, taking into account market condi-  
16 tions and legal and regulatory require-  
17 ments.

18 “(2) LIABILITY LIMITATION.—

19 “(A) IN GENERAL.—The liability of a lend-  
20 er that is liable under any other provision of  
21 this Act for the release or threatened release of  
22 a hazardous substance at, from, or in connec-  
23 tion with a vessel or facility shall be limited to  
24 the amount described in subparagraph (B) if  
25 the vessel or facility is—

1           “(i) a vessel or facility acquired  
2           through foreclosure;

3           “(ii) a vessel or facility subject to a  
4           security interest held by the lender;

5           “(iii) a vessel or facility held by a les-  
6           sor under the terms of an extension of  
7           credit; or

8           “(iv) a vessel or facility subject to fi-  
9           nancial control or financial oversight under  
10          the terms of an extension of credit.

11          “(B) AMOUNT.—The amount described in  
12          this subparagraph is the excess of the fair mar-  
13          ket value of a vessel or facility on the date on  
14          which the liability of a lender is determined  
15          over the fair market value of the vessel or facil-  
16          ity on the date that is 180 days before the date  
17          on which the response action is initiated, not to  
18          exceed the amount that the lender realizes on  
19          the sale of the vessel or facility after subtract-  
20          ing acquisition, holding, and disposition costs.

21          “(3) EXCLUSION.—This subsection does not  
22          limit the liability of a lender that causes or contrib-  
23          utes to the release or threatened release of a hazard-  
24          ous substance.

1           “(4) RULE OF CONSTRUCTION.—Nothing in  
2 this subsection shall be construed to—

3           “(A) affect the rights or immunities or  
4 other defenses that are available under this Act  
5 or other applicable law to any person;

6           “(B) create any liability for any person; or

7           “(C) create a private right of action  
8 against a lender or against a Federal agency  
9 that regulates lenders.”.

10 **SEC. 304. FEDERAL DEPOSIT INSURANCE ACT**  
11 **AMENDMENT.**

12       The Federal Deposit Insurance Act (12 U.S.C. 1811  
13 et seq.) is amended by adding at the end the following:

14 **“SEC. 45. FEDERAL BANKING AND LENDING AGENCY LI-**  
15 **ABILITY.**

16       “(a) DEFINITIONS.—In this section:

17           “(1) FEDERAL BANKING OR LENDING AGEN-  
18 CY.—The term ‘Federal banking or lending agen-  
19 cy’—

20           “(A) means the Corporation, the Resolu-  
21 tion Trust Corporation, the Board of Governors  
22 of the Federal Reserve System, the Comptroller  
23 of the Currency, the Office of Thrift Super-  
24 vision, a Federal Reserve Bank, a Federal  
25 Home Loan Bank, the Department of Housing

1 and Urban Development, the National Credit  
2 Union Administration Board, the Farm Credit  
3 Administration, the Farm Credit System Insur-  
4 ance Corporation, the Farm Credit System As-  
5 sistance Board, the Farmers Home Administra-  
6 tion, the Rural Electrification Administration,  
7 the Small Business Administration, and any  
8 other Federal agency acting in a similar capac-  
9 ity, in any of their capacities, and their agents  
10 or appointees; and

11 “(B) includes a first subsequent purchaser  
12 of the vessel or facility from a Federal banking  
13 or lending agency, unless the purchaser—

14 “(i) would otherwise be liable or po-  
15 tentially liable for all or part of the costs  
16 of the removal, remedial, corrective, or  
17 other response action due to a prior rela-  
18 tionship with the vessel or facility;

19 “(ii) is or was affiliated with or relat-  
20 ed to a party described in clause (i);

21 “(iii) fails to agree to take reasonable  
22 steps necessary to remedy the release or  
23 threatened release or to protect public  
24 health and safety in a manner consistent

1           with the purposes of applicable environ-  
2           mental laws; or

3           “(iv) causes or contributes to any ad-  
4           ditional release or threatened release on  
5           the vessel or facility.

6           “(2) FACILITY.—The term ‘facility’ has the  
7           meaning stated in section 101 of the Comprehensive  
8           Environmental Response, Compensation, and Liabil-  
9           ity Act of 1980 (42 U.S.C. 9601).

10          “(3) HAZARDOUS SUBSTANCE.—The term ‘haz-  
11          ardous substance’ means a hazardous substance (as  
12          defined in section 101 of the Comprehensive Envi-  
13          ronmental Response, Compensation, and Liability  
14          Act of 1980 (42 U.S.C. 9601)).

15          “(4) RELEASE.—The term ‘release’ has the  
16          meaning stated in section 101 of the Comprehensive  
17          Environmental Response, Compensation, and Liabil-  
18          ity Act of 1980 (42 U.S.C. 9601).

19          “(5) RESPONSE ACTION.—The term ‘response  
20          action’ has the meaning stated in section 101 of the  
21          Comprehensive Environmental Response, Compensa-  
22          tion, and Liability Act of 1980 (42 U.S.C. 9601).

23          “(6) VESSEL.—The term ‘vessel’ has the mean-  
24          ing stated in section 101 of the Comprehensive En-

1        vironmental Response, Compensation, and Liability  
2        Act of 1980 (42 U.S.C. 9601).

3        “(b) FEDERAL BANKING AND LENDING AGENCIES  
4        NOT STRICTLY LIABLE.—

5                “(1) IN GENERAL.—Except as provided in para-  
6        graph (2), a Federal banking or lending agency shall  
7        not be liable under any law imposing strict liability  
8        for the release or threatened release of a hazardous  
9        substance at or from a vessel or facility (including  
10       a right or interest in a vessel or facility) acquired—

11               “(A) in connection with the exercise of re-  
12        ceivership or conservatorship authority, or the  
13        liquidation or winding up of the affairs of an  
14        insured depository institution, including a sub-  
15        sidiary of an insured depository institution;

16               “(B) in connection with the provision of a  
17        loan, a discount, an advance, a guarantee, in-  
18        surance, or other financial assistance; or

19               “(C) in connection with a vessel or facility  
20        received in a civil or criminal proceeding, or ad-  
21        ministrative enforcement action, whether by set-  
22        tlement or by order.

23               “(2) ACTIVE CAUSATION.—Subject to section  
24        107(d) of the Comprehensive Environmental Re-  
25        sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9607(d)), a Federal banking or lending agen-  
2 cy that causes or contributes to a release or threat-  
3 ened release of a hazardous substance may be liable  
4 for a response action pertaining to the release or  
5 threatened release.

6 “(3) FEDERAL OR STATE ACTION.—If a Fed-  
7 eral agency or State environmental agency is re-  
8 quired to take response due to the failure of a subse-  
9 quent purchaser to carry out in good faith an agree-  
10 ment described in paragraph (a)(1)(C)(iii), the sub-  
11 sequent purchaser shall reimburse the Federal or  
12 State environmental agency for the costs of the re-  
13 sponse action. Any such reimbursement shall not ex-  
14 ceed the increase in the fair market value of the ves-  
15 sel or facility attributable to the response action.

16 “(c) LIEN EXEMPTION.—Notwithstanding any other  
17 law, a vessel or facility held by a subsequent purchaser  
18 described in subsection (a)(1)(B) or held by a Federal  
19 banking or lending agency shall not be subject to a lien  
20 for costs or damages associated with the release or threat-  
21 ened release of a hazardous substance existing at the time  
22 of the transfer.

23 “(d) EXEMPTION FROM COVENANTS TO REMEDI-  
24 ATE.—A Federal banking or lending agency shall be ex-  
25 empt from any law requiring the agency to grant a cov-

1 enant warranting that a response action has been, or will  
2 in the future be, taken with respect to a vessel or facility  
3 acquired in a manner described in subsection (b)(1).

4 “(e) RULES OF CONSTRUCTION.—Nothing in this  
5 section shall be construed to—

6 “(1) affect the rights or immunities or other de-  
7 fenses that are available to any party under this Act,  
8 the Comprehensive Environmental Response, Com-  
9 pensation, and Liability Act of 1980 (42 U.S.C.  
10 9601 et seq.) or any other law;

11 “(2) create any liability for any party;

12 “(3) create a private right of action against an  
13 insured depository institution or lender, a Federal  
14 banking or lending agency, or any other party;

15 “(4) preempt, affect, apply to, or modify a  
16 State law or a right, cause of action, or obligation  
17 under State law, except that the liability of a Fed-  
18 eral banking or lending agency for a response action  
19 under a State law shall not exceed the value of the  
20 interest of the agency in the asset giving rise to the  
21 liability; or

22 “(5) preclude a Federal banking or lending  
23 agency from agreeing with a State to transfer a ves-  
24 sel or facility to the State in lieu of any liability that  
25 might otherwise be imposed under State law.”.



1 **SEC. 305. CONTIGUOUS PROPERTIES.**

2 Section 107 of the Comprehensive Environmental Re-  
3 sponse, Compensation, and Liability Act of 1980 (42  
4 U.S.C. 9607(a)), as amended by section 303(b), is amend-  
5 ed by adding at the end the following:

6 “(p) CONTIGUOUS PROPERTIES.—

7 “(1) IN GENERAL.—A person that owns or op-  
8 erates real property that is contiguous to or other-  
9 wise similarly situated with respect to real property  
10 on which there has been a release or threatened re-  
11 lease of a hazardous substance and that is or may  
12 be contaminated by the release shall not be consid-  
13 ered to be an owner or operator of a vessel or facil-  
14 ity under subsection (a) (1) or (2) solely by reason  
15 of the contamination if the person did not cause,  
16 contribute, or consent to the release or threatened  
17 release.

18 “(2) ASSURANCES.—The Administrator may—

19 “(A) issue an assurance that no enforce-  
20 ment action under this Act will be initiated  
21 against a person described in paragraph (1);  
22 and

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

1 **SEC. 306. PROSPECTIVE PURCHASERS AND WINDFALL**  
2 **LIENS.**

3 (a) DEFINITION.—Section 101 of the Comprehensive  
4 Environmental Response, Compensation, and Liability Act  
5 of 1980 (42 U.S.C. 9601), as amended by section  
6 303(a)(2), is amended by adding at the end the following:

7 “(41) BONA FIDE PROSPECTIVE PURCHASER.—  
8 The term ‘bona fide prospective purchaser’ means a  
9 person that acquires ownership of a facility after the  
10 date of enactment of this paragraph, or a tenant of  
11 such a person, that establishes each of the following  
12 by a preponderance of the evidence:

13 “(A) DISPOSAL PRIOR TO ACQUISITION.—  
14 All active disposal of hazardous substances at  
15 the facility occurred before the person acquired  
16 the facility.

17 “(B) INQUIRIES.—

18 “(i) IN GENERAL.—The person made  
19 all appropriate inquiries into the previous  
20 ownership and uses of the facility and the  
21 facility’s real property in accordance with  
22 generally accepted good commercial and  
23 customary standards and practices.

24 “(ii) STANDARDS AND PRACTICES.—  
25 The standards and practices referred to in  
26 paragraph (35)(B)(ii) or those issued or

1           adopted by the Administrator under that  
2           paragraph shall be considered to satisfy  
3           the requirements of this subparagraph.

4           “(iii) RESIDENTIAL USE.—In the case  
5           of property for residential or other similar  
6           use purchased by a nongovernmental or  
7           noncommercial entity, a facility inspection  
8           and title search that reveal no basis for  
9           further investigation shall be considered to  
10          satisfy the requirements of this subpara-  
11          graph.

12          “(C) NOTICES.—The person provided all  
13          legally required notices with respect to the dis-  
14          covery or release of any hazardous substances  
15          at the facility.

16          “(D) CARE.—The person exercised appro-  
17          priate care with respect to each hazardous sub-  
18          stance found at the facility by taking reasonable  
19          steps to stop any continuing release, prevent  
20          any threatened future release and prevent or  
21          limit human or natural resource exposure to  
22          any previously released hazardous substance.

23          “(E) COOPERATION, ASSISTANCE, AND AC-  
24          CESS.—The person provides full cooperation,  
25          assistance, and facility access to the persons

1           that are responsible for response actions at the  
2           facility, including the cooperation and access  
3           necessary for the installation, integrity, oper-  
4           ation, and maintenance of any complete or par-  
5           tial response action at the facility.

6           “(F) RELATIONSHIP.—The person is not  
7           liable, and is not affiliated with any other per-  
8           son that is liable, for any response costs at the  
9           facility, through any direct or indirect familial  
10          relationship, or any contractual, corporate, or  
11          financial relationship other than that created by  
12          the instruments by which title to the facility is  
13          conveyed or financed.”.

14          (b) AMENDMENT.—Section 107 of the Comprehen-  
15          sive Environmental Response, Compensation, and Liabil-  
16          ity Act of 1980 (42 U.S.C. 9607), as amended by section  
17          305(b), is amended by adding at the end the following:

18          “(q) PROSPECTIVE PURCHASER AND WINDFALL  
19          LIEN.—

20               “(1) LIMITATION ON LIABILITY.—Notwith-  
21          standing subsection (a), a bona fide prospective pur-  
22          chaser whose potential liability for a release or  
23          threatened release is based solely on the purchaser’s  
24          being considered to be an owner or operator of a fa-  
25          cility shall not be liable as long as the bona fide pro-

1       pective purchaser does not impede the performance  
2       of a response action or natural resource restoration.

3           “(2) LIEN.—If there are unrecovered response  
4       costs at a facility for which an owner of the facility  
5       is not liable by reason of subsection (n)(1)(C) and  
6       each of the conditions described in paragraph (3) is  
7       met, the United States shall have a lien on the facil-  
8       ity, or may obtain from appropriate responsible  
9       party a lien on any other property or other assur-  
10      ances of payment satisfactory to the Administrator,  
11      for such unrecovered costs.

12           “(3) CONDITIONS.—The conditions referred to  
13      in paragraph (1) are the following:

14           “(A) RESPONSE ACTION.—A response ac-  
15      tion for which there are unrecovered costs is  
16      carried out at the facility.

17           “(B) FAIR MARKET VALUE.—The response  
18      action increases the fair market value of the fa-  
19      cility above the fair market value of the facility  
20      that existed 180 days before the response action  
21      was initiated.

22           “(C) SALE.—A sale or other disposition of  
23      all or a portion of the facility has occurred.

24           “(4) AMOUNT.—A lien under paragraph (2)—

1           “(A) shall not exceed the increase in fair mar-  
 2           ket value of the property attributable to the response  
 3           action at the time of a subsequent sale or other dis-  
 4           position of the property;

5           “(B) shall arise at the time at which costs are  
 6           first incurred by the United States with respect to  
 7           a response action at the facility;

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

10           “(D) shall continue until the earlier of satisfac-  
 11           tion of the lien or recovery of all response costs in-  
 12           curred at the facility.”.

13 **SEC. 307. SAFE HARBOR INNOCENT LANDHOLDERS.**

14           (a) AMENDMENT.—Section 101(35) of the Com-  
 15           prehensive Environmental Response, Compensation, and  
 16           Liability Act of 1980 (42 U.S.C. 9601(35)) is amended  
 17           by striking subparagraph (B) and inserting the following:

18                           “(B) KNOWLEDGE OF INQUIRY REQUIRE-  
 19                           MENT.—

20   “(i) ALL APPROPRIATE INQUIRIES.—

21                           To establish that the defendant had no  
 22                           reason to know of the matter described in  
 23                           subparagraph (A)(i), the defendant must  
 24                           show that, at or prior to the date on which  
 25                           the defendant acquired the facility, the de-

1           fendant undertook all appropriate inquiries  
2           into the previous ownership and uses of the  
3           facility in accordance with generally ac-  
4           cepted good commercial and customary  
5           standards and practices.

6           “(ii) STANDARDS AND PRACTICES.—  
7           The Secretary shall by regulation establish  
8           as standards and practices for the purpose  
9           of clause (i)—

10                   “(I) the American Society for  
11                   Testing and Materials (ASTM) Stand-  
12                   ard E1527-94, entitled ‘Standard  
13                   Practice for Environmental Site As-  
14                   sessments: Phase I Environmental  
15                   Site Assessment Process’; or

16                   “(II) alternative standards and  
17                   practices under clause (iii).

18           “(iii) ALTERNATIVE STANDARDS AND  
19           PRACTICES.—

20                   “(I) IN GENERAL.—The Admin-  
21                   istrator may by regulation issue alter-  
22                   native standards and practices or des-  
23                   ignate standards developed by other  
24                   organizations than the American Soci-  
25                   ety for Testing and Materials after

1 conducting a study of commercial and  
2 industrial practices concerning the  
3 transfer of real property in the United  
4 States.

5 “(II) CONSIDERATIONS.—In issu-  
6 ing or designating alternative stand-  
7 ards and practices under subclause  
8 (I), the Administrator shall include  
9 each of the following:

10 “(aa) The results of an in-  
11 quiry by an environmental pro-  
12 fessional.

13 “(bb) Interviews with past  
14 and present owners, operators,  
15 and occupants of the facility and  
16 the facility’s real property for the  
17 purpose of gathering information  
18 regarding the potential for con-  
19 tamination at the facility and the  
20 facility’s real property.

21 “(cc) Reviews of historical  
22 sources, such as chain of title  
23 documents, aerial photographs,  
24 building department records, and  
25 land use records to determine



1 previous uses and occupancies of  
2 the real property since the prop-  
3 erty was first developed.

4 “(dd) Searches for recorded  
5 environmental cleanup liens, filed  
6 under Federal, State, or local  
7 law, against the facility or the fa-  
8 cility’s real property.

9 “(ee) Reviews of Federal,  
10 State, and local government  
11 records (such as waste disposal  
12 records), underground storage  
13 tank records, and hazardous  
14 waste handling, generation, treat-  
15 ment, disposal, and spill records,  
16 concerning contamination at or  
17 near the facility or the facility’s  
18 real property.

19 “(ff) Visual inspections of  
20 the facility and facility’s real  
21 property and of adjoining prop-  
22 erties.

23 “(gg) Specialized knowledge  
24 or experience on the part of the  
25 defendant.

1           “(hh) Consideration of the  
2           relationship of the purchase price  
3           to the value of the property if the  
4           property was uncontaminated.

5           “(ii) Commonly known or  
6           reasonably ascertainable informa-  
7           tion about the property.

8           “(jj) Consideration of the  
9           degree of obviousness of the pres-  
10          ence or likely presence of con-  
11          tamination at the property, and  
12          the ability to detect such con-  
13          tamination by appropriate inves-  
14          tigation.

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

23          (b) STANDARDS AND PRACTICES.—

24                (1) ESTABLISHMENT BY REGULATION.—The  
25          Administrator of the Environmental Protection

1       Agency shall issue the regulation required by section  
2       101(35)(B)(ii) of the Comprehensive Environmental  
3       Response, Compensation, and Liability Act of 1980,  
4       as added by subsection (a), not later than 1 year  
5       after the date of enactment of this Act.

6           (2) INTERIM STANDARDS AND PRACTICES.—  
7       Until the Administrator issues the regulation de-  
8       scribed in paragraph (1), in making a determination  
9       under section 101(35)(B)(i) of the Comprehensive  
10      Environmental Response, Compensation, and Liabil-  
11      ity Act of 1980, as added by subsection (a), there  
12      shall be taken into account—

13           (A) any specialized knowledge or experi-  
14      ence on the part of the defendant;

15           (B) the relationship of the purchase price  
16      to the value of the property if the property was  
17      uncontaminated;

18           (C) commonly known or reasonably ascer-  
19      tainable information about the property;

20           (D) the degree of obviousness of the pres-  
21      ence or likely presence of contamination at the  
22      property; and

23           (E) the ability to detect the contamination  
24      by appropriate investigation.

## **TITLE IV—SELECTION OF REMEDIAL ACTIONS**

### **SEC. 401. DEFINITIONS.**

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 306(a), is amended by adding at the end the following:

“(42) ACTUAL OR PLANNED OR REASONABLY ANTICIPATED FUTURE USE OF THE LAND AND WATER RESOURCES.—The term ‘actual or planned or reasonably anticipated future use of the land and water resources’ means—

“(A) the actual use of the land, surface water, and ground water at a facility at the time of the initiation of the facility evaluation; and

“(B)(i) with respect to land—

“(I) the use of land that is authorized by the zoning or land use decisions formally adopted, at or prior to the time of the initiation of the facility evaluation, by the local land use planning authority for a facility and the land immediately adjacent to the facility; and

1           “(II) any other reasonably anticipated  
2           use that has a substantial probability of  
3           occurring based on recent (as of the time  
4           of the determination) development patterns  
5           in the area in which the facility is located  
6           and on population projections for the area;  
7           and

8           “(ii) with respect to water resources, the  
9           future use of the surface water and ground  
10          water that is potentially affected by releases  
11          from a facility that is reasonably anticipated, by  
12          a local government or other governmental unit  
13          that regulates ground water use or ground  
14          water use planning in the vicinity of the facility,  
15          on the earlier of—

16               “(I) the date of issuance of the first  
17               record of decision; or

18               “(II) the initiation of the facility eval-  
19               uation.

20           “(43) SIGNIFICANT ECOSYSTEM.—The term  
21           ‘significant ecosystem’, for the purpose of section  
22           121(a)(1)(B), means an ecosystem that exhibits a  
23           uniqueness, particular value, or historical presence  
24           or that is widely recognized as a significant resource  
25           at the national, State or local level.

1           “(44) VALUABLE ECOSYSTEM.—The term ‘valu-  
2       able ecosystem’ means an ecosystem that is a known  
3       source of significant human or ecological benefits for  
4       its function.

5           “(45) SUSTAINABLE ECOSYSTEM.—The term  
6       ‘sustainable ecosystem’ means an ecosystem that has  
7       redundancy and resiliency sufficient to enable the  
8       ecosystem to continue to function and provide bene-  
9       fits within the normal range of its variability not-  
10      withstanding exposure to hazardous substances re-  
11      sulting from releases.

12          “(46) ECOLOGICAL RESOURCE.—The term ‘eco-  
13      logical resource’ means land, fish, wildlife, biota, air,  
14      surface water, and ground water within an eco-  
15      system.

16          “(47) SIGNIFICANT RISK TO ECOLOGICAL RE-  
17      SOURCES THAT ARE NECESSARY TO THE SUSTAIN-  
18      ABILITY OF A SIGNIFICANT ECOSYSTEM OR VALU-  
19      ABLE ECOSYSTEM.—The term ‘significant risk to ec-  
20      ological resources that are necessary to the sustain-  
21      ability of a significant ecosystem or valuable eco-  
22      system’ means the risk associated with exposures  
23      and impacts resulting from the release of hazardous  
24      substances which together reduce or eliminate the  
25      sustainability (within the meaning of paragraph

1 (45)) of a significant ecosystem or valuable eco-  
2 system.”.

3 **SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL**  
4 **ACTIONS.**

5 Section 121 of the Comprehensive Environmental Re-  
6 sponse, Compensation, and Liability Act of 1980 (42  
7 U.S.C. 9621) is amended—

8 (1) by striking the section heading and sub-  
9 sections (a) and (b) and inserting the following:

10 **“SEC. 121. SELECTION AND IMPLEMENTATION OF REME-**  
11 **DIAL ACTIONS.**

12 **“(a) GENERAL RULES.—**

13 **“(1) SELECTION OF MOST COST-EFFECTIVE RE-**  
14 **MEDIAL ACTION THAT PROTECTS HUMAN HEALTH**  
15 **AND THE ENVIRONMENT.—**

16 **“(A) IN GENERAL.—**The Administrator  
17 shall select a remedial action that is the most  
18 cost-effective means of achieving the goals of  
19 protecting human health and the environment  
20 as stated in subparagraph (B) using the criteria  
21 stated in subparagraph (C).

22 **“(B) GOALS OF PROTECTING HUMAN**  
23 **HEALTH AND THE ENVIRONMENT.—**

24 **“(i) PROTECTION OF HUMAN**  
25 **HEALTH.—**A remedial action shall be con-

1           sidered to protect human health if, consid-  
2           ering the expected exposures associated  
3           with the actual or planned or reasonably  
4           anticipated future use of the land and  
5           water resources, the remedial action  
6           achieves a residual risk—

7                   “(I) from exposure to carcino-  
8                   genic hazardous substances, pollut-  
9                   ants, or contaminants such that cu-  
10                  mulative lifetime additional cancer  
11                  from exposure to hazardous sub-  
12                  stances from releases at the facility  
13                  range from  $10^{-4}$  to  $10^{-6}$  for the af-  
14                  fected population; and

15                  “(II) from exposure to  
16                  noncarcinogenic hazardous sub-  
17                  stances, pollutants, or contaminants  
18                  at the facility that does not pose an  
19                  appreciable risk of deleterious effects.

20                  “(ii) PROTECTION OF THE ENVIRON-  
21                  MENT.—A remedial action shall be consid-  
22                  ered to protect the environment if, based  
23                  on the actual or planned or reasonably an-  
24                  ticipated future use of the land and water  
25                  resources, the remedial action will protect



1           against significant risks to ecological re-  
2           sources that are necessary to the sustain-  
3           ability of a significant ecosystem or valu-  
4           able ecosystem and will not interfere with  
5           a sustainable functional ecosystem.

6           “(C) REMEDY SELECTION CRITERIA.—In  
7           selecting a remedial action from among alter-  
8           natives that achieve the goals stated in sub-  
9           paragraph (B), the Administrator shall balance  
10          the following factors, ensuring that no single  
11          factor predominates over the others:

12               “(i) The effectiveness of the remedy in  
13               protecting human health and the environ-  
14               ment.

15               “(ii) The reliability of the remedial ac-  
16               tion in achieving the protectiveness stand-  
17               ards over the long term.

18               “(iii) Any short-term risk to the af-  
19               fected community, those engaged in the re-  
20               medial action effort, and to the environ-  
21               ment posed by the implementation of the  
22               remedial action.

23               “(iv) The acceptability of the remedial  
24               action to the affected community.

1                   “(v) The implementability and tech-  
2                   nical practicability of the remedial action  
3                   from an engineering perspective.

4                   “(2) TECHNICAL IMPRACTICABILITY AND UN-  
5                   REASONABLE COST.—

6                   “(A) MINIMIZATION OF RISK.—If the Ad-  
7                   ministrator finds that achieving the goals stated  
8                   in paragraph (1)(B), is technically impractica-  
9                   ble or unreasonably costly, the Administrator  
10                  shall evaluate remedial measures that mitigate  
11                  the risks to human health and the environment  
12                  and select a technically practicable remedial ac-  
13                  tion that minimizes the risk to human health  
14                  and the environment by cost-effective means.

15                  “(B) BASIS FOR FINDING.—A finding of  
16                  technical impracticability may be made on the  
17                  basis of a determination, supported by appro-  
18                  priate documentation, that, at the time at  
19                  which the finding is made—

20                       “(i) there is no known reliable means  
21                       of achieving at a reasonable cost the goals  
22                       stated in paragraph (1)(B); and

23                       “(ii) it has not been shown that such  
24                       a means is likely to be developed within a  
25                       reasonable period of time.

1           “(3) PRESUMPTIVE REMEDIAL ACTIONS.—A re-  
2       medial action that implements a presumptive reme-  
3       dial action issued under section 128 shall be consid-  
4       ered to achieve the goals stated in paragraph (1)(B)  
5       and balance adequately the factors stated in para-  
6       graph (1)(C).

7           “(4) GROUND WATER.—

8           “(A) IN GENERAL.—A remedial action  
9       shall protect uncontaminated ground water that  
10      is suitable for use as drinking water by humans  
11      or livestock in the water’s condition at the time  
12      of initiation of the facility evaluation.

13          “(B) CONSIDERATIONS.—A decision under  
14      subparagraph (A) regarding remedial action for  
15      ground water shall take into consideration—

16           “(i) the actual or planned or reason-  
17          ably anticipated future use of the ground  
18          water and the timing of that use;

19           “(ii) any attenuation or  
20          biodegradation that would occur if no re-  
21          medial action were taken; and

22           “(iii) the criteria stated in paragraph  
23          (1)(C).

24          “(C) OFFICIAL CLASSIFICATION.—For the  
25      purposes of subparagraph (A), there shall be no

1 presumption that ground water that is suitable  
2 for use as drinking water by humans or live-  
3 stock is the actual or planned or reasonably an-  
4 ticipated future use of the ground water.

5 “(D) UNCONTAMINATED GROUND  
6 WATER.—A remedial action for protecting  
7 uncontaminated ground water may be based on  
8 natural attenuation or biodegradation so long  
9 as the remedial action does not interfere with  
10 the actual or planned or reasonably anticipated  
11 future use of the ground water.

12 “(E) CONTAMINATED GROUND WATER.—A  
13 remedial action for contaminated ground water  
14 may include point-of-use treatment.

15 “(5) LEGALLY APPLICABLE REQUIREMENTS.—  
16 A remedial action shall not be required to attain  
17 any standard that, without regard to this paragraph,  
18 would be legally applicable under any other Federal  
19 or State law, except that in the case of a removal  
20 or remedial action involving the transfer of hazard-  
21 ous waste off-site, that hazardous waste may be  
22 transferred only to a facility that is permitted to  
23 treat, store, or dispose such waste under section  
24 3005 of the Solid Waste Disposal Act (42 U.S.C.

1       6925) or, if applicable, the Toxic Substances Control  
2       Act (15 U.S.C. 2601 et seq.).

3           “(6) OTHER CONSIDERATIONS APPLICABLE TO  
4       REMEDIAL ACTIONS.—A remedial action that uses  
5       institutional and engineering controls shall be con-  
6       sidered to be on an equal basis with all other reme-  
7       dial action alternatives.”;

8           (2) by redesignating subsection (c) as sub-  
9       section (b), and, in the first sentence of that sub-  
10      section, by striking “5 years” and inserting “7  
11      years”;

12          (3) by redesignating subsection (e) as sub-  
13      section (c); and

14          (4) by redesignating subsection (f) as sub-  
15      section (d).

16   **SEC. 403. REMEDY SELECTION METHODOLOGY.**

17      Title I of the Comprehensive Environmental Re-  
18      sponse, Compensation, and Liability Act of 1980 (42  
19      U.S.C. 9601 et seq.) is amended by adding at the end  
20      the following:

21   **“SEC. 127. FACILITY-SPECIFIC RISK EVALUATIONS.**

22      “(a) USES.—

23          “(1) IN GENERAL.—A facility-specific risk eval-  
24      uation shall be used to—

1           “(A) identify the significant components of  
2 potential risk posed by a facility;

3           “(B) screen out potential contaminants,  
4 areas, or exposure pathways from further study  
5 at a facility;

6           “(C) compare the relative protectiveness of  
7 alternative potential remedies proposed for a fa-  
8 cility; and

9           “(D) demonstrate that the remedial action  
10 selected for a facility is capable of protecting  
11 human health and the environment considering  
12 the actual or planned or reasonably anticipated  
13 future use of the land and water resources.

14           “(2) COMPLIANCE WITH PRINCIPLES.—A facil-  
15 ity-specific risk evaluation shall comply with the  
16 principles stated in this section to ensure that—

17           “(A) actual or planned or reasonably an-  
18 ticipated future use of the land and water re-  
19 sources is given appropriate consideration; and

20           “(B) all of the components of the evalua-  
21 tion are, to the maximum extent practicable,  
22 scientifically objective and inclusive of all rel-  
23 evant data.

24           “(b) RISK EVALUATION PRINCIPLES.—A facility-spe-  
25 cific risk evaluation shall—

1           “(1) be based on actual or plausible estimates  
2 of exposure considering the actual or planned or rea-  
3 sonably anticipated future use of the land and water  
4 resources;

5           “(2) be comprised of components each of which  
6 is, to the maximum extent practicable, scientifically  
7 objective, and inclusive of all relevant data;

8           “(3) use chemical and facility-specific data and  
9 analysis (such as toxicity, exposure, and fate and  
10 transport evaluations) in preference to default as-  
11 sumptions;

12           “(4) use a range and distribution of realistic  
13 and plausible assumptions when chemical and facil-  
14 ity-specific data are not available;

15           “(5) use mathematical models that take into ac-  
16 count the fate and transport of hazardous sub-  
17 stances, pollutants, or contaminants, in the environ-  
18 ment instead of relying on default assumptions; and

19           “(6) use credible hazard identification and dose/  
20 response assessments.

21           “(c) RISK COMMUNICATION PRINCIPLES.—The docu-  
22 ment reporting the results of a facility-specific risk evalua-  
23 tion shall—

24           “(1) contain an explanation that clearly com-  
25 municates the risks at the facility;

1           “(2) identify and explain all assumptions used  
2           in the evaluation, all alternative assumptions, the  
3           policy or value judgments used in choosing the as-  
4           sumptions, and whether empirical data conflict with  
5           or validate the assumptions;

6           “(3) present—

7                   “(A) a range and distribution of exposure  
8                   and risk estimates, including, if numerical esti-  
9                   mates are provided, central estimates of expo-  
10                  sure and risk using—

11                           “(i) the most plausible assumptions or  
12                           a weighted combination of multiple as-  
13                           sumptions based on different scenarios; or

14                           “(ii) any other methodology designed  
15                           to characterize the most plausible estimate  
16                           of risk given the scientific information that  
17                           is available at the time of the facility-spe-  
18                           cific risk evaluation; and

19                   “(B) a statement of the nature and mag-  
20                   nitude of the scientific and other uncertainties  
21                   associated with those estimates;

22           “(4) state the size of the population potentially  
23           at risk from releases from the facility and the likeli-  
24           hood that potential exposures will occur based on the



1 actual or planned or reasonably anticipated future  
2 use of the land and water resources; and

3 “(5) compare the risks from the facility to  
4 other risks commonly experienced by members of the  
5 local community in their daily lives and similar risks  
6 regulated by the Federal Government.

7 “(d) REGULATIONS.—Not later than 18 months after  
8 the date of enactment of this section, the Administrator  
9 shall issue a final regulation implementing this section  
10 that promotes a realistic characterization of risk that nei-  
11 ther minimizes nor exaggerates the risks and potential  
12 risks posed by a facility or a proposed remedial action.

13 “(e) DETERMINATION OF ACTUAL OR PLANNED OR  
14 REASONABLY ANTICIPATED FUTURE USE OF THE LAND  
15 AND WATER RESOURCES.—The Administrator shall de-  
16 termine the actual or planned or reasonably anticipated  
17 future use of the land and water resources at a facility  
18 by consulting the community response organization, facil-  
19 ity owners and operators, potentially responsible parties,  
20 elected municipal and county officials, and other persons.

21 **“SEC. 128. PRESUMPTIVE REMEDIAL ACTIONS.**

22 “(a) IN GENERAL.—Not later than 1 year after the  
23 date of enactment of this section, the Administrator shall  
24 issue a final regulation establishing presumptive remedial  
25 actions for commonly encountered types of facilities with

1 reasonably well understood contamination problems and  
2 exposure potential.

3 “(b) PRACTICABILITY AND COST-EFFECTIVENESS.—  
4 Such presumptive remedies must have been demonstrated  
5 to be technically practicable and cost-effective methods of  
6 achieving the goals of protecting human health and the  
7 environment stated in section 121(a)(1)(B).

8 “(c) VARIATIONS.—The Administrator may issue var-  
9 ious presumptive remedial actions based on various uses  
10 of land and water resources, various environmental media,  
11 and various types of hazardous substances, pollutants, or  
12 contaminants.

13 “(d) ENGINEERING CONTROLS.—Presumptive reme-  
14 dial actions are not limited to treatment remedies, but  
15 may be based on, or include, institutional and standard  
16 engineering controls.”.

17 **SEC. 404. REMEDY SELECTION PROCEDURES.**

18 Title I of the Comprehensive Environmental Re-  
19 sponse, Compensation, and Liability Act of 1980 (42  
20 U.S.C. 9601 et seq.), as amended by section 403, is  
21 amended by adding at the end the following:

22 **“SEC. 129. REMEDIAL ACTION PLANNING AND IMPLEMEN-**  
23 **TATION.**

24 “(a) IN GENERAL.—

25 “(1) BASIC RULES.—

1           “(A) PROCEDURES.—A remedial action  
2 shall be developed and selected in accordance  
3 with the procedures set forth in this section.

4           “(B) NO OTHER PROCEDURES OR RE-  
5 QUIREMENTS.—The procedures stated in this  
6 section are in lieu of any procedures or require-  
7 ments under any other law to conduct remedial  
8 investigations, feasibility studies, record of deci-  
9 sions, remedial designs, or remedial actions.

10          “(C) LIMITED REVIEW.—In a case in  
11 which the potentially responsible parties pre-  
12 pare a remedial action plan, only the facility  
13 evaluation, proposed remedial action plan, and  
14 final remedial design shall be subject to review,  
15 comment, and approval by the Administrator.

16          “(D) NATIONAL CONTINGENCY PLAN.—  
17 The Administrator shall conform the National  
18 Contingency Plan regulations to reflect the pro-  
19 cedures stated in this section.

20          “(2) USE OF PRESUMPTIVE REMEDIAL AC-  
21 TIONS.—

22               “(A) PROPOSAL TO USE.—In a case in  
23 which a presumptive remedial action applies,  
24 the Administrator (if the Administrator is con-  
25 ducting the remedial action) or the preparer of

1 the remedial action plan may, after conducting  
2 a facility evaluation, propose a presumptive re-  
3 medial action for the facility, if the Adminis-  
4 trator or preparer shows with appropriate docu-  
5 mentation that the facility fits the generic clas-  
6 sification for which a presumptive remedial ac-  
7 tion has been issued and performs an engineer-  
8 ing evaluation to demonstrate that the pre-  
9 sumptive remedial action can be applied at the  
10 facility.

11 “(B) LIMITATION.—The Administrator  
12 may not require a potentially responsible party  
13 to implement a presumptive remedial action.

14 “(b) REMEDIAL ACTION PLANNING PROCESS.—

15 “(1) IN GENERAL.—The Administrator or a po-  
16 tentially responsible party shall prepare and imple-  
17 ment a remedial action plan for a facility.

18 “(2) CONTENTS.—A remedial action plan shall  
19 consist of—

20 “(A) the results of a facility evaluation, in-  
21 cluding any screening analysis performed at the  
22 facility;

23 “(B) a discussion of the potentially viable  
24 remedies that are considered to be reasonable

1 under section 121(a) and how they balance the  
2 factors stated in section 121(a)(1)(C);

3 “(C) a description of the remedial action to  
4 be taken;

5 “(D) a description of the facility-specific  
6 risk-based evaluation under section 127 and a  
7 demonstration that the selected remedial ac-  
8 tion—

9 “(i) will achieve the goals stated in  
10 section 121(a)(1)(B); or

11 “(ii) satisfies the requirements of sec-  
12 tion 128; and

13 “(E) a realistic schedule for conducting the  
14 remedial action, taking into consideration facil-  
15 ity-specific factors.

16 “(3) WORK PLAN.—

17 “(A) IN GENERAL.—Prior to preparation  
18 of a remedial action plan, the preparer shall de-  
19 velop a work plan, including a community infor-  
20 mation and participation plan, which generally  
21 describes how the remedial action plan will be  
22 developed.

23 “(B) SUBMISSION.—A work plan shall be  
24 submitted to the Administrator, the State, the  
25 community response organization, the local li-

1           brary, and any other public facility designated  
2           by the Administrator.

3           “(C) PUBLICATION.—The Administrator,  
4           or the preparer of the plan, shall publish in a  
5           newspaper of general circulation in the area  
6           where the facility is located, and post in con-  
7           spicuous places in the local community, a notice  
8           announcing that the work plan is available for  
9           review at the local library and that comments  
10          concerning the work plan can be submitted to  
11          the preparer of the work plan, the Adminis-  
12          trator, the State, or the local community re-  
13          sponse organization.

14          “(D) FORWARDING OF COMMENTS.—If  
15          comments are submitted to the Administrator,  
16          the State, or the community response organiza-  
17          tion, the Administrator, State, or community  
18          response organization shall forward the com-  
19          ments to the preparer of the work plan.

20          “(4) FACILITY EVALUATION.—

21                 “(A) IN GENERAL.—The Administrator  
22                 shall conduct a facility evaluation at each facil-  
23                 ity to characterize the risk posed by the facility  
24                 by gathering enough information necessary to—

1           “(i) assess potential remedial alter-  
2 natives, including ascertaining, to the de-  
3 gree appropriate, the volume and nature of  
4 the contaminants, their location, potential  
5 exposure pathways and receptors;

6           “(ii) discern the actual or planned or  
7 reasonably anticipated future use of the  
8 land and water resources; and

9           “(iii) screen out any uncontaminated  
10 areas, contaminants, and potential path-  
11 ways from further consideration.

12           “(B) SUBMISSION.—A draft facility eval-  
13 uation shall be submitted to the Administrator  
14 for approval.

15           “(C) PUBLICATION.—Not later than 30  
16 days after submission, or in a case in which the  
17 Administrator is preparing the remedial action  
18 plan, after the completion of the draft facility  
19 evaluation, the Administrator shall publish in a  
20 newspaper of general circulation in the area  
21 where the facility is located, and post in con-  
22 spicuous places in the local community, a notice  
23 announcing that the draft facility evaluation is  
24 available for review and that comments con-  
25 cerning the evaluation can be submitted to the

1 Administrator, the State, and the community  
2 response organization.

3 “(D) AVAILABILITY OF COMMENTS.—If  
4 comments are submitted to the Administrator,  
5 the State, or the community response organiza-  
6 tion, the Administrator, State, or community  
7 response organization shall make the comments  
8 available to the preparer of the facility evalua-  
9 tion.

10 “(E) NOTICE OF APPROVAL.—If the Ad-  
11 ministrator approves a facility evaluation, the  
12 Administrator shall—

13 “(i) notify the community response or-  
14 ganization; and

15 “(ii) publish in a newspaper of general  
16 circulation in the area where the facility is  
17 located, and post in conspicuous places in  
18 the local community, a notice of approval.

19 “(F) NOTICE OF DISAPPROVAL.—If the  
20 Administrator does not approve a facility eval-  
21 uation, the Administrator shall—

22 “(i) identify to the preparer of the fa-  
23 cility evaluation, with specificity, any defi-  
24 ciencies in the submission; and



1           “(ii) request that the preparer submit  
2           a revised facility evaluation within a rea-  
3           sonable period of time.

4           “(5) PROPOSED REMEDIAL ACTION PLAN.—

5           “(A) SUBMISSION.—In a case in which a  
6           potentially responsible party prepares a reme-  
7           dial action plan, the preparer shall submit the  
8           remedial action plan to the Administrator for  
9           approval and provide a copy to the local library.

10          “(B) PUBLICATION.—After receipt of the  
11          proposed remedial action plan, or in a case in  
12          which the Administrator is preparing the reme-  
13          dial action plan, after the completion of the re-  
14          medial action plan, the Administrator shall  
15          cause to be published in a newspaper of general  
16          circulation in the area where the facility is lo-  
17          cated and posted in other conspicuous places in  
18          the local community a notice announcing that  
19          the proposed remedial action plan is available  
20          for review at the local library and that com-  
21          ments concerning the remedial action plan can  
22          be submitted to the Administrator, the State,  
23          and the community response organization, and  
24          that persons may request that the Adminis-  
25          trator hold a public hearing.

1           “(C) AVAILABILITY OF COMMENTS.—If  
2       comments are submitted to a State or the com-  
3       munity response organization, the State or com-  
4       munity response organization shall make the  
5       comments available to the preparer of the pro-  
6       posed remedial action plan.

7           “(D) HEARING.—The Administrator shall  
8       hold a public hearing at which the proposed re-  
9       medial action plan may be presented and public  
10      comment received.

11          “(E) APPROVAL.—

12           “(i) IN GENERAL.—The Adminis-  
13       trator shall approve a proposed remedial  
14       action plan if the plan—

15           “(I) contains the information de-  
16       scribed in subsection (b); and

17           “(II) achieves the goals stated in  
18       section 121(a)(1)(B).

19           “(ii) DEFAULT.—If the Administrator  
20       fails to issue a notice of disapproval of a  
21       proposed remedial action plan in accord-  
22       ance with subparagraph (G) within 90  
23       days after the proposed plan is submitted,  
24       the plan shall be considered to be approved  
25       and its implementation fully authorized.

1           “(F) NOTICE OF APPROVAL.—If the Ad-  
2           ministrator approves a proposed remedial action  
3           plan, the Administrator shall—

4                   “(i) notify the community response or-  
5                   ganization; and

6                   “(ii) publish in a newspaper of general  
7                   circulation in the area where the facility is  
8                   located, and post in conspicuous places in  
9                   the local community, a notice of approval.

10           “(G) NOTICE OF DISAPPROVAL.—If the  
11           Administrator does not approve a proposed re-  
12           medial action plan, the Administrator shall—

13                   “(i) inform the preparer of the pro-  
14                   posed remedial action plan, with specific-  
15                   ity, of any deficiencies in the submission;  
16                   and

17                   “(ii) request that the preparer submit  
18                   a revised proposed remedial action plan  
19                   within a reasonable time.

20           “(6) IMPLEMENTATION OF REMEDIAL ACTION  
21           PLAN.—A remedial action plan that has been ap-  
22           proved or is considered to be approved under para-  
23           graph (5) shall be implemented in accordance with  
24           the schedule set forth in the remedial action plan.

25           “(7) REMEDIAL DESIGN.—

1           “(A) SUBMISSION.—A remedial design  
2 shall be submitted to, or in a case in which the  
3 Administrator is preparing the remedial action  
4 plan, completed by, the Administrator.

5           “(B) PUBLICATION.—After receipt (or  
6 completion) of the remedial design, the Admin-  
7 istrator shall—

8               “(i) notify the community response or-  
9 ganization; and

10               “(ii) cause a notice of submission or  
11 completion of the remedial design to be  
12 published in a newspaper of general cir-  
13 culation and posted in conspicuous places  
14 in the area where the facility is located.

15           “(C) COMMENT.—The Administrator shall  
16 provide an opportunity to the public to submit  
17 written comments on the remedial design.

18           “(D) APPROVAL.—Not later than 90 days  
19 after the submission (or completion) of the re-  
20 medial design, the Administrator shall approve  
21 or disapprove the remedial design.

22           “(E) NOTICE OF APPROVAL.—If the Ad-  
23 ministrator approves a remedial design the Ad-  
24 ministrator shall—

1                   “(i) notify the community response or-  
2                   ganization; and

3                   “(ii) publish in a newspaper of general  
4                   circulation in the area where the facility is  
5                   located, and post in conspicuous places in  
6                   the local community, a notice of approval.

7                   “(F) NOTICE OF DISAPPROVAL.—If the  
8                   Administrator disapproves the remedial design,  
9                   the Administrator shall identify with specificity  
10                  any deficiencies in the submission and allow the  
11                  preparer submitting a remedial design a reason-  
12                  able time to submit a revised remedial design.

13                  “(c) JUDICIAL REVIEW.—Notwithstanding any other  
14                  provision of this Act or any other law, an approval or dis-  
15                  approval of a remedial action plan the implementation of  
16                  which is projected to cost more than \$15,000,000 shall  
17                  be final action of the Administrator subject to judicial re-  
18                  view in United States district court.

19                  “(d) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

20                  “(1) NOTICE OF SIGNIFICANT DEVIATION.—If  
21                  the Administrator determines that the implementa-  
22                  tion of the remedial action plan has deviated signifi-  
23                  cantly from the plan, the Administrator shall so no-  
24                  tify the implementing party and require the imple-  
25                  menting party to—

1           “(A) comply with the terms of the remedial  
2           action plan; or

3           “(B) submit a notice for modifying the  
4           plan,  
5           at the option of the implementing party.

6           “(2) FAILURE TO COMPLY.—If the implement-  
7           ing party fails to either comply with the plan or sub-  
8           mit a proposed modification, the Administrator may  
9           pursue all appropriate enforcement pursuant to this  
10          Act.

11          “(e) MODIFICATIONS TO REMEDIAL ACTION PLAN.—

12           “(1) BY THE ADMINISTRATOR.—

13           “(A) IN GENERAL.—If the Administrator  
14           proposes a modification to the plan, the Admin-  
15           istrator shall demonstrate that the modification  
16           constitutes the most cost-effective remedial ac-  
17           tion that is technologically feasible, is not un-  
18           reasonably costly, and achieves the goals of pro-  
19           tecting human health and the environment stat-  
20           ed in section 121(a)(1)(B).

21           “(B) NOTICE AND COMMENT.—The Ad-  
22           ministrator shall provide the implementing  
23           party and the community response organization  
24           at least 30 days’ advance notice and oppor-

1           tunity to comment on any such proposed modi-  
2           fication.

3           “(2) BY THE IMPLEMENTING PARTY.—An im-  
4           plementing party that proposes a minor modification  
5           to or clarification of a remedial action plan shall, at  
6           least 10 days prior to the proposed implementation  
7           of the modification or clarification, submit to the  
8           Administrator and to the community response orga-  
9           nization a description of the proposed modification  
10          or clarification and documentation showing that the  
11          proposed modification or clarification will not cause  
12          the remedial action to fail to achieve the goals of  
13          section 121(a)(1)(B).”.

14 **SEC. 405. COMPLETION OF REMEDIAL ACTION AND**  
15 **DELISTING.**

16          Title I of the Comprehensive Environmental Re-  
17          sponse, Compensation, and Liability Act of 1980 (42  
18          U.S.C. 9601 et seq.), as amended by section 404, is  
19          amended by adding at the end the following:

20 **“SEC. 130. COMPLETION OF REMEDIAL ACTION AND**  
21 **DELISTING.**

22          “(a) IN GENERAL.—

23                 “(1) PROPOSED NOTICE OF COMPLETION AND  
24                 PROPOSED DELISTING.—Not later than 60 days  
25                 after the completion of a remedial action by the Ad-

1       ministrator, or not later than 60 days after receipt  
2       of a notice of such completion from the implement-  
3       ing party, the Administrator shall publish a notice of  
4       completion and proposed delisting of the facility  
5       from the National Priorities List in the Federal  
6       Register and in a newspaper of general circulation  
7       in the area where the facility is located.

8               “(2) COMMENTS.—The public shall be provided  
9       30 days in which to submit comments on the notice  
10      of completion and proposed delisting.

11              “(3) FINAL NOTICE.—Not later than 60 days  
12      after the end of the comment period, the Adminis-  
13      trator shall—

14                      “(A) issue a final notice of completion and  
15                      delisting or a notice of withdrawal of the pro-  
16                      posed notice until the implementation of the re-  
17                      medial action is determined to be complete; and

18                      “(B) publish the notice in the Federal  
19                      Register and in a newspaper of general circula-  
20                      tion in the area where the facility is located.

21              “(4) FAILURE TO ACT.—If the Administrator  
22      fails to publish a notice of withdrawal within the 60-  
23      day period described in paragraph (3)—

24                      “(A) the remedial action plan shall be  
25                      deemed to have been completed; and



1           “(B) the facility shall be delisted by oper-  
2           ation of law.

3           “(5) EFFECT OF DELISTING.—The delisting of  
4           a facility shall have no effect on—

5           “(A) liability allocation requirements or  
6           cost-recovery provisions otherwise provided in  
7           this Act; or

8           “(B) the obligation of any person to pro-  
9           vide continued operation and maintenance.

10          “(b) CERTIFICATION.—A final notice of completion  
11          and delisting shall include a certification by the Adminis-  
12          trator that the facility has met all of the requirements of  
13          the remedial action plan (except requirements for contin-  
14          ued operation and maintenance).

15          “(c) RELEASE FROM LIABILITY.—

16          “(1) FACILITY AVAILABLE FOR UNRESTRICTED  
17          USE.—If, after completion of remedial action, a fa-  
18          cility is available for unrestricted use and there is no  
19          need for continued operation and maintenance, the  
20          potentially responsible parties shall have no further  
21          liability under any Federal, State, or local law (in-  
22          cluding any regulation) for remediation at the facil-  
23          ity, unless the Administrator determines, based on  
24          new and reliable factual information about the facil-  
25          ity, that the facility does not meet the goals stated

1 in section 121(a)(1)(B) considering the actual or  
2 planned or reasonably anticipated future use of the  
3 land and water resources.

4 “(2) FACILITY NOT AVAILABLE FOR UNRE-  
5 STRICTED USE.—If, after completion of remedial ac-  
6 tion, a facility is not available for unrestricted use  
7 or there are continued operation and maintenance  
8 requirements that preclude use of the facility, the  
9 Administrator shall—

10 “(A) review the status of the facility every  
11 7 years; and

12 “(B) require additional remedial action at  
13 the facility if the Administrator determines,  
14 after notice and opportunity for hearing, that  
15 the facility does not meet the goals of section  
16 121(a)(1) (B), (C), and (D) considering the ac-  
17 tual or planned or reasonably anticipated future  
18 use of the land and water resources con-  
19 templated in the remedial action plan.

20 “(3) FACILITIES AVAILABLE FOR RESTRICTED  
21 USE.—The Administrator may determine that a fa-  
22 cility or portion of a facility is available for re-  
23 stricted use while remediation response actions are  
24 under way. The Administrator shall make available  
25 for use any uncontaminated portions of the facility

1       where such uses would not interfere with ongoing  
2       operations and maintenance activities or endanger  
3       human health or the environment.

4           “(4) FAILURE TO MAKE TIMELY DIS-  
5       APPROVAL.—The issuance of a final notice of com-  
6       pletion and delisting or of a notice of withdrawal  
7       within the time required by subsection (a)(3) con-  
8       stitutes a nondiscretionary duty within the meaning  
9       of section 310(a)(2).

10       “(d) OPERATION AND MAINTENANCE.—The need to  
11      perform continued operation and maintenance at a facility  
12      shall not delay delisting of the facility or issuance of the  
13      certification if performance of operation and maintenance  
14      is subject to a legally enforceable agreement, order, or  
15      decree.

16       “(e) CHANGE OF USE OF FACILITY.—

17           “(1) PETITION.—Any person may petition the  
18      Administrator to change the use of a facility from  
19      that which was the basis of the remedial action plan.

20           “(2) GRANT.—The Administrator may grant a  
21      petition under paragraph (1) if the petitioner agrees  
22      to implement any additional remedial actions that  
23      the Administrator determines are necessary to con-  
24      tinue to meet the goals stated in section

1       121(a)(1)(B), considering the different use of the  
2       facility.

3           “(3) RESPONSIBILITY FOR RISK.—When a peti-  
4       tion has been granted under paragraph (2), the per-  
5       son requesting the change in use of the facility shall  
6       be responsible for all risk associated with altering  
7       the facility and all costs of implementing any nec-  
8       essary additional remedial actions.”.

9       **SEC. 406. TRANSITION RULES FOR FACILITIES CURRENTLY**  
10       **INVOLVED IN REMEDY SELECTION.**

11       Title I of the Comprehensive Environmental Re-  
12       sponse, Compensation, and Liability Act of 1980 (42  
13       U.S.C. 9601 et seq.), as amended by section 405, is  
14       amended by adding at the end the following:

15       **“SEC. 131. TRANSITION RULES FOR FACILITIES INVOLVED**  
16       **IN REMEDY SELECTION ON DATE OF ENACT-**  
17       **MENT.**

18       “(a) No RECORD OF DECISION.—

19           “(1) OPTION.—In the case of a facility or oper-  
20       able unit that, as of the date of enactment of this  
21       section, is the subject of a remedial investigation  
22       and feasibility study (whether completed or incom-  
23       plete), the potentially responsible parties or the Ad-  
24       ministrator may elect to follow the remedial action  
25       plan process stated in section 129 rather than the

1 remedial investigation and feasibility study and  
2 record of decision process under regulations in effect  
3 on the date of enactment of this section that would  
4 otherwise apply if the requesting party notifies the  
5 Administrator and other potentially responsible par-  
6 ties of the election not later than 90 days after the  
7 date of enactment of this section.

8 “(2) SUBMISSION OF FACILITY EVALUATION.—  
9 In a case in which the potentially responsible parties  
10 have or the Administrator has made an election  
11 under subsection (a), the potentially responsible par-  
12 ties shall submit the proposed facility evaluation  
13 within 270 days after the date on which notice of  
14 the election is given.

15 “(b) CONSTRUCTION NOT BEGUN.—

16 “(1) DETERMINATION.—In the case of a facility  
17 or operable unit with respect to which a record of  
18 decision has been signed but construction has not  
19 yet begun prior to the date of enactment of this sec-  
20 tion, the Administrator or the State shall, at the re-  
21 quest of the implementer of the record of decision,  
22 conduct an expedited review to determine whether  
23 the application of section 127 would be likely to re-  
24 sult in the selection of a less costly remedial action

1       that achieves the goals of protecting human health  
2       and the environment stated in section 121(a)(1)(B).

3           “(2) DEFAULT.—Section 127 shall apply to a  
4       facility or operable unit in accordance with a request  
5       under paragraph (1) unless the Administrator or the  
6       State, prior to the date that is 90 days after the  
7       date on which the request is made, publishes a writ-  
8       ten finding that the application of section 127 would  
9       not be likely to result in the selection of a less costly  
10      remedial action that achieves the goals of protecting  
11      human health and the environment stated in section  
12      121(a)(1)(B).

13      “(c) ADDITIONAL CONSTRUCTION.—

14           “(1) IN GENERAL.—In the case of a facility or  
15      operable unit with respect to which a record of deci-  
16      sion has been signed and construction has begun  
17      prior to the date of enactment of this section, but  
18      for which additional construction or long-term oper-  
19      ation and maintenance activities are anticipated, the  
20      Administrator or the State shall, at the request of  
21      the implementer of the record of decision, conduct  
22      an expedited review to determine whether the appli-  
23      cation of section 127 would be likely to result in the  
24      selection of a remedial action that—

1           “(A) achieves a cost saving of at least 10  
2           percent over the life of the remedial action, in-  
3           cluding any long-term operation and mainte-  
4           nance, compared to the remedial action origi-  
5           nally selected; and

6           “(B) achieves the goals of protecting  
7           human health and the environment stated in  
8           section 121(a)(1)(B).

9           “(2) DEFAULT.—Section 127 shall apply to a  
10          facility or operable unit in accordance with a request  
11          under paragraph (1) unless the Administrator or the  
12          State, prior to the date that is 90 days after the  
13          date on which the request is made, publishes a writ-  
14          ten finding that the application of section 127 would  
15          not be likely to result in the selection of a remedial  
16          action that achieves a cost saving of at least 10 per-  
17          cent over the life of the remedial and achieves the  
18          goals of protecting human health and the environ-  
19          ment stated in section 121(a)(1)(B).

20          “(d) MEDIATION OF DISPUTES.—A dispute over the  
21          implementation of this section or over a written finding  
22          under subsection (b)(2) or (c)(2) shall be referred to medi-  
23          ation on an expedited basis without penalty to any per-  
24          son.”.

1 **SEC. 407. JUDICIAL REVIEW.**

2 (a) REVIEW OF CERTAIN ACTIONS.—Section 113(h)  
3 of the Comprehensive Environmental Response, Com-  
4 pensation, and Liability Act of 1980 (42 U.S.C. 9613(h))  
5 is amended by adding at the end the following:

6 “(6) An action under section 129(c).”.

7 (b) STAY.—Section 113(b) of the Comprehensive En-  
8 vironmental Response, Compensation, and Liability Act of  
9 1980 (42 U.S.C. 9613(b)) is amended by adding at the  
10 end the following: “In the case of a challenge under sec-  
11 tion 113(h)(6), the court may stay the implementation or  
12 initiation of the challenged actions pending judicial resolu-  
13 tion of the matter.”.

14 **SEC. 408. NATIONAL PRIORITIES LIST.**

15 (a) REVISION OF NATIONAL CONTINGENCY PLAN.—

16 (1) AMENDMENTS.—Section 105 of the Com-  
17 prehensive Environmental Response, Compensation,  
18 and Liability Act of 1980 (42 U.S.C. 9605) is  
19 amended—

20 (A) in subsection (a)(8) by adding at the  
21 end the following:

22 “(C) provision that in listing a site on the Na-  
23 tional Priority List, the Administrator shall not in-  
24 clude any parcel of real property at which no release  
25 has actually occurred, but to which a released haz-  
26 ardous substance, pollutant, or contaminant has mi-



1       grated in ground water that has moved through sub-  
2       surface strata from another parcel of real estate at  
3       which the release actually occurred, unless the  
4       ground water is in use as a public drinking water  
5       supply or was in such use at the time of the re-  
6       lease.”; and

7               (B) by adding at the end the following:

8       “(h) LISTING OF PARTICULAR PARCELS.—

9               “(1) DEFINITION.—In subsection (a)(8)(C) and  
10       paragraph (2) of this subsection, the term ‘parcel of  
11       real property’ means a parcel, lot, or tract of land  
12       that has a separate legal description from that of  
13       any other parcel, lot, or tract of land the legal de-  
14       scription and ownership of which has been recorded  
15       in accordance with the law of the State in which it  
16       is located.

17              “(2) STATUTORY CONSTRUCTION.—Nothing in  
18       subsection (a)(8)(C) shall be construed to limit the  
19       Administrator’s authority under section 104 to ob-  
20       tain access to and undertake response actions at any  
21       parcel of real property to which a released hazardous  
22       substance, pollutant, or contaminant has migrated in  
23       the ground water.”.

24              (2) REVISION OF NATIONAL PRIORITIES LIST.—

25       The President shall revise the National Priorities

1 List to conform with the amendment made by para-  
 2 graph (1) not later than 180 days of the date of en-  
 3 actment of this Act.

## 4 **TITLE V—LIABILITY** 5 **ALLOCATIONS**

### 6 **SEC. 501. ALLOCATION OF LIABILITY FOR MULTIPARTY** 7 **FACILITIES.**

8 Title I of the Comprehensive Environmental Re-  
 9 sponse, Compensation, and Liability Act of 1980 (42  
 10 U.S.C. 9601 et seq.), as amended by section 406, is  
 11 amended by adding at the end the following:

### 12 **“SEC. 132. ALLOCATION OF LIABILITY FOR MULTIPARTY** 13 **FACILITIES.**

14 “(a) DEFINITIONS.—In this section:

15 “(1) ALLOCATION PARTY.—The term ‘allocation  
 16 party’ means a party, named on a list of parties that  
 17 will be subject to the allocation process under this  
 18 section, issued by an allocator under subsection  
 19 (g)(3)(A).

20 “(2) ALLOCATOR.—The term ‘allocator’ means  
 21 an allocator retained to conduct an allocation for a  
 22 facility under subsection (f)(1).

23 “(3) MANDATORY ALLOCATION FACILITY.—The  
 24 term ‘mandatory allocation facility’ means—

1           “(A) a non-federally owned vessel or facil-  
2           ity listed on the National Priorities List for  
3           which the Administrator has approved a record  
4           of decision or a remedial action plan on or after  
5           June 15, 1995;

6           “(B) a federally owned facility listed on  
7           the National Priorities List for which the Ad-  
8           ministrator has approved a record of decision or  
9           a remedial action plan on or after June 15,  
10          1995, if 1 or more of the potentially responsible  
11          parties with respect to the facility is not a de-  
12          partment, agency, or instrumentality of the  
13          United States;

14          “(C) a non-federally owned vessel or facil-  
15          ity listed on the National Priorities List for  
16          which the Administrator has approved a record  
17          of decision prior to June 15, 1995, if the con-  
18          struction or the operation and maintenance in  
19          accordance with the record of decision has con-  
20          tinued after June 15, 1995; or

21          “(D) a federally owned facility listed on  
22          the National Priorities List for which the Ad-  
23          ministrator has approved a record of decision  
24          prior to June 15, 1995, and 1 or more of the  
25          potentially responsible parties is not a depart-

1           ment, agency, or instrumentality of the United  
2           States and the construction or the operation  
3           and maintenance in accordance with the record  
4           of decision has continued after June 15, 1995.

5           “(b) ALLOCATIONS OF LIABILITY.—

6           “(1) MANDATORY ALLOCATIONS.—For each  
7           mandatory allocation facility involving 2 or more po-  
8           tentially responsible parties, the Administrator shall  
9           conduct the allocation process under this section.

10          “(2) REQUESTED ALLOCATIONS.—For a facility  
11          (other than a mandatory allocation facility) involving  
12          2 or more potentially responsible parties, the Admin-  
13          istrator shall conduct the allocation process under  
14          this section if the allocation is requested in writing  
15          by a potentially responsible party that has—

16               “(A) incurred response costs with respect  
17               to a response action; or

18               “(B) resolved any liability to the United  
19               States with respect to a response action in  
20               order to assist in allocating shares among po-  
21               tentially responsible parties.

22          “(3) PERMISSIVE ALLOCATIONS.—For any fa-  
23          cility (other than a mandatory allocation facility or  
24          a facility with respect to which a request is made  
25          under paragraph (2)) involving 2 or more potentially

1 responsible parties, the Administrator may conduct  
2 the allocation process under this section if the Ad-  
3 ministrator considers it to be appropriate to do so.

4 “(4) ORPHAN SHARE.—An allocation performed  
5 at a facility identified under subsection (a)(3) (C) or  
6 (D) or (b) (2) or (3) shall not require payment of  
7 an orphan share under subsection (l) or reimburse-  
8 ment under subsection (t).

9 “(5) EXCLUDED FACILITIES.—

10 “(A) IN GENERAL.—Except as provided in  
11 subparagraph (B), for purposes of the alloca-  
12 tion process only, this section does not apply  
13 to—

14 “(i) a response action at a mandatory  
15 allocation facility for which there was in ef-  
16 fect as of June 15, 1995, a final settle-  
17 ment, decree, or order that determines the  
18 liability and allocated shares of all poten-  
19 tially responsible parties with respect to  
20 the response action; or

21 “(ii) a facility with respect to which  
22 none of the potentially responsible parties  
23 is liable or potentially liable under section  
24 107(a)(1) (C) or (D).

1           “(B) CONDUCT PRIOR TO DECEMBER 11,  
2           1980.—

3           “(i) IN GENERAL.—For any manda-  
4           tory allocation facility that is otherwise ex-  
5           cluded by subparagraph (A), an allocation  
6           process shall be conducted for the sole pur-  
7           pose of determining the percentage share  
8           of responsibility attributable to activity of  
9           each potentially responsible party prior to  
10          December 11, 1980.

11          “(ii) PURPOSE.—The determination  
12          made under clause (i) shall be used only to  
13          determine the availability of the environ-  
14          mental response expenditures credit under  
15          section 38(b)(12) of the Internal Revenue  
16          Code of 1986.

17          “(6) SCOPE OF ALLOCATIONS.—Subject to  
18          paragraph (5), an allocation under this section shall  
19          apply to—

20               “(A) the cost of any response action se-  
21               lected by the Administrator after June 15,  
22               1995, for a mandatory allocation facility de-  
23               scribed in subsection (a)(3) (A) or (B);

24               “(B) the cost of construction and operation  
25               and maintenance incurred at a mandatory allo-

1 cation facility after June 15, 1995, in accord-  
2 ance with a record of decision approved by the  
3 Administrator before June 15, 1995; and

4 “(C) the cost of any response action in-  
5 curred by a potentially responsible party at a  
6 facility that is the subject of a requested alloca-  
7 tion or permissive allocation process under sub-  
8 section (b) (2) or (3).

9 “(7) OTHER MATTERS.—This section shall not  
10 limit or affect—

11 “(A) the obligation of the Administrator to  
12 conduct the allocation process for a response  
13 action at a facility that has been the subject of  
14 a partial or expedited settlement with respect to  
15 a response action that is not within the scope  
16 of the allocation;

17 “(B) the ability of any person to resolve  
18 any liability at a facility to any other person at  
19 any time before initiation or completion of the  
20 allocation process, subject to subsection (l)(3);

21 “(C) the validity, enforceability, finality, or  
22 merits of any judicial or administrative order,  
23 judgment, or decree issued prior to the date of  
24 enactment of this section with respect to liabil-  
25 ity under this Act; or

1           “(D) the validity, enforceability, finality, or  
2           merits of any preexisting contract or agreement  
3           relating to any allocation of responsibility or  
4           any indemnity for, or sharing of, any response  
5           costs under this Act.

6           “(c) MORATORIUM ON LITIGATION AND ENFORCE-  
7           MENT.—

8           “(1) IN GENERAL.—No person may assert a  
9           claim for recovery of a response cost or contribution  
10          toward a response cost under this Act or any other  
11          Federal or State law in connection with a response  
12          action—

13               “(A) for which an allocation is required to  
14               be performed under subsection (b)(1); or

15               “(B) for which the Administrator has initi-  
16               ated the allocation process under this section,  
17          until the date that is 120 days after the date of issu-  
18          ance of a report by the allocator under subsection  
19          (j)(5) or, if a second or subsequent report is issued  
20          under subsection (r), the date of issuance of the sec-  
21          ond or subsequent report.

22               “(2) PENDING ACTIONS OR CLAIMS.—If a claim  
23          described in paragraph (1) is pending on the date of  
24          enactment of this section or on initiation of an allo-  
25          cation under this section, the portion of the claim



1       pertaining to response costs that are the subject of  
2       the allocation shall be stayed until the date that is  
3       120 days after the date of issuance of a report by  
4       the allocator under subsection (j)(5) or, if a second  
5       or subsequent report is issued under subsection (r),  
6       the date of issuance of the second or subsequent re-  
7       port, unless the court determines that a stay would  
8       result in manifest injustice.

9               “(3) TOLLING OF PERIOD OF LIMITATION.—

10              “(A) BEGINNING OF TOLLING.—Any appli-  
11              cable period of limitation with respect to a  
12              claim subject to paragraph (1) shall be tolled  
13              beginning on the earlier of—

14              “(i) the date of listing of the facility  
15              on the National Priorities List if the list-  
16              ing occurs after the date of enactment of  
17              this section; or

18              “(ii) the date of initiation of the allo-  
19              cation process under this section.

20              “(B) END OF TOLLING.—A period of limi-  
21              tation shall be tolled under subparagraph (A)  
22              until the date that is 180 days after the date  
23              of issuance of a report by the allocator under  
24              subsection (j)(5), or of a second or subsequent  
25              report under subsection (r).

1           “(4) LATER ACTIONS.—

2                   “(A) IN GENERAL.—Except as provided in  
3           subparagraph (B), the Administrator shall not  
4           issue any order under section 106 after the date  
5           of enactment of this section in connection with  
6           a response action for which an allocation is re-  
7           quired to be performed under subsection (b)(1),  
8           or for which the Administrator has initiated the  
9           allocation process under this section, until the  
10          date that is 180 days after the date of issuance  
11          of a report by the allocator under subsection  
12          (j)(5) or of a second or subsequent report under  
13          subsection (r).

14                  “(B) EMERGENCIES.—Subparagraph (A)  
15          does not preclude an order requiring the per-  
16          formance of a removal action that is necessary  
17          to address an emergency situation at a facility.

18           “(5) RETAINED AUTHORITY.—Except as spe-  
19          cifically provided in this section, this section does  
20          not affect the authority of the Administrator to—

21                   “(A) exercise the powers conferred by sec-  
22          tion 103, 104, 105, 106, or 122;

23                   “(B) commence an action against a party  
24          if there is a contemporaneous filing of a judicial

1 consent decree resolving the liability of the  
2 party; or

3 “(C) file a proof of claim or take other ac-  
4 tion in a proceeding under title 11, United  
5 States Code.

6 “(d) INITIATION OF ALLOCATION PROCESS.—

7 “(1) RESPONSIBLE PARTY SEARCH.—For each  
8 facility described in paragraph (2), the Adminis-  
9 trator shall initiate the allocation process as soon as  
10 practicable by commencing a comprehensive search  
11 for all potentially responsible parties with respect to  
12 the facility under authority of section 104.

13 “(2) FACILITIES.—The Administrator shall ini-  
14 tiate the allocation process for each—

15 “(A) mandatory allocation facility;

16 “(B) facility for which a request for alloca-  
17 tion is made under subsection (b)(2); and

18 “(C) facility that the Administrator consid-  
19 ers to be appropriate for allocation under sub-  
20 section (b)(3).

21 “(3) TIME LIMIT.—The Administrator shall ini-  
22 tiate the allocation process for a facility not later  
23 than the earlier of—

1           “(A) the date of completion of the facility  
2           evaluation or remedial investigation for the fa-  
3           cility; or

4           “(B) the date that is 60 days after the  
5           date of selection of a removal action.

6           “(4) SUBMISSION OF INFORMATION.—Any per-  
7           son may submit information to the Administrator  
8           concerning a potentially responsible party for a facil-  
9           ity that is subject to a search, and the Administrator  
10          shall consider the information in carrying out the  
11          search.

12          “(5) INITIAL LIST OF PARTIES.—

13               “(A) IN GENERAL.—As soon as practicable  
14               after initiation of an allocation process for a fa-  
15               cility, the Administrator shall publish, in ac-  
16               cordance with section 117(d), a list of all poten-  
17               tially responsible parties identified for a facility.

18               “(B) TIME LIMIT.—The Administrator  
19               shall publish a list under paragraph (1) not  
20               later than 120 days after the commencement of  
21               a comprehensive search.

22               “(C) COPY OF LIST.—The Administrator  
23               shall provide each person named on a list of po-  
24               tentially responsible parties with—

25                       “(i) a copy of the list; and

1           “(ii) the names of not less than 25  
2           neutral parties—

3           “(I) who are not employees of the  
4           United States;

5           “(II) who are qualified to per-  
6           form an allocation at the facility, as  
7           determined by the Administrator; and

8           “(III) at least some of whom  
9           maintain an office in the vicinity of  
10          the facility.

11          “(D) PROPOSED ALLOCATOR.—A person  
12          identified by the Administrator as a potentially  
13          responsible party may propose an allocator not  
14          on the list of neutral parties.

15          “(e) SELECTION OF ALLOCATOR.—

16               “(1) IN GENERAL.—As soon as practicable  
17          after the receipt of a list under subsection (d)(5)(C),  
18          the potentially responsible parties named on the list  
19          shall—

20               “(A) select an individual to serve as allo-  
21          cator by plurality vote on a per capita basis;  
22          and

23               “(B) promptly notify the Administrator of  
24          the selection.

1           “(2) VOTE BY REPRESENTATIVE.—The rep-  
2       representative of the Fund shall be entitled to cast 1  
3       vote in an election under paragraph (1).

4           “(3) ELIGIBLE ALLOCATORS.—The potentially  
5       responsible parties shall select an allocator under  
6       paragraph (1) from among individuals—

7           “(A) named on the list of neutral parties  
8       provided by the Administrator;

9           “(B) named on a list that is current on the  
10      date of selection of neutrals maintained by the  
11      American Arbitration Association, the Center  
12      for Public Resources, the Administrative Con-  
13      ference of the United States, or another non-  
14      profit or governmental organization of com-  
15      parable standing; or

16          “(C) proposed by a party under subsection  
17      (d)(5)(D).

18          “(4) UNQUALIFIED ALLOCATOR.—

19          “(A) IN GENERAL.—If the Administrator  
20      determines that a person selected under para-  
21      graph (1) is unqualified to serve, the Adminis-  
22      trator shall promptly notify all potentially re-  
23      sponsible parties for the facility, and the poten-  
24      tially responsible parties shall make an alter-  
25      native selection under paragraph (1).

1           “(B) LIMIT ON DETERMINATIONS.—The  
2           Administrator may not make more than 2 de-  
3           terminations that an allocator is unqualified  
4           under this paragraph with respect to any facil-  
5           ity.

6           “(5) DETERMINATION BY ADMINISTRATOR.—If  
7           the Administrator does not receive notice of selection  
8           of an allocator within 60 days after a copy of a list  
9           is provided under subsection (d)(5)(C), or if the Ad-  
10          ministrator, having given a notification under para-  
11          graph (4), does not receive notice of an alternative  
12          selection of an allocator under that paragraph within  
13          60 days after the date of the notification, the Ad-  
14          ministrator shall promptly select and designate a  
15          person to serve as allocator.

16          “(6) JUDICIAL REVIEW.—No action under this  
17          subsection shall be subject to judicial review.

18          “(f) RETENTION OF ALLOCATOR.—

19                 “(1) IN GENERAL.—On selection of an allo-  
20          cator, the Administrator shall promptly—

21                         “(A) contract with the allocator for the  
22                         provision of allocation services in accordance  
23                         with this section; and

1           “(B) notify each person named as a poten-  
2           tially responsible party at the facility that the  
3           allocator has been retained.

4           “(2) DISCRETION OF ALLOCATOR.—A contract  
5           with an allocator under paragraph (1) shall give the  
6           allocator broad discretion to conduct the allocation  
7           process in a fair, efficient, and impartial manner.

8           “(3) PROVISION OF INFORMATION.—

9           “(A) IN GENERAL.—Not later than 30  
10          days after the selection of an allocator, the Ad-  
11          ministrators shall make available to the allocator  
12          and to each person named as a potentially re-  
13          sponsible party for the facility—

14               “(i) any information or documents  
15               furnished under section 104(e)(2); and

16               “(ii) any other potentially relevant in-  
17               formation concerning the facility and the  
18               potentially responsible parties at the facil-  
19               ity.

20           “(B) PRIVILEGED INFORMATION.—The  
21           Administrator shall not make available any  
22           privileged information, except as otherwise au-  
23           thorized by law.

24           “(g) ADDITIONAL PARTIES.—



1           “(1) IN GENERAL.—Any person may propose to  
2           the allocator the name of an additional potentially  
3           responsible party at a facility, or otherwise provide  
4           the allocator with information pertaining to a facility  
5           or to an allocation, until the date that is 60 days  
6           after the later of—

7                   “(A) the date of issuance of the initial list  
8                   described in subsection (d)(5)(A); or

9                   “(B) the date of retention of the allocator  
10                  under subsection (f)(1)(A).

11           “(2) NEXUS.—Any proposal under paragraph  
12           (1) to add a potentially responsible party shall in-  
13           clude all information reasonably available to the per-  
14           son making the proposal regarding the nexus be-  
15           tween the additional potentially responsible party  
16           and the facility.

17           “(3) FINAL LIST.—

18                   “(A) IN GENERAL.—The allocator shall  
19                   issue a final list of all parties that will be sub-  
20                   ject to the allocation process (referred to in this  
21                   section as the ‘allocation parties’) not later than  
22                   120 days after publication of the initial list  
23                   under subsection (d)(5)(A).

24                   “(B) STANDARD.—The allocator shall in-  
25                   clude each party proposed under paragraph (1)

1 in the final list of allocation parties unless the  
2 allocator determines that the party is not poten-  
3 tially liable under section 107.

4 “(4) DE MICROMIS PARTIES.—

5 “(A) IDENTIFICATION.—Not later than  
6 120 days after the filing of the initial list of  
7 parties under subsection (d)(5)(A), the allocator  
8 shall issue a list identifying all de micromis  
9 parties with respect to the facility based on an  
10 evaluation of all evidence received at the time of  
11 the issuance of the list with respect to the  
12 amount of hazardous substances contributed by  
13 potentially responsible parties.

14 “(B) NOTIFICATION.—The allocator shall  
15 notify each de micromis party of its inclusion  
16 on the list under subparagraph (A) not later  
17 than 20 days after the date of issuance of the  
18 list.

19 “(C) EXEMPTION FROM LIABILITY.—A  
20 person that is named on the list under subpara-  
21 graph (A) shall have no liability to the United  
22 States or to any other person (including liability  
23 for contribution), under Federal or State law,  
24 for a response action or for any past, present,  
25 or future cost incurred at the facility for a re-

1           lease identified in the facility evaluation under  
2           section 129(b)(4) if the person takes no other  
3           action after being included on the list that  
4           would give rise to a separate basis for liability  
5           under this Act.

6           “(h) FEDERAL, STATE, AND LOCAL AGENCIES.—

7           “(1) IN GENERAL.—Notwithstanding any other  
8           law, any Federal, State, or local governmental de-  
9           partment, agency, or instrumentality that is named  
10          as a potentially responsible party or an allocation  
11          party shall be subject to, and be entitled to the bene-  
12          fits of, the allocation process and allocation deter-  
13          mination under this section to the same extent as  
14          any other party.

15          “(2) ORPHAN SHARE.—The Administrator or  
16          the Attorney General shall participate in the alloca-  
17          tion proceeding as the representative of the Fund  
18          from which any orphan share shall be paid.

19          “(i) POTENTIALLY RESPONSIBLE PARTY SETTLE-  
20          MENT.—

21          “(1) SUBMISSION.—At any time prior to the  
22          date of issuance of an allocation report under sub-  
23          section (j)(6) or of a second or subsequent report  
24          under subsection (r), any group of potentially re-  
25          sponsible parties for a facility may submit to the al-

1 locator a private allocation for any response action  
2 that is within the scope of the allocation under sub-  
3 section (b)(6).

4 “(2) ADOPTION.—The allocator shall promptly  
5 adopt a private allocation under paragraph (1) as  
6 the allocation report if the private allocation—

7 “(A) is a binding allocation of 100 percent  
8 of the recoverable costs of the response action  
9 that is the subject of the allocation; and

10 “(B) does not allocate a share to—

11 “(i) any person who is not a signatory  
12 to the private allocation; or

13 “(ii) any person whose share would be  
14 part of the orphan share under subsection  
15 (l), unless the representative of the Fund  
16 is a signatory to the private allocation.

17 “(3) WAIVER OF RIGHTS.—Any signatory to a  
18 private allocation waives the right to seek from any  
19 other potentially responsible party for a facility—

20 “(A) recovery of any response cost that is  
21 the subject of the allocation; and

22 “(B) contribution under this Act with re-  
23 spect to any response action that is within the  
24 scope of the allocation.

25 “(j) ALLOCATION DETERMINATION.—

1           “(1) ALLOCATION PROCESS.—An allocator re-  
2           tained under subsection (f)(1) shall conduct an allo-  
3           cation process culminating in the issuance of a writ-  
4           ten report with a nonbinding equitable allocation of  
5           percentage shares of responsibility for any response  
6           action that is within the scope of the allocation  
7           under subsection (b)(6).

8           “(2) COPIES OF REPORT.—An allocator shall  
9           provide the report issued under paragraph (1) to the  
10          Administrator and to the allocation parties.

11          “(3) INFORMATION-GATHERING AUTHORI-  
12          TIES.—

13               “(A) IN GENERAL.—An allocator may re-  
14               quest information from any person in order to  
15               assist in the efficient completion of the alloca-  
16               tion process.

17               “(B) REQUESTS.—Any person may request  
18               that an allocator request information under this  
19               paragraph.

20               “(C) AUTHORITY.—An allocator may exer-  
21               cise the information-gathering authority of the  
22               Administrator under section 104(e), including  
23               issuing an administrative subpoena to compel  
24               the production of a document or the appearance  
25               of a witness.

1           “(D) DISCLOSURE.—Notwithstanding any  
2 other law, any information submitted to the al-  
3 locator in response to a subpoena issued under  
4 paragraph (4) shall be exempt from disclosure  
5 to any person under section 552 of title 5,  
6 United States Code.

7           “(E) ORDERS.—In the event of contumacy  
8 or a failure of a person to obey a subpoena is-  
9 sued under paragraph (4), an allocator may re-  
10 quest the Attorney General to—

11                   “(i) bring a civil action to enforce the  
12 subpoena; or

13                   “(ii) if the person moves to quash the  
14 subpoena, to defend the motion.

15           “(F) FAILURE OF ATTORNEY GENERAL TO  
16 RESPOND.—If the Attorney General fails to  
17 provide any response to the allocator within 30  
18 days of a request for enforcement of a subpoena  
19 or information request, the allocator may retain  
20 counsel to commence a civil action to enforce  
21 the subpoena or information request.

22           “(4) ADDITIONAL AUTHORITY.—An allocator  
23 may—

1           “(A) schedule a meeting or hearing and re-  
2           quire the attendance of allocation parties at the  
3           meeting or hearing;

4           “(B) sanction an allocation party for fail-  
5           ing to cooperate with the orderly conduct of the  
6           allocation process;

7           “(C) require that allocation parties wishing  
8           to present similar legal or factual positions con-  
9           solidate the presentation of the positions;

10          “(D) obtain or employ support services, in-  
11          cluding secretarial, clerical, computer support,  
12          legal, and investigative services; and

13          “(E) take any other action necessary to  
14          conduct a fair, efficient, and impartial alloca-  
15          tion process.

16          “(5) CONDUCT OF ALLOCATION PROCESS.—

17               “(A) IN GENERAL.—The allocator shall  
18               conduct the allocation process and render a de-  
19               cision based solely on the provisions of this sec-  
20               tion, including the allocation factors described  
21               in subsection (k).

22               “(B) OPPORTUNITY TO BE HEARD.—Each  
23               allocation party shall be afforded an oppor-  
24               tunity to be heard (orally or in writing, at the

option of an allocation party) and an opportunity to comment on a draft allocation report.

“(C) RESPONSES.—The allocator shall not be required to respond to comments.

“(D) STREAMLINING.—In a case in which the expected response costs are relatively low and the number of potentially responsible parties is relatively small, the allocator shall make every effort to streamline the allocation process and minimize the cost of conducting the allocation.

“(6) ALLOCATION REPORT.—

“(A) DEADLINE.—

“(i) IN GENERAL.—The allocator shall provide a written allocation report to the Administrator and the allocation parties not later than 180 days after the date of issuance of the final list of allocation parties under subsection (g)(3)(A) that specifies the allocation share of each potentially responsible party and any orphan shares, as determined by the allocator.

“(ii) EXTENSION.—On request by the allocator and for good cause shown, the



1 Administrator may extend the time to com-  
2 plete the report by not more than 90 days.

3 “(B) BREAKDOWN OF ALLOCATION  
4 SHARES INTO TIME PERIODS.—The allocation  
5 share for each potentially responsible party with  
6 respect to a mandatory allocation facility shall  
7 be comprised of percentage shares of respon-  
8 sibility stated separately for activity prior to  
9 December 11, 1980, and activity on or after  
10 December 11, 1980.

11 “(C) TAX-EXEMPT PARTIES.—Of the per-  
12 centage share of a potentially responsible party  
13 that is a State, political subdivision of a State,  
14 an agency or instrumentality of a State or polit-  
15 ical subdivision, or is an organization that is ex-  
16 empt from tax imposed by chapter 1 of the In-  
17 ternal Revenue Code of 1986 (unless the orga-  
18 nization is subject to the tax imposed by 511 of  
19 the Internal Revenue Code of 1986) for activity  
20 prior to December 11, 1980, that would be allo-  
21 cated to that party but for this subparagraph—

22 “(i) 50 percent shall be allocated to  
23 that party; and

24 “(ii) 50 percent shall be allocated to  
25 the orphan share under subsection (l).

1       “(k) EQUITABLE FACTORS FOR ALLOCATION.—The  
2 allocator shall prepare a nonbinding allocation of percent-  
3 age shares of responsibility to each allocation party and  
4 to the orphan share, in accordance with this section and  
5 without regard to any theory of joint and several liability,  
6 based on—

7               “(1) the amount of hazardous substances con-  
8 tributed by each allocation party;

9               “(2) the degree of toxicity of hazardous sub-  
10 stances contributed by each allocation party;

11              “(3) the mobility of hazardous substances con-  
12 tributed by each allocation party;

13              “(4) the degree of involvement of each alloca-  
14 tion party in the generation, transportation, treat-  
15 ment, storage, or disposal of hazardous substances;

16              “(5) the degree of care exercised by each alloca-  
17 tion party with respect to hazardous substances, tak-  
18 ing into account the characteristics of the hazardous  
19 substances;

20              “(6) the cooperation of each allocation party in  
21 contributing to any response action and in providing  
22 complete and timely information to the allocator;  
23 and

24              “(7) such other equitable factors as the allo-  
25 cator determines are appropriate.

1 “(l) ORPHAN SHARES.—

2 “(1) IN GENERAL.—The allocator shall deter-  
3 mine whether any percentage of responsibility for  
4 the response action shall be allocable to the orphan  
5 share.

6 “(2) MAKEUP OF ORPHAN SHARE.—The orphan  
7 share shall consist of—

8 “(A) any share that the allocator deter-  
9 mines is attributable to an allocation party that  
10 is insolvent or defunct and that is not affiliated  
11 with any financially viable allocation party;

12 “(B) any share allocated under subsection  
13 (j)(6)(C)(ii); and

14 “(C) the difference between the aggregate  
15 share that the allocator determines is attrib-  
16 utable to a person and the aggregate share ac-  
17 tually assumed by the person in a settlement  
18 with the United States if—

19 “(i) the person is eligible for an expe-  
20 dited settlement with the United States  
21 under section 122 based on limited ability  
22 to pay response costs;

23 “(ii) the person is eligible for an expe-  
24 dited settlement with the United States  
25 under section 122 based on de minimis

1 contributions of hazardous substances to a  
2 facility;

3 “(iii) the liability of the person for the  
4 response action is limited or reduced by  
5 any provision of this Act; or

6 “(iv) the person settled with the Unit-  
7 ed States before the completion of the allo-  
8 cation.

9 “(3) UNATTRIBUTABLE SHARES.—A share at-  
10 tributed to a hazardous substance that the allocator  
11 cannot attribute to any identified party shall be dis-  
12 tributed among the allocation parties and the orphan  
13 share.

14 “(m) DE MINIMIS SETTLEMENTS.—

15 “(1) IDENTIFICATION.—As part of the alloca-  
16 tion report under subsection (j)(6), or at any time  
17 before the issuance of the allocation report, the allo-  
18 cator shall issue a list identifying all potentially re-  
19 sponsible parties with respect to the facility whose  
20 allocated share of liability is determined to be 1.0  
21 percent or less.

22 “(2) SETTLEMENT OFFER.—

23 “(A) OFFER BY THE ADMINISTRATOR.—  
24 Not later than 90 days after the date of issu-  
25 ance of the allocation report under subsection

1 (j)(6) or the date of issuance of the list of de  
2 minimis parties under paragraph (1), whichever  
3 is earlier, the Administrator shall make a firm  
4 written offer of settlement to all de minimis  
5 parties.

6 “(B) AMOUNT.—The amount of the settle-  
7 ment offer for a de minimis party—

8 “(i) shall be stated in dollars, not a  
9 percentage share of the cleanup costs; and

10 “(ii) shall be based on the Adminis-  
11 trator’s estimate of the total cleanup cost  
12 at the facility multiplied by the de minimis  
13 party’s allocated share, as determined by  
14 the allocator.

15 “(C) SINGLE ESTIMATE AND PREMIUM.—  
16 All settlement offers by the Administrator to de  
17 minimis parties at a facility shall be based on  
18 the same estimate of cleanup costs and the  
19 same premium.

20 “(D) NO JUDICIAL REVIEW.—A settlement  
21 offer under this paragraph is not subject to ju-  
22 dicial review.

23 “(3) ACCEPTANCE.—

24 “(A) DEADLINE.—A de minimis party may  
25 accept or decline a settlement offer, but any ac-

1           ceptance of the offer shall be made within 60  
2           days after receipt of the offer.

3           “(B) RESOLUTION OF LIABILITY.—A de  
4           minimis party that accepts the offer may re-  
5           solve the party’s liability to the United States  
6           by paying the amount of the offer to the Haz-  
7           ardous Substance Superfund established under  
8           subparagraph (A) of chapter 98 of the Internal  
9           Revenue Code of 1986.

10          “(C) NO REOPENING.—Settlement under  
11          this subsection may not be reopened after pay-  
12          ment is made except on the ground of fraud.

13          “(4) NO FURTHER LIABILITY.—A de minimis  
14          party that accepts a settlement offer and pays the  
15          amount of the offer shall have no other liability,  
16          under Federal or State law, to any person for a re-  
17          sponse action or for any past, present, or future  
18          costs incurred at the facility for a release identified  
19          in the facility evaluation under section 129(b)(4) if  
20          the de minimis party takes no other actions after  
21          making the payment that would give rise to a sepa-  
22          rate basis for liability of the de minimis party under  
23          this Act.

24          “(5) APPLICATION OF PROCEEDS.—

1           “(A) PROCEEDS REPRESENTING ALLO-  
2           CATED SHARES.—All proceeds from a de  
3           minimis settlement under this subsection that  
4           represent the allocated share of a de minimis  
5           party for a facility shall be held by the Admin-  
6           istrator for timely payment directly to the per-  
7           son performing the response action at the facil-  
8           ity.

9           “(B) EXCESS AMOUNTS.—Any amounts of  
10          a settlement remaining in the Fund after com-  
11          pletion of the response action shall be available  
12          for other authorized uses.

13       “(n) INFORMATION REQUESTS.—

14           “(1) DUTY TO ANSWER.—Each person that re-  
15          ceives an information request or subpoena from the  
16          allocator shall provide a full and timely response to  
17          the request.

18           “(2) CERTIFICATION.—An answer to an infor-  
19          mation request by an allocator shall include a certifi-  
20          cation by a representative that meets the criteria es-  
21          tablished in section 270.11(a) of title 40, Code of  
22          Federal Regulations (or any successor regulation),  
23          that—

24           “(A) the answer is correct to the best of  
25          the representative’s knowledge;

1           “(B) the answer is based on a diligent  
2           good faith search of records in the possession or  
3           control of the person to whom the request was  
4           directed;

5           “(C) the answer is based on a reasonable  
6           inquiry of the current (as of the date of the an-  
7           swer) officers, directors, employees, and agents  
8           of the person to whom the request was directed;

9           “(D) the answer accurately reflects infor-  
10          mation obtained in the course of conducting the  
11          search and the inquiry;

12          “(E) the person executing the certification  
13          understands that there is a duty to supplement  
14          any answer if, during the allocation process,  
15          any significant additional, new, or different in-  
16          formation becomes known or available to the  
17          person; and

18          “(F) the person executing the certification  
19          understands that there are significant penalties  
20          for submitting false information, including the  
21          possibility of a fine or imprisonment for a  
22          knowing violation.

23          “(o) PENALTIES.—

24          “(1) CIVIL.—



1           “(A) IN GENERAL.—A person that fails to  
2           submit a complete and timely answer to an in-  
3           formation request, a request for the production  
4           of a document, or a summons from an allo-  
5           cator, submits a response that lacks the certifi-  
6           cation required under subsection (n)(2), or  
7           knowingly makes a false or misleading material  
8           statement or representation in any statement,  
9           submission, or testimony during the allocation  
10          process (including a statement or representa-  
11          tion in connection with the nomination of an-  
12          other potentially responsible party) shall be sub-  
13          ject to a civil penalty of not more than \$10,000  
14          per day of violation.

15          “(B) ASSESSMENT OF PENALTY.—A pen-  
16          alty may be assessed by the Administrator in  
17          accordance with section 109 or by any alloca-  
18          tion party in a citizen suit brought under sec-  
19          tion 310.

20          “(2) CRIMINAL.—A person that knowingly and  
21          willfully makes a false material statement or rep-  
22          resentation in the response to an information re-  
23          quest or subpoena issued by the allocator under sub-  
24          section (n) shall be considered to have made a false  
25          statement on a matter within the jurisdiction of the

1 United States within the meaning of section 1001 of  
2 title 18, United States Code.

3 “(p) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

4 “(1) DOCUMENT REPOSITORY.—

5 “(A) IN GENERAL.—The allocator shall es-  
6 tablish and maintain a document repository  
7 containing copies of all documents and informa-  
8 tion provided by the Administrator or any allo-  
9 cation party under this section or generated by  
10 the allocator during the allocation process.

11 “(B) AVAILABILITY.—Subject to para-  
12 graph (2), the documents and information in  
13 the document repository shall be available only  
14 to an allocation party for review and copying at  
15 the expense of the allocation party.

16 “(2) CONFIDENTIALITY.—

17 “(A) IN GENERAL.—Each document or  
18 material submitted to the allocator or placed in  
19 the document repository and the record of any  
20 information generated or obtained during the  
21 allocation process shall be confidential.

22 “(B) MAINTENANCE.—The allocator, each  
23 allocation party, the Administrator, and the At-  
24 torney General—

1           “(i) shall maintain the documents,  
2 materials, and records of any depositions  
3 or testimony adduced during the allocation  
4 as confidential; and

5           “(ii) shall not use any such document  
6 or material or the record in any other mat-  
7 ter or proceeding or for any purpose other  
8 than the allocation process.

9           “(C) DISCLOSURE.—Notwithstanding any  
10 other law, the documents and materials and the  
11 record shall not be subject to disclosure to any  
12 person under section 552 of title 5, United  
13 States Code.

14           “(D) DISCOVERY AND ADMISSIBILITY.—

15           “(i) IN GENERAL.—Subject to clause  
16 (ii), the documents and materials and the  
17 record shall not be subject to discovery or  
18 admissible in any other Federal, State, or  
19 local judicial or administrative proceeding,  
20 except—

21           “(I) a new allocation under sub-  
22 section (r) or (w) for the same re-  
23 sponse action; or

1           “(II) an initial allocation under  
2           this section for a different response  
3           action at the same facility.

4           “(ii) OTHERWISE DISCOVERABLE OR  
5           ADMISSIBLE.—

6           “(I) DOCUMENT OR MATERIAL.—  
7           If the original of any document or  
8           material submitted to the allocator or  
9           placed in the document repository was  
10          otherwise discoverable or admissible  
11          from a party, the original document,  
12          if subsequently sought from the party,  
13          shall remain discoverable or admissi-  
14          ble.

15          “(II) FACTS.—If a fact gen-  
16          erated or obtained during the alloca-  
17          tion was otherwise discoverable or ad-  
18          missible from a witness, testimony  
19          concerning the fact, if subsequently  
20          sought from the witness, shall remain  
21          discoverable or admissible.

22          “(3) NO WAIVER OF PRIVILEGE.—The submis-  
23          sion of testimony, a document, or information under  
24          the allocation process shall not constitute a waiver of  
25          any privilege applicable to the testimony, document,

1 or information under any Federal or State law or  
2 rule of discovery or evidence.

3 “(4) PROCEDURE IF DISCLOSURE SOUGHT.—

4 “(A) NOTICE.—A person that receives a  
5 request for a statement, document, or material  
6 submitted for the record of an allocation pro-  
7 ceeding, shall—

8 “(i) promptly notify the person that  
9 originally submitted the item or testified in  
10 the allocation proceeding; and

11 “(ii) provide the person that originally  
12 submitted the item or testified in the allo-  
13 cation proceeding an opportunity to assert  
14 and defend the confidentiality of the item  
15 or testimony.

16 “(B) RELEASE.—No person may release or  
17 provide a copy of a statement, document, or  
18 material submitted, or the record of an alloca-  
19 tion proceeding, to any person not a party to  
20 the allocation except—

21 “(i) with the written consent of the  
22 person that originally submitted the item  
23 or testified in the allocation proceeding; or

24 “(ii) as may be required by court  
25 order.

1 “(5) CIVIL PENALTY.—

2 “(A) IN GENERAL.—A person that fails to  
3 maintain the confidentiality of any statement,  
4 document, or material or the record generated  
5 or obtained during an allocation proceeding, or  
6 that releases any information in violation of this  
7 section, shall be subject to a civil penalty of not  
8 more than \$25,000 per violation.

9 “(B) ASSESSMENT OF PENALTY.—A pen-  
10 alty may be assessed by the Administrator in  
11 accordance with section 109 or by any alloca-  
12 tion party in a citizen suit brought under sec-  
13 tion 310.

14 “(C) DEFENSES.—In any administrative  
15 or judicial proceeding, it shall be a complete de-  
16 fense that any statement, document, or material  
17 or the record at issue under subparagraph  
18 (A)—

19 “(i) was in, or subsequently became  
20 part of, the public domain, and did not be-  
21 come part of the public domain as a result  
22 of a violation of this subsection by the per-  
23 son charged with the violation;

24 “(ii) was already known by lawful  
25 means to the person receiving the informa-

1           tion in connection with the allocation proc-  
2           ess; or

3           “(iii) became known to the person re-  
4           ceiving the information after disclosure in  
5           connection with the allocation process and  
6           did not become known as a result of any  
7           violation of this subsection by the person  
8           charged with the violation.

9           “(q) REJECTION OF ALLOCATION REPORT.—

10           “(1) REJECTION.—The Administrator and the  
11           Attorney General may jointly reject a report issued  
12           by an allocator only if the Administrator and the At-  
13           torney General jointly publish, not later than 180  
14           days after the Administrator receives the report, a  
15           written determination that—

16           “(A) no rational interpretation of the facts  
17           before the allocator, in light of the factors re-  
18           quired to be considered, would form a reason-  
19           able basis for the shares assigned to the parties;  
20           or

21           “(B) the allocation process was directly  
22           and substantially affected by bias, procedural  
23           error, fraud, or unlawful conduct.

24           “(2) FINALITY.—A report issued by an allo-  
25           cator may not be rejected after the date that is 180

1 days after the date on which the United States ac-  
2 cepts a settlement offer (excluding a de minimis or  
3 other expedited settlement under section 122) based  
4 on the allocation.

5 “(3) JUDICIAL REVIEW.—Any determination by  
6 the Administrator or the Attorney General under  
7 this subsection shall not be subject to judicial review  
8 unless 2 successive allocation reports relating to the  
9 same response action are rejected, in which case any  
10 allocation party may obtain judicial review of the  
11 second rejection in a United States district court  
12 under subchapter II of chapter 5 of part I of title  
13 5, United States Code.

14 “(4) STANDARD OF REVIEW.—In a proceeding  
15 on review of a rejection of an allocation report under  
16 subparagraph (3), the court shall, notwithstanding  
17 section 706(2)(E) of title 5, United States Code,  
18 hold unlawful and set aside actions, findings, and  
19 conclusions found to be unsupported by substantial  
20 evidence.

21 “(5) DELEGATION.—The authority to make a  
22 determination under this subsection may not be dele-  
23 gated to any officer or employee below the level of  
24 an Assistant Administrator or Acting Assistant Ad-  
25 ministrator or an Assistant Attorney General or Act-



1 ing Assistant Attorney General with authority for  
2 implementing this Act.

3 “(r) SECOND AND SUBSEQUENT ALLOCATIONS.—

4 “(1) IN GENERAL.—If a report is rejected  
5 under subsection (q), the allocation parties shall se-  
6 lect an allocator under subsection (e) to perform, on  
7 an expedited basis, a new allocation based on the  
8 same record available to the previous allocator.

9 “(2) MORATORIUM AND TOLLING.—The mora-  
10 torium and tolling provisions of subsection (c) shall  
11 be extended until the date that is 180 days after the  
12 date of the issuance of any second or subsequent al-  
13 location report under paragraph (1).

14 “(3) SAME ALLOCATOR.—The allocation parties  
15 may select the same allocator who performed 1 or  
16 more previous allocations at the facility, except that  
17 the Administrator may determine under subsection  
18 (e) that an allocator whose previous report at the  
19 same facility has been rejected under subsection (q)  
20 is unqualified to serve.

21 “(s) SETTLEMENTS BASED ON ALLOCATIONS.—

22 “(1) DEFINITION.—In this subsection, the term  
23 ‘all settlements’ includes any orphan share allocated  
24 under subsection (l).

1           “(2) IN GENERAL.—Unless an allocation report  
2           is rejected under subsection (q), any allocation party  
3           with respect to a mandatory allocation facility shall  
4           be entitled to resolve the liability of the party to the  
5           United States for response actions subject to alloca-  
6           tion if, not later than 90 days after the date of issu-  
7           ance of a report by the allocator, the party—

8                   “(A) offers to settle with the United States  
9                   based on the percentage share specified by the  
10                  allocator; and

11                  “(B) agrees to the other terms and condi-  
12                  tions stated in this subsection.

13           “(3) PROVISIONS OF SETTLEMENTS.—

14                   “(A) IN GENERAL.—A settlement based on  
15                  an allocation under this section—

16                          “(i) may consist of a cash-out settle-  
17                          ment or an agreement for the performance  
18                          of a response action; and

19                          “(ii) shall include—

20                                  “(I) a waiver of contribution  
21                                  rights against all persons that are po-  
22                                  tentially responsible parties for any  
23                                  response action addressed in the set-  
24                                  tlement;

1           “(II) a covenant not to sue that  
2           is consistent with section 122(f) and,  
3           except in the case of a cash-out settle-  
4           ment, provisions regarding perform-  
5           ance or adequate assurance of per-  
6           formance of the response action;

7           “(III) a premium, calculated on a  
8           facility-specific basis and subject to  
9           the limitations on premiums stated in  
10          paragraph (5), that reflects the actual  
11          risk to the United States of not col-  
12          lecting unrecovered response costs for  
13          the response action, despite the dili-  
14          gent prosecution of litigation against  
15          any viable allocation party that has  
16          not resolved the liability of the party  
17          to the United States, except that no  
18          premium shall apply if all allocation  
19          parties participate in the settlement  
20          or if the settlement covers 100 per-  
21          cent of the response costs subject to  
22          the allocation;

23          “(IV) complete protection from  
24          all claims for contribution regarding

1 the response action addressed in the  
2 settlement; and

3 “(V) provisions through which a  
4 settling party shall receive prompt re-  
5 imbursement from the Fund under  
6 subsection (t) of any response costs  
7 incurred by the party for any response  
8 action that is the subject of the alloca-  
9 tion in excess of the allocated share of  
10 the party, including the allocated por-  
11 tion of any orphan share.

12 “(B) RIGHT TO REIMBURSEMENT.—A  
13 right to reimbursement under subparagraph  
14 (A)(ii)(V) shall not be contingent on recovery  
15 by the United States of any response costs from  
16 any person other than the settling party.

17 “(4) REPORT.—The Administrator shall report  
18 annually to Congress on the administration of the  
19 allocation process under this section, providing in  
20 the report—

21 “(A) information comparing allocation re-  
22 sults with actual settlements at multiparty fa-  
23 cilities;

24 “(B) a cumulative analysis of response ac-  
25 tion costs recovered through post-allocation liti-

1           gation or settlements of post-allocation litigation;  
2

3           “(C) a description of any impediments to  
4 achieving complete recovery; and

5           “(D) a complete accounting of the costs incurred in administering and participating in the  
6 allocation process.  
7

8           “(5) PREMIUM.—In each settlement under this  
9 subsection, the premium authorized—

10           “(A) shall be determined on a case-by-case  
11 basis to reflect the actual litigation risk faced  
12 by the United States with respect to any response action addressed in the settlement; but  
13

14           “(B) shall not exceed—

15           “(i) 5 percent of the total costs assumed by a settling party if all settlements  
16 (including any orphan share) account for  
17 more than 80 percent and less than 100  
18 percent of responsibility for the response  
19 action;  
20

21           “(ii) 10 percent of the total costs assumed by a settling party if all settlements  
22 (including any orphan share) account for  
23 more than 60 percent and not more than  
24

1           80 percent of responsibility for the re-  
2           sponse action;

3           “(iii) 15 percent of the total costs as-  
4           sumed by a settling party if all settlements  
5           (including any orphan share) account for  
6           more than 40 percent and not more than  
7           60 percent of responsibility for the re-  
8           sponse action; or

9           “(iv) 20 percent of the total costs as-  
10          sumed by a settling party if all settlements  
11          (including any orphan share) account for  
12          40 percent or less of responsibility for the  
13          response action.

14       “(t) FUNDING OF ORPHAN SHARES.—

15           “(1) REIMBURSEMENT.—For each settlement  
16          agreement entered into under subsection (s), and for  
17          each administrative order that satisfies the require-  
18          ments of subsection (u), the Administrator shall  
19          promptly reimburse the allocation parties for any  
20          costs incurred that are attributable to the orphan  
21          share, as determined by the allocator.

22           “(2) ENTITLEMENT.—Paragraph (1) con-  
23          stitutes an entitlement to any allocation party eligi-  
24          ble to receive a reimbursement.

1           “(3) AMOUNTS OWED.—Any amount due and  
2           owing in excess of available appropriations in any  
3           fiscal year shall be paid from amounts made avail-  
4           able in subsequent fiscal years, along with interest  
5           on the unpaid balances at the rate equal to that of  
6           the current average market yield on outstanding  
7           marketable obligations of the United States with a  
8           maturity of 1 year.

9           “(4) DOCUMENTATION AND AUDITING.—The  
10          Administrator—

11                 “(A) shall require that any claim for reim-  
12                 bursement be supported by documentation of  
13                 actual costs incurred; and

14                 “(B) may require an independent auditing  
15                 of any claim for reimbursement.

16          “(u) ADMINISTRATIVE ORDER REIMBURSEMENT.—

17                 “(1) IN GENERAL.—An allocation party that is  
18                 ordered to perform, and does perform, a response  
19                 action that is the subject of an allocation under this  
20                 section to an extent that exceeds the percentage  
21                 share of the allocation party, as determined by the  
22                 allocator, shall be entitled to prompt reimbursement  
23                 of the excess amount, including any orphan share,  
24                 from the Fund, unless the allocation report is re-  
25                 jected under subsection (q).

1           “(2) NOT CONTINGENT.—The right to reim-  
2           bursement under paragraph (1) shall not be contin-  
3           gent on recovery by the United States of a response  
4           cost from any other person.

5           “(3) TERMS AND CONDITIONS.—

6                   “(A) RISK PREMIUM.—A reimbursement  
7           shall be reduced by the amount of the litigation  
8           risk premium under subsection (s)(4) that  
9           would apply to a settlement by the allocation  
10          party concerning the response action, based on  
11          the total allocated shares of the parties that  
12          have not reached a settlement with the United  
13          States.

14           “(B) TIMING.—

15                   “(i) IN GENERAL.—A reimbursement  
16           shall be paid out during the course of the  
17           response action that was the subject of the  
18           allocation, using reasonable progress pay-  
19           ments at significant milestones.

20                   “(ii) CONSTRUCTION.—Reimburse-  
21           ment for the construction portion of the  
22           work shall be paid out not later than 120  
23           days after the date of completion of the  
24           construction.



1           “(C) EQUITABLE OFFSET.—A reimburse-  
2           ment is subject to equitable offset or  
3           recoupment by the Administrator at any time if  
4           the allocation party fails to perform the work in  
5           a proper and timely manner.

6           “(D) INDEPENDENT AUDITING.—The Ad-  
7           ministrator may require independent auditing  
8           of any claim for reimbursement.

9           “(E) WAIVER.—An allocation party seek-  
10          ing reimbursement waives the right to seek re-  
11          covery of response costs in connection with the  
12          response action, or contribution toward the re-  
13          sponse costs, from any other person.

14          “(F) BAR.—An administrative order shall  
15          be in lieu of any action by the United States or  
16          any other person against the allocation party  
17          for recovery of response costs in connection  
18          with the response action, or for contribution to-  
19          ward the costs of the response action.

20          “(v) POST-SETTLEMENT LITIGATION.—

21               “(1) IN GENERAL.—Subject to subsections (r)  
22               and (s), and on the expiration of the moratorium pe-  
23               riod under subsection (c)(4), the Administrator may  
24               commence an action under section 107 against an  
25               allocation party that has not resolved the liability of

1 the party to the United States following allocation  
2 and may seek to recover response costs not recov-  
3 ered through settlements with other persons.

4 “(2) ORPHAN SHARE.—The recoverable costs  
5 shall include any orphan share determined under  
6 subsection (l), but shall not include any share allo-  
7 cated to a Federal, State, or local governmental  
8 agency, department, or instrumentality.

9 “(3) IMPLER.—A defendant in an action  
10 under paragraph (1) may implead an allocation  
11 party only if the allocation party did not resolve li-  
12 ability to the United States.

13 “(4) CERTIFICATION.—In commencing or main-  
14 taining an action under section 107 against an allo-  
15 cation party after the expiration of the moratorium  
16 period under subsection (c)(4), the Attorney General  
17 shall certify in the complaint that the defendant  
18 failed to settle the matter based on the share that  
19 the allocation report assigned to the party.

20 “(5) RESPONSE COSTS.—

21 “(A) ALLOCATION PROCEDURE.—The cost  
22 of implementing the allocation procedure under  
23 this section, including reasonable fees and ex-  
24 penses of the allocator, shall be considered as a  
25 necessary response cost.

1           “(B) FUNDING ORPHAN SHARES.—The  
2           cost attributable to funding an orphan share  
3           under this section—

4                   “(i) shall be considered as a necessary  
5                   cost of response cost; and

6                   “(ii) shall be recoverable in accord-  
7                   ance with section 107 only from an alloca-  
8                   tion party that does not reach a settlement  
9                   and does not receive an administrative  
10                  order under subsection (s) or (u).

11          “(w) NEW INFORMATION.—

12                  “(1) IN GENERAL.—An allocation under this  
13                  section shall be final, except that any settling party,  
14                  including the United States, may seek a new alloca-  
15                  tion with respect to the response action that was the  
16                  subject of the settlement by presenting the Adminis-  
17                  trator with clear and convincing evidence that—

18                          “(A) the allocator did not have information  
19                          concerning—

20                                  “(i) 35 percent or more of the mate-  
21                                  rials containing hazardous substances at  
22                                  the facility; or

23                                  “(ii) 1 or more persons not previously  
24                                  named as an allocation party that contrib-  
25                                  uted 15 percent or more of materials con-

1           taining hazardous substances at the facil-  
2           ity; and

3           “(B) the information was discovered subse-  
4           quent to the issuance of the report by the allo-  
5           cator.

6           “(2) NEW ALLOCATION.—Any new allocation of  
7           responsibility—

8           “(A) shall proceed in accordance with this  
9           section;

10           “(B) shall be effective only after the date  
11           of the new allocation report; and

12           “(C) shall not alter or affect the original  
13           allocation with respect to any response costs  
14           previously incurred.

15           “(x) ALLOCATOR’S DISCRETION.—The Administrator  
16           shall not issue any rule or order that limits the discretion  
17           of the allocator in the conduct of the allocation.”.

18   **SEC. 502. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

19           (a) LIABILITY OF CONTRACTORS.—Section 101(20)  
20           of the Comprehensive Environmental Response, Com-  
21           pensation, and Liability Act of 1980 (42 U.S.C.  
22           9601(20)), as amended by section 303(a), is amended by  
23           adding at the end the following:

24           “(G) LIABILITY OF CONTRACTORS.—

1           “(i) IN GENERAL.—The term ‘owner  
2           or operator’ does not include a response  
3           action contractor (as defined in section  
4           119(e)).

5           “(ii) LIABILITY LIMITATIONS.—A per-  
6           son described in clause (i) shall not, in the  
7           absence of negligence by the person, be  
8           considered to—

9                   “(I) cause or contribute to any  
10                  release or threatened release of a haz-  
11                  ardous substance, pollutant, or con-  
12                  taminant;

13                  “(II) arrange for disposal or  
14                  treatment of a hazardous substance,  
15                  pollutant, or contaminant;

16                  “(III) arrange with a transporter  
17                  for transport or disposal or treatment  
18                  of a hazardous substance, pollutant,  
19                  or contaminant; or

20                  “(IV) transport a hazardous sub-  
21                  stance, pollutant, or contaminant.

22           “(iii) EXCEPTION.—This subpara-  
23           graph does not apply to a person poten-  
24           tially responsible under section 106 or 107  
25           other than a person associated solely with

1           the provision of a response action or a  
2           service or equipment ancillary to a re-  
3           sponse action.”.

4           (b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—  
5 Section 119(a) of the Comprehensive Environmental Re-  
6 sponse, Compensation, and Liability Act of 1980 (42  
7 U.S.C. 9619(a)) is amended—

8           (1) in paragraph (1) by striking “title or under  
9           any other Federal law” and inserting “title, under  
10          any other Federal or State law”; and

11          (2) in paragraph (2)—

12           (A) by striking “Paragraph (1)” and in-  
13          serting the following:

14           “(A) IN GENERAL.—Paragraph (1)”; and

15           (B) by adding at the end the following:

16           “(B) STANDARD.—Conduct under sub-  
17          paragraph (A) shall be evaluated based on the  
18          generally accepted standards and practices in  
19          effect at the time and place at which the con-  
20          duct occurred.

21           “(C) PLAN.—An activity performed in ac-  
22          cordance with a plan that was approved by the  
23          Administrator shall not be considered to con-  
24          stitute negligence under subparagraph (A).”.

1 (c) EXTENSION OF INDEMNIFICATION AUTHORITY.—  
2 Section 119(c)(1) of the Comprehensive Environmental  
3 Response, Compensation, and Liability Act of 1980 (42  
4 U.S.C. 9619(c)(1)) is amended by adding at the end the  
5 following: “The agreement may apply to a claim for neg-  
6 ligence arising under Federal or State law.”.

7 (d) INDEMNIFICATION DETERMINATIONS.—Section  
8 119(c) of the Comprehensive Environmental Response,  
9 Compensation, and Liability Act of 1980 (42 U.S.C.  
10 9619(c)) is amended by striking paragraph (4) and insert-  
11 ing the following:

12 “(4) DECISION TO INDEMNIFY.—

13 “(A) IN GENERAL.—For each response ac-  
14 tion contract for a vessel or facility, the Admin-  
15 istrator shall make a decision whether to enter  
16 into an indemnification agreement with a re-  
17 sponse action contractor.

18 “(B) STANDARD.—The Administrator shall  
19 enter into an indemnification agreement to the  
20 extent that the potential liability (including the  
21 risk of harm to public health, safety, environ-  
22 ment, and property) involved in a response ac-  
23 tion exceed or are not covered by insurance  
24 available to the contractor at the time at which  
25 the response action contract is entered into that

1 is likely to provide adequate long-term protec-  
2 tion to the public for the potential liability on  
3 fair and reasonable terms (including consider-  
4 ation of premium, policy terms, and  
5 deductibles).

6 “(C) DILIGENT EFFORTS.—The Adminis-  
7 trator shall enter into an indemnification agree-  
8 ment only if the Administrator determines that  
9 the response action contractor has made dili-  
10 gent efforts to obtain insurance coverage from  
11 non-Federal sources to cover potential liabil-  
12 ities.

13 “(D) CONTINUED DILIGENT EFFORTS.—  
14 An indemnification agreement shall require the  
15 response action contractor to continue, not  
16 more frequently than annually, to make diligent  
17 efforts to obtain insurance coverage from non-  
18 Federal sources to cover potential liabilities.

19 “(E) LIMITATIONS ON INDEMNIFICA-  
20 TION.—An indemnification agreement provided  
21 under this subsection shall include deductibles  
22 and shall place limits on the amount of indem-  
23 nification made available in amounts deter-  
24 mined by the contracting agency to be appro-



1           prie in light of the unique risk factors associ-  
2           ated with the cleanup activity.”.

3           (e) INDEMNIFICATION FOR THREATENED RE-  
4 LEASES.—Section 119(c)(5)(A) of the Comprehensive En-  
5 vironmental Response, Compensation, and Liability Act of  
6 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting  
7 “or threatened release” after “release” each place it ap-  
8 pears.

9           (f) EXTENSION OF COVERAGE TO ALL RESPONSE  
10 ACTIONS.—Section 119(e)(1) of the Comprehensive Envi-  
11 ronmental Response, Compensation, and Liability Act of  
12 1980 (42 U.S.C. 9619(e)(1)) is amended—

13           (1) in subparagraph (D) by striking “carrying  
14           out an agreement under section 106 or 122”; and

15           (2) in the matter following subparagraph (D)—

16           (A) by striking “any remedial action under  
17           this Act at a facility listed on the National Pri-  
18           orities List, or any removal under this Act,”  
19           and inserting “any response action,”; and

20           (B) by inserting before the period at the  
21           end the following: “or to undertake appropriate  
22           action necessary to protect and restore any nat-  
23           ural resource damaged by the release or threat-  
24           ened release”.

1 (g) DEFINITION OF RESPONSE ACTION CONTRAC-  
 2 TOR.—Section 119(e)(2)(A)(i) of the Comprehensive Envi-  
 3 ronmental Response, Compensation, and Liability Act of  
 4 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking  
 5 “and is carrying out such contract” and inserting “cov-  
 6 ered by this section and any person (including any sub-  
 7 contractor) hired by a response action contractor”.

8 (h) SURETY BONDS.—Section 119 of the Comprehen-  
 9 sive Environmental Response, Compensation, and Liabil-  
 10 ity Act of 1980 (42 U.S.C. 9619) is amended—

11 (1) in subsection (e)(2)(C) by striking “, and  
 12 before January 1, 1996,”; and

13 (2) in subsection (g)(5) by striking “, or after  
 14 December 31, 1995”.

15 (i) NATIONAL UNIFORM STATUTE OF REPOSE.—Sec-  
 16 tion 119 of the Comprehensive Environmental Response,  
 17 Compensation, and Liability Act of 1980 (42 U.S.C.  
 18 9619) is amended by adding at the end the following:

19 “(h) LIMITATION ON ACTIONS AGAINST RESPONSE  
 20 ACTION CONTRACTORS.—

21 “(1) IN GENERAL.—No action may be brought  
 22 as a result of the performance of services under a  
 23 response contract against a response action contrac-  
 24 tor after the date that is 7 years after the date of

1 completion of work at any facility under the contract  
2 to recover—

3 “(A) injury to property, real or personal;

4 “(B) personal injury or wrongful death;

5 “(C) other expenses or costs arising out of  
6 the performance of services under the contract;  
7 or

8 “(D) contribution or indemnity for dam-  
9 ages sustained as a result of an injury de-  
10 scribed in subparagraphs (A) through (C).

11 “(2) EXCEPTION.—Paragraph (1) does not bar  
12 recovery for a claim caused by the conduct of the re-  
13 sponse action contractor that is grossly negligent or  
14 that constitutes intentional misconduct.

15 “(3) INDEMNIFICATION.—This subsection does  
16 not affect any right of indemnification that a re-  
17 sponse action contractor may have under this sec-  
18 tion or may acquire by contract with any person.

19 “(i) STATE STANDARDS OF NEGLIGENCE.—Sub-  
20 section (a)(1) and subsection (h) shall not apply in deter-  
21 mining the liability of a response action contractor if the  
22 State has enacted, after the date of enactment of this sub-  
23 section, a statute of repose determining the liability of a  
24 response action contractor.”.

1 **SEC. 503. RELEASE OF EVIDENCE.**

2 (a) TIMELY ACCESS TO INFORMATION FURNISHED  
 3 UNDER SECTION 104(e).—Section 104(e)(7)(A) of the  
 4 Comprehensive Environmental Response, Compensation,  
 5 and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is  
 6 amended by inserting after “shall be available to the pub-  
 7 lic” the following: “not later than 14 days after the  
 8 records, reports, or information is obtained”.

9 (b) REQUIREMENT TO PROVIDE POTENTIALLY RE-  
 10 SPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

11 (1) ABATEMENT ACTIONS.—Section 106(a) of  
 12 the Comprehensive Environmental Response, Com-  
 13 pensation, and Liability Act of 1980 (42 U.S.C.  
 14 9606(a)) is amended—

15 (A) by striking “(a) In addition” and in-  
 16 serting the following: “(a) ORDER.—”

17 “(1) IN GENERAL.—In addition”; and

18 (B) by adding at the end the following:

19 “(2) CONTENTS OF ORDER.—An order under  
 20 paragraph (1) shall provide information concerning  
 21 the evidence that indicates that each element of li-  
 22 ability described in section 107(a)(1) (A), (B), (C),  
 23 and (D), as applicable, is present.”.

24 (2) SETTLEMENTS.—Section 122(e)(1) of the  
 25 Comprehensive Environmental Response, Compensa-  
 26 tion, and Liability Act of 1980 (42 U.S.C.

1       9622(e)(1)) is amended by inserting after subpara-  
2       graph (C) the following:

3               “(D) For each potentially responsible  
4               party, the evidence that indicates that each ele-  
5               ment of liability contained in section 107(a)(1)  
6               (A), (B), (C), and (D), as applicable, is  
7               present.”.

8       **SEC. 504. CONTRIBUTION PROTECTION.**

9       (a) NO LIABILITY FOR COST RECOVERY AFTER SET-  
10       TLEMENT.—Section 113(f)(2) of the Comprehensive Envi-  
11       ronmental Response, Compensation, and Liability Act of  
12       1980 (42 U.S.C. 9613(f)(2)) is amended in the first sen-  
13       tence by inserting “or cost recovery” after “contribution”.

14       (b) DEFINITIONS.—Section 101 of the Comprehen-  
15       sive Environmental Response, Compensation, and Liabil-  
16       ity Act of 1980 (42 U.S.C. 9601), as amended by section  
17       401, is amended by adding at the end the following:

18               “(48) ALLOCATED SHARE.—The term ‘allocated  
19               share’ means the percentage of liability assigned to  
20               a potentially responsible party by the allocator in an  
21               allocation report under section 132(j)(6).

22               “(49) DE MICROMIS PARTY.—The term ‘de  
23               micromis party’ means a potentially responsible  
24               party that is a generator or transporter that contrib-  
25               uted not more than 200 pounds or not more than

1       110 gallons of material containing hazardous sub-  
 2       stances at a facility, or such greater or lesser  
 3       amount as the Administrator may determine by reg-  
 4       ulation.

5           “(50) DE MINIMIS PARTY.—The term ‘de  
 6       minimis party’ means a liable party whose assigned  
 7       share of liability is determined to be 1.0 percent or  
 8       less in an allocation report under section 132.

9           “(51) ORPHAN SHARE.—The term ‘orphan  
 10      share’ means the total of the allocated shares deter-  
 11      mined by the allocator under section 132(l).

12   **SEC. 505. TREATMENT OF RELIGIOUS, CHARITABLE, SCI-**  
 13                   **ENTIFIC, AND EDUCATIONAL ORGANIZA-**  
 14                   **TIONS AS OWNERS OR OPERATORS.**

15       (a) DEFINITION.—Section 101(20) of the Com-  
 16       prehensive Environmental Response, Compensation, and  
 17       Liability Act of 1980 (42 U.S.C. 9601(20)), as amended  
 18       by section 502(a), is amended by adding at the end the  
 19       following:

20           “(H) RELIGIOUS, CHARITABLE, SCI-  
 21       ENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—  
 22       The term ‘owner or operator’ includes an orga-  
 23       nization described in section 501(c)(3) of the  
 24       Internal Revenue Code of 1986 that is orga-  
 25       nized and operated exclusively for religious,

1 charitable, scientific, or educational purposes  
2 and that holds legal or equitable title to a vessel  
3 or facility.”.

4 (b) LIMITATION ON LIABILITY.—Section 107 of the  
5 Comprehensive Environmental Response, Compensation,  
6 and Liability Act of 1980 (42 U.S.C. 9607), as amended  
7 by section 306(b), is amended by adding at the end the  
8 following:

9 “(r) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND  
10 EDUCATIONAL ORGANIZATIONS.—

11 “(1) LIMITATION ON LIABILITY.—Subject to  
12 paragraph (2), if an organization described in sec-  
13 tion 101(20)(I) holds legal or equitable title to a ves-  
14 sel or facility as a result of a charitable gift that is  
15 allowable as a deduction under section 170, 2055, or  
16 2522 of the Internal Revenue Code of 1986 (deter-  
17 mined without regard to dollar limitations), the li-  
18 ability of the organization shall be limited to the  
19 lesser of the fair market value of the vessel or facil-  
20 ity or the actual proceeds of the sale of the vessel  
21 or facility received by the organization.

22 “(2) CONDITIONS.—In order for an organiza-  
23 tion described in section 101(20)(I) to be eligible for  
24 the limited liability described in paragraph (1), the  
25 organization shall—

1           “(A) provide full cooperation, assistance,  
2           and vessel or facility access to persons author-  
3           ized to conduct response actions at the vessel or  
4           facility, including the cooperation and access  
5           necessary for the installation, preservation of  
6           integrity, operation, and maintenance of any  
7           complete or partial response action at the vessel  
8           or facility;

9           “(B) provide full cooperation and assist-  
10          ance to the United States in identifying and lo-  
11          cating persons who recently owned, operated, or  
12          otherwise controlled activities at the vessel or  
13          facility;

14          “(C) establish by a preponderance of the  
15          evidence that all active disposal of hazardous  
16          substances at the vessel or facility occurred be-  
17          fore the organization acquired the vessel or fa-  
18          cility; and

19          “(D) establish by a preponderance of the  
20          evidence that the organization did not cause or  
21          contribute to a release or threatened release of  
22          hazardous substances at the vessel or facility.

23          “(3) LIMITATION.—Nothing in this subsection  
24          affects the liability of a person other than a person



1 described in section 101(20)(G) that meets the con-  
2 ditions specified in paragraph (2).”.

3 **SEC. 506. COMMON CARRIERS.**

4 Section 107(b)(3) of the Comprehensive Environ-  
5 mental Response, Compensation, and Liability Act of  
6 1980 (42 U.S.C. 9607(b)(3)) is amended by striking “a  
7 published tariff and acceptance” and inserting “a con-  
8 tract”.

9 **SEC. 507. LIMITATION ON LIABILITY FOR RESPONSE COSTS.**

10 Section 107 of the Comprehensive Environmental Re-  
11 sponse, Compensation, and Liability Act of 1980 (42  
12 U.S.C. 9607), as amended by section 505(b), is amended  
13 by adding at the end the following:

14 “(s) LIMITATION ON LIABILITY OF RAILROAD OWN-  
15 ERS.—Notwithstanding subsection (a)(1), a person that  
16 does not impede the performance of a response action or  
17 natural resource restoration shall not be liable under this  
18 Act to the extent that liability is based solely on the status  
19 of the person as a railroad owner or operator of a spur  
20 track, including a spur track over land subject to an ease-  
21 ment, to a facility that is owned or operated by a person  
22 that is not affiliated with the railroad owner or operator,  
23 if—

1 “(1) the spur track provides access to a main  
2 line or branch line track that is owned or operated  
3 by the railroad;

4 “(2) the spur track is 10 miles long or less; and

5 “(3) the railroad owner or operator does not  
6 cause or contribute to a release or threatened release  
7 at the spur track.”.

## 8 **TITLE VI—FEDERAL FACILITIES**

### 9 **SEC. 601. TRANSFER OF AUTHORITIES.**

10 Section 120 of the Comprehensive Environmental Re-  
11 sponse, Compensation, and Liability Act of 1980 (42  
12 U.S.C. 9620) is amended by striking subsection (g) and  
13 inserting the following:

14 “(g) TRANSFER OF AUTHORITIES.—

15 “(1) DEFINITIONS.—In this section:

16 “(A) INTERAGENCY AGREEMENT.—The  
17 term ‘interagency agreement’ means an inter-  
18 agency agreement under section 120.

19 “(B) TRANSFER AGREEMENT.—The term  
20 ‘transfer agreement’ means a transfer agree-  
21 ment under paragraph (3).

22 “(C) TRANSFEREE STATE.—The term  
23 ‘transferee State’ means a State to which au-  
24 thorities have been transferred under a transfer  
25 agreement.

1           “(2) STATE APPLICATION FOR TRANSFER OF  
2           AUTHORITIES.—A State may apply to the Adminis-  
3           trator to exercise the authorities vested in the Ad-  
4           ministrator under this Act at any facility owned or  
5           operated by any department, agency, or instrumen-  
6           tality of the United States (including the executive,  
7           legislative, and judicial branches of government) lo-  
8           cated in the State.

9           “(3) TRANSFER OF AUTHORITIES.—

10           “(A) DETERMINATIONS.—The Adminis-  
11           trator shall enter into a transfer agreement to  
12           transfer to a State the authorities described in  
13           paragraph (2) if the Administrator determines  
14           that—

15                   “(i) the State has the ability to exer-  
16                   cise such authorities in accordance with  
17                   this Act, including adequate legal author-  
18                   ity, financial and personnel resources, or-  
19                   ganization, and expertise;

20                   “(ii) the State has demonstrated expe-  
21                   rience in exercising similar authorities;

22                   “(iii) the State has agreed to be  
23                   bound by all Federal requirements and  
24                   standards under section 129 governing the  
25                   design and implementation of the facility

1 evaluation, remedial action plan, and reme-  
2 dial design; and

3 “(iv) the State has agreed to abide by  
4 the terms of any interagency agreement or  
5 agreements covering the Federal facility or  
6 facilities with respect to which authorities  
7 are being transferred in effect at the time  
8 of the transfer of authorities.

9 “(B) CONTENTS OF TRANSFER AGREE-  
10 MENT.—A transfer agreement—

11 “(i) shall incorporate the determina-  
12 tions of the Administrator under subpara-  
13 graph (A); and

14 “(ii) in the case of a transfer agree-  
15 ment covering a facility with respect to  
16 which there is no interagency agreement  
17 that specifies a dispute resolution process,  
18 shall require that within 120 days after the  
19 effective date of the transfer agreement,  
20 the State shall agree with the head of the  
21 Federal department, agency, or instrumen-  
22 tality that owns or operates the facility on  
23 a process for resolution of any disputes be-  
24 tween the State and the Federal depart-  
25 ment, agency, or instrumentality regarding

1           the selection of a remedial action for the  
2           facility; and

3           “(iii) shall not impose on the trans-  
4           feree State any term or condition other  
5           than that the State meet the requirements  
6           of subparagraph (A).

7           “(4) EFFECT OF TRANSFER.—

8           “(A) STATE AUTHORITIES.—A transferee  
9           State—

10           “(i) shall not be deemed to be an  
11           agent of the Administrator but shall exer-  
12           cise the authorities transferred under a  
13           transfer agreement in the name of the  
14           State; and

15           “(ii) shall have exclusive authority to  
16           determine the manner in which those au-  
17           thorities are implemented.

18           “(B) EFFECT ON INTERAGENCY AGREE-  
19           MENTS.—Nothing in this subsection shall re-  
20           quire, authorize, or permit the modification or  
21           revision of an interagency agreement covering a  
22           facility with respect to which authorities have  
23           been transferred to a State under a transfer  
24           agreement (except for the substitution of the  
25           transferee State for the Administrator in the

1 terms of the interagency agreement, including  
2 terms stating obligations intended to preserve  
3 the confidentiality of information) without the  
4 written consent of the Governor of the State  
5 and the head of the department, agency, or in-  
6 strumentality.

7 “(5) SELECTED REMEDIAL ACTION.—The reme-  
8 dial action selected for a facility under section 129  
9 by a transferee State shall constitute the only reme-  
10 dial action required to be conducted at the facility,  
11 and the transferee State shall be precluded from en-  
12 forcing any other remedial action requirement under  
13 Federal or State law, except for—

14 “(A) any corrective action activity under  
15 the Solid Waste Disposal Act (42 U.S.C. 6901  
16 et seq.) that was initiated prior to the date of  
17 enactment of this subsection; and

18 “(B) any remedial action in excess of re-  
19 medial action under section 129 that the State  
20 selects in accordance with paragraph (8).

21 “(6) DEADLINE.—

22 “(A) IN GENERAL.—The Administrator  
23 shall make a determination on an application by  
24 a State under paragraph (2) not later than 120

1 days after the date on which the Administrator  
2 receives the application.

3 “(B) FAILURE TO ACT.—If the Adminis-  
4 trator does not issue a notice of approval or no-  
5 tice of disapproval of an application within the  
6 time period stated in subparagraph (A), the ap-  
7 plication shall be deemed to have been granted.

8 “(7) RESUBMISSION OF APPLICATION.—

9 “(A) IN GENERAL.—If the Administrator  
10 disapproves an application under paragraph (1),  
11 the State may resubmit the application at any  
12 time after receiving the notice of disapproval.

13 “(B) FAILURE TO ACT.—If the Adminis-  
14 trator does not issue a notice of approval or no-  
15 tice of disapproval of a resubmitted application  
16 within the time period stated in paragraph  
17 (6)(A), the resubmitted application shall be  
18 deemed to have been granted.

19 “(8) JUDICIAL REVIEW.—

20 “(A) IN GENERAL.—A disapproval of a re-  
21 submitted application shall be subject to judicial  
22 review under section 113(b).

23 “(B) STANDARD OF REVIEW.—In a pro-  
24 ceeding on review of a disapproval of a resub-  
25 mitted application, the court shall, notwith-

1 standing section 706(2)(E) of title 5, United  
2 States Code, hold unlawful and set aside ac-  
3 tions, findings, and conclusions found to be un-  
4 supported by substantial evidence.

5 “(9) WITHDRAWAL OF AUTHORITIES.—The Ad-  
6 ministrator may withdraw the authorities trans-  
7 ferred under a transfer agreement in whole or in  
8 part if the Administrator determines that the  
9 State—

10 “(A) is exercising the authorities, in whole  
11 or in part, in a manner that is inconsistent with  
12 the requirements of this Act;

13 “(B) has violated the transfer agreement,  
14 in whole or in part; or

15 “(C) no longer meets one of the require-  
16 ments of paragraph (3).

17 “(10) STATE COST RESPONSIBILITY.—The  
18 State may require a remedial action that exceeds  
19 Federal standards (including the remedial action se-  
20 lection requirements of section 121) if the State  
21 pays the incremental cost of implementing that re-  
22 medial action over the most cost-effective remedial  
23 action that would result from the application of sec-  
24 tion 129.



1           “(11) DISPUTE RESOLUTION AND ENFORCE-  
2       MENT.—

3           “(A) DISPUTE RESOLUTION.—

4                   “(i) FACILITIES COVERED BY BOTH A  
5       TRANSFER AGREEMENT AND AN INTER-  
6       AGENCY AGREEMENTS.—In the case of a  
7       facility with respect to which there is both  
8       a transfer agreement and an interagency  
9       agreement, if the State does not concur in  
10      the remedial action proposed for selection  
11      by the Federal department, agency, or in-  
12      strumentality, the Federal department,  
13      agency, or instrumentality and the State  
14      shall engage in the dispute resolution proc-  
15      ess provided for in the interagency agree-  
16      ment, except that the final level for resolu-  
17      tion of the dispute shall be the head of the  
18      Federal department, agency, or instrumen-  
19      tality and the Governor of the State.

20                   “(ii) FACILITIES COVERED BY A  
21      TRANSFER AGREEMENT BUT NOT AN  
22      INTERAGENCY AGREEMENT.—In the case  
23      of a facility with respect to which there is  
24      a transfer agreement but no interagency  
25      agreement, if the State does not concur in

1 the remedial action proposed for selection  
2 by the Federal department, agency, or in-  
3 strumentality, the Federal department,  
4 agency, or instrumentality and the State  
5 shall engage in dispute resolution as pro-  
6 vide in paragraph (3)(B)(ii) under which  
7 the final level for resolution of the dispute  
8 shall be the head of the Federal depart-  
9 ment, agency, or instrumentality and the  
10 Governor of the State.

11 “(iii) FAILURE TO RESOLVE.—If no  
12 agreement is reached between the head of  
13 the Federal department, agency, or instru-  
14 mentality and the Governor in a dispute  
15 resolution process under clause (i) or (ii),  
16 the Governor of the State shall make the  
17 final determination regarding selection of a  
18 remedial action.

19 “(B) ENFORCEMENT.—

20 “(i) IN GENERAL.—An interagency  
21 agreement with respect to which there is a  
22 transfer agreement or an order issued by a  
23 transferee State shall be enforceable by a  
24 transferee State or by the Federal depart-  
25 ment, agency, or instrumentality that is a

1 party to the interagency agreement in the  
2 United States district court for the district  
3 in which the facility is located.

4 “(ii) REMEDIES.—The district court  
5 shall have the jurisdiction to—

6 “(I) enforce compliance with any  
7 provision, standard, regulation, condi-  
8 tion, requirement, order, or final de-  
9 termination that has become effective  
10 under the interagency agreement;

11 “(II) impose any appropriate civil  
12 penalty provided for any violation of  
13 an interagency agreement, not to ex-  
14 ceed \$25,000 per day;

15 “(III) compel implementation of  
16 the selected remedial action; and

17 “(IV) review a challenge by the  
18 Federal department, agency, or in-  
19 strumentality to the remedial action  
20 selected by the State, in accordance  
21 with section 113(j).

22 “(12) COMMUNITY PARTICIPATION.—If, prior to  
23 June 15, 1995, a Federal department, agency, or in-  
24 strumentality had established for a facility covered  
25 by a transfer agreement a facility-specific advisory

board or other community-based advisory group (designated as a ‘site-specific advisory board’, a ‘response action advisory board’, or otherwise), and the Administrator determines that the board or group is willing and able to perform the responsibilities of a community response organization under section 117(e)(2), the board or group—

“(A) shall be considered to be a community response organization for the purposes of section 117 (e) (2), (3), (4), (5), and (6), and (g) and sections 127 and 129; but

“(B) shall not be required to comply with, and shall not be considered to be a community response organization for the purposes of, section 117 (e) (1), (7), (8), (9), (10), or (11) or (f).”.

**SEC. 602. DEPARTMENT OF ENERGY ENVIRONMENTAL  
CLEANUP REQUIREMENTS.**

(a) DEFINITIONS.—In this section:

(1) CIVIL OR CRIMINAL SANCTION.—The term “civil or criminal sanction” means a fine, penalty, imprisonment, a requirement to pay damages or costs, the imposition of equitable relief against a person, and the application of any other remedy authorized by law.

1           (2) DEPARTMENT OF ENERGY ENVIRONMENTAL  
2       CLEANUP REQUIREMENT.—The term “Department  
3       of Energy environmental cleanup requirement”—

4           (A) means a requirement imposed on the  
5       Secretary of Energy—

6           (i) to carry out a response action  
7       under the Comprehensive Environmental  
8       Response, Compensation, and Liability Act  
9       of 1980 (42 U.S.C. 9601 et seq.);

10          (ii) to take corrective action under  
11       section 3004 (u) or (v) or section 3008(h)  
12       of the Solid Waste Disposal Act (42  
13       U.S.C. 6924 (u), (v));

14          (iii) to conduct closure activity under  
15       section 3004 or 3005 of the Solid Waste  
16       Disposal Act (42 U.S.C. 6924, 6925);

17          (iv) relating to storage of mixed waste  
18       under section 3004(j) of the Solid Waste  
19       Disposal Act (42 U.S.C. 6924(j));

20          (v) for treatment of mixed waste  
21       under section 3021 of the Solid Waste Dis-  
22       posal Act (42 U.S.C. 6939c);

23          (vi) with respect to the storage of  
24       mixed waste in a storage facility that does  
25       not meet other storage requirements im-

posed under the Solid Waste Disposal Act  
(42 U.S.C. 6901 et seq.), if—

(I) the facility commenced operation prior to October 6, 1992;

(II) the storage does not result in any release of mixed waste to the environment, or any direct, immediate, and significant danger to human health or the environment.

(vii) under comparable provisions of State and local laws; or

(viii) under a permit or order issued by, or an agreement with a Federal, State, or local agency relating to a requirement described in clause (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii); but

(B) does not include—

(i) a reporting requirement imposed by section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9603); or

(ii) except as provided in subparagraph (A)(iii), a requirement with respect to the treatment, storage, disposal, or transportation of hazardous waste gen-

erated by a response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or by a corrective action or closure under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(b) LISTS.—

(1) INITIAL LIST.—Not later than 120 days after the date of enactment of this Act, the Secretary of Energy, after providing appropriate Federal, State, and local agencies reasonable notice and an opportunity for comment, shall submit to Congress a list identifying by State and facility the specific Department of Energy environmental cleanup requirements that cannot be carried out with the funds appropriated specifically for the Department's environmental management activities under the Energy and Water Development Appropriations Act, 1996, or the Department of Defense Appropriations Act, 1996.

(2) ANNUAL LISTS.—

(A) SUBMISSION TO THE PRESIDENT.—

For fiscal year 1997 and each fiscal year thereafter, the Secretary of Energy, after providing appropriate Federal, State, and local agencies

1 reasonable notice and an opportunity for com-  
2 ment, shall—

3 (i) provide to the President—

4 (I) information concerning the  
5 budget necessary to meet all Depart-  
6 ment of Energy environmental man-  
7 agement requirements, including De-  
8 partment of Energy environmental  
9 cleanup requirements; and

10 (II) a list of the Department of  
11 Energy environmental cleanup re-  
12 quirements that cannot be met (in-  
13 cluding information about the nature  
14 and cost of each requirement and the  
15 locations of each affected facility)  
16 within the Department's budget re-  
17 quest for environmental management  
18 activities for that fiscal year;

19 (ii) advise the President of the factors  
20 taken into account in formulating the list;  
21 and

22 (iii) a summary of comments on the  
23 list received by the Secretary of Energy  
24 from Federal, State, and local agencies.



1 (B) INCLUSION IN BUDGET REQUEST.—

2 After considering information provided by the  
3 Secretary of Energy, the President shall submit  
4 to Congress with the President's annual budget  
5 request under section 1105 of title 31, United  
6 States Code—

7 (i) information concerning the budget  
8 necessary to meet all Department of En-  
9 ergy environmental management require-  
10 ments, including Department of Energy  
11 environmental cleanup requirements;

12 (ii) a list of the Department of En-  
13 ergy environmental cleanup requirements  
14 that cannot be met (including information  
15 about the nature and cost of each require-  
16 ment and the locations of each affected fa-  
17 cility) within the Department's budget re-  
18 quest for environmental management ac-  
19 tivities for that fiscal year; and

20 (iii) a summary of comments on the  
21 list received by the Secretary of Energy  
22 from Federal, State, and local agencies.

23 (3) COMMENTS ON COST REDUCTION.—During  
24 the comment period on a list under paragraph (1)  
25 or (2), the Secretary of Energy shall seek comments

1 of appropriate Federal, State, and local agencies  
2 concerning opportunities for cost reduction in meet-  
3 ing cleanup requirements, risk reduction, community  
4 concerns and other factors relevant to setting prior-  
5 ities for cleanup activities.

6 (4) REVISION OF LISTS.—

7 (A) IN GENERAL.—Beginning with fiscal  
8 year 1997, after funds for the Department of  
9 Energy’s environmental management activities  
10 have been appropriated for a fiscal year, the  
11 Secretary of Energy, after providing appro-  
12 priate Federal, State, and local agencies reason-  
13 able notice and an additional opportunity for  
14 comment, shall revise the list of the Depart-  
15 ment of Energy environmental cleanup require-  
16 ments submitted to Congress to reflect any dif-  
17 ferences between the President’s budget request  
18 and the funds appropriated specifically to carry  
19 out such activities and shall submit the revised  
20 list to Congress within 60 days.

21 (B) NO FURTHER REVISION.—After a re-  
22 vised list is submitted to Congress, it shall not  
23 be subject to further revision.

24 (c) CIVIL OR CRIMINAL SANCTIONS.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), notwithstanding any other law, no action  
3           seeking to impose civil or criminal sanctions under  
4           any law may be commenced at any time against—

5                   (A) the United States or any department,  
6                   agency, or instrumentality of the United States;

7                   (B) any employee or officer of the United  
8                   States or of any department, agency, or instru-  
9                   mentality of the United States; or

10                   (C) any person who is a contractor, sub-  
11                   contractor, or agent of the Department of En-  
12                   ergy, or any employee, officer, shareholder,  
13                   partner, or director of such a person acting in  
14                   accordance with the person's authority,

15           with respect to a failure to comply with a Depart-  
16           ment of Energy environmental cleanup requirement  
17           by reason of a lack of funds appropriated specifically  
18           for the Department of Energy environmental man-  
19           agement activities during a fiscal year for which  
20           such cleanup requirement was on a list under sub-  
21           section (c).

22           (2) PERMITTED ACTIONS.—This subsection  
23           does not prohibit an action against the United  
24           States or any department, agency, or instrumentality  
25           of the United States—

1 (A) with respect to a violation of a Depart-  
2 ment of Energy environmental cleanup require-  
3 ment contained in a compliance agreement with  
4 a Federal, State, or local agency or order that  
5 the Department of Energy voluntarily accepted  
6 in writing after January 1, 1995, if the action  
7 seeks only civil penalties stipulated in the agree-  
8 ment or order, or injunctive relief enforcing the  
9 agreement or order;

10 (B) if injunctive relief is sought on the  
11 basis that such relief is necessary to avoid a di-  
12 rect, immediate, and significant danger to  
13 human health or the environment; or

14 (C) if monetary damages are sought to  
15 compensate a person for an actual injury or  
16 loss to the extent that such an action is allowed  
17 by other law.

18 (d) JUDICIAL REVIEW.—A decision made by the  
19 President or the Secretary of Energy in preparing a list  
20 under subsection (c) shall not be subject to judicial review.

21 **SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**  
22 **TION AT FEDERAL FACILITIES.**

23 (a) IN GENERAL.—Section 311 of the Comprehensive  
24 Environmental Response, Compensation, and Liability Act

1 of 1980 (42 U.S.C. 9660) is amended by adding at the  
2 end the following:

3 “(h) FEDERAL FACILITIES.—

4 “(1) DESIGNATION.—The President may des-  
5 ignate a facility that is owned or operated by any de-  
6 partment, agency, or instrumentality of the United  
7 States, and that is listed or proposed for listing on  
8 the National Priorities List, to facilitate the re-  
9 search, development, and application of innovative  
10 technologies for remedial action at the facility.

11 “(2) USE OF FACILITIES.—

12 “(A) IN GENERAL.—A facility designated  
13 under paragraph (1) shall be made available to  
14 Federal departments and agencies, State de-  
15 partments and agencies, and public and private  
16 instrumentalities, to carry out activities de-  
17 scribed in paragraph (1).

18 “(B) COORDINATION.—The Adminis-  
19 trator—

20 “(i) shall coordinate the use of the fa-  
21 cilities with the departments, agencies, and  
22 instrumentalities of the United States; and

23 “(ii) may approve or deny the use of  
24 a particular innovative technology for re-  
25 medial action at any such facility.

1 “(3) CONSIDERATIONS.—

2 “(A) EVALUATION OF SCHEDULES AND  
3 PENALTIES.—In considering whether to permit  
4 the application of a particular innovative tech-  
5 nology for remedial action at a facility des-  
6 ignated under paragraph (1), the Administrator  
7 shall evaluate the schedules and penalties appli-  
8 cable to the facility under any agreement or  
9 order entered into under section 120.

10 “(B) AMENDMENT OF AGREEMENT OR  
11 ORDER.—If, after an evaluation under subpara-  
12 graph (A), the Administrator determines that  
13 there is a need to amend any agreement or  
14 order entered into pursuant to section 120, the  
15 Administrator shall comply with all provisions  
16 of the agreement or order, respectively, relating  
17 to the amendment of the agreement or order.”.

18 (b) REPORT TO CONGRESS.—Section 311(e) of Com-  
19 prehensive Environmental Response, Compensation, and  
20 Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

21 (1) by striking “At the time” and inserting the  
22 following:

23 “(1) IN GENERAL.—At the time”; and

24 (2) by adding at the end the following:

1           “(2) ADDITIONAL INFORMATION.—A report  
2           under paragraph (1) shall include information on the  
3           use of facilities described in subsection (h)(1) for the  
4           research, development, and application of innovative  
5           technologies for remedial activity, as authorized  
6           under subsection (h).”.

7   **SEC. 604. FEDERAL FACILITY LISTING.**

8           Section 120(d) of the Comprehensive Environmental  
9   Response, Compensation, and Liability Act of 1980 (42  
10   U.S.C. 9620(d)) is amended—

11           (1) by striking “Not later” and inserting the  
12           following:

13           “(1) PRELIMINARY ASSESSMENTS.—Not later”;

14           (2) by striking “Following such” and inserting  
15           the following:

16           “(2) EVALUATION AND PLACEMENT ON NA-  
17           TIONAL PRIORITIES LIST.—Following such”;

18           (3) by striking “(1) evaluate” and inserting the  
19           following:

20           “(A) evaluate”;

21           (4) by striking “(2) include” and inserting the  
22           following:

23           “(B) include”;

24           (5) by striking “Such criteria” and inserting  
25           the following:

1           “(3) APPLICATION OF CRITERIA.—The criteria  
2           for determining priorities”;

3           (6) by striking “Evaluation” and inserting the  
4           following:

5           “(4) COMPLETION.—Evaluation”;

6           (7) by striking “Upon” and inserting the fol-  
7           lowing:

8           “(5) PETITIONS BY GOVERNORS.—On”; and

9           (8) by adding at the end the following:

10          “(6) UNCONTAMINATED PROPERTIES.—On  
11          identification of parcels of uncontaminated property  
12          under subsection (h)(4), the Administrator may pro-  
13          vide notice that the listing does not include the iden-  
14          tified uncontaminated parcels.”.

15   **SEC. 605. FEDERAL FACILITY LISTING DEFERRAL.**

16          Paragraph (3) of section 120(d) of the Comprehen-  
17          sive Environmental Response, Compensation, and Liabil-  
18          ity Act of 1980 (42 U.S.C. 9620(d)), as designated by  
19          section 604, is amended by inserting after “persons” the  
20          following: “, but an appropriate factor as referred to in  
21          section 105(a)(8)(A) may include the extent to which the  
22          Federal land holding agency has arranged with the Ad-  
23          ministrator or with a State to respond to the release or  
24          threatened release under other legal authority”.



1 **SEC. 606. TRANSFERS OF UNCONTAMINATED PROPERTY.**

2 Section 120(h)(4)(A) of the Comprehensive Environ-  
3 mental Response, Compensation, and Liability Act of  
4 1980 (42 U.S.C. 9620(h)(4)(A)) is amended in the first  
5 sentence by striking “stored for one year or more,”.

6 **TITLE VII—NATURAL RESOURCE**  
7 **DAMAGES**

8 **SEC. 701. RESTORATION OF NATURAL RESOURCES.**

9 (a) DEFINITIONS.—Section 101 of the Comprehen-  
10 sive Environmental Response, Compensation, and Liabil-  
11 ity Act of 1980 (42 U.S.C. 9601), as amended by section  
12 504(b), is amended—

13 (1) by striking paragraph (16) and inserting  
14 the following:

15 “(16) NATURAL RESOURCE.—

16 “(A) IN GENERAL.—The term ‘natural re-  
17 source’ means land, fish, wildlife, biota, air,  
18 water, ground water, a drinking water supply,  
19 and any similar resource that is committed for  
20 use by the general public and is owned or man-  
21 aged by, appertains to, is held in trust by, or  
22 is otherwise controlled by the United States (in-  
23 cluding a resource of the fishery conservation  
24 zone established by the Magnuson Fishery Con-  
25 servation and Management Act (16 U.S.C.  
26 1801 et seq.)), by a State or local government,

1 by a foreign government, by an Indian tribe, or,  
2 if such a resource is subject to a trust restric-  
3 tion on alienation, by a member of an Indian  
4 tribe.

5 “(B) COMMITMENT FOR USE.—A resource  
6 shall be considered to be committed for use by  
7 the general public only if, at the time of the act  
8 of disposal giving rise to liability (as limited by  
9 section 107(f)(1)(B)), the resource is subject to  
10 a public use or to a planned public use, for  
11 which there is an authorized and documented  
12 legal, administrative, budgetary, or financial  
13 commitment.”; and

14 (2) by adding at the end the following:

15 “(52) BASELINE.—The term ‘baseline’ means  
16 the condition or conditions that would have existed  
17 at a natural resource had a release of hazardous  
18 substances not occurred.

19 “(53) COMPENSATORY RESTORATION.—The  
20 term ‘compensatory restoration’ means the provision  
21 of ecological services lost as a result of injury to or  
22 destruction or loss of a natural resource from the  
23 initial release giving rise to liability under section  
24 107(a)(2)(C) until primary restoration has been  
25 achieved with respect to those services.

1           “(54) ECOLOGICAL SERVICE.—The term ‘eco-  
2       logical service’ means a physical or biological func-  
3       tion performed by an ecological resource, including  
4       the human uses of such a function.

5           “(55) PRIMARY RESTORATION.—The term ‘pri-  
6       mary restoration’ means rehabilitation, natural re-  
7       covery, or replacement of an injured, destroyed, or  
8       lost natural resource, or acquisition of a substitute  
9       or alternative natural resource, to reestablish the  
10      baseline ecological service that the natural resource  
11      would have provided in the absence of a release giv-  
12      ing rise to liability under section 107(a)(2)(C).

13          “(56) RESTORATION.—The term ‘restoration’  
14      means primary restoration and compensatory res-  
15      toration.”.

16      (b) LIABILITY FOR NATURAL RESOURCE DAM-  
17      AGES.—

18          (1) AMENDMENT.—Section 107(a) of the Com-  
19      prehensive Environmental Response, Compensation,  
20      and Liability Act of 1980 (42 U.S.C. 9607(a)) is  
21      amended—

22              (A) by inserting “IN GENERAL.—” after  
23              “(a)”;

24              (B) by striking “Notwithstanding” and in-  
25      serting the following:

1 “(1) PERSONS LIABLE.—Notwithstanding”;

2 (C) by redesignating paragraphs (1), (2),  
3 (3), and (4) (as designated prior to the date of  
4 enactment of this Act) as subparagraphs (A),  
5 (B), (C), and (D), respectively, and adjusting  
6 the margins accordingly;

7 (D) by striking “hazardous substance,  
8 shall be liable for—” and inserting the follow-  
9 ing: “hazardous substance,  
10 shall be liable for the costs and damages described  
11 in paragraph (2).

12 “(2) COSTS AND DAMAGES.—A person de-  
13 scribed in paragraph (1) shall be liable for—”;

14 (E) by striking subparagraph (C) of para-  
15 graph (2), as designated by subparagraph (D),  
16 and inserting the following:

17 “(C) damages for injury to, destruction of,  
18 or loss of the baseline ecological services of nat-  
19 ural resources, including the reasonable costs of  
20 assessing such injury, destruction, or loss  
21 caused by a release; and”;

22 (F) by striking “The amounts” and insert-  
23 ing the following:

24 “(3) INTEREST.—The amounts”; and

1 (G) in the first sentence of paragraph (3),  
2 as designated by subparagraph (F), by striking  
3 “subparagraphs (A) through (D)” and inserting  
4 “paragraph (2)”.

5 (2) CONFORMING AMENDMENTS.—Section 107  
6 of the Comprehensive Environmental Response,  
7 Compensation, and Liability Act of 1980 (42 U.S.C.  
8 9607) is amended—

9 (A) in subsection (d)(3) by striking “the  
10 provisions of paragraph (1), (2), (3), or (4) of  
11 subsection (a) of this section” and inserting  
12 “subsection (a)”; and

13 (B) in subsection (f)(1) by striking “sub-  
14 paragraph (C) of subsection (a)” each place it  
15 appears and inserting “subsection (a)(2)(C)”.

16 (c) NATURAL RESOURCE DAMAGES.—Section 107(f)  
17 of the Comprehensive Environmental Response, Com-  
18 pensation, and Liability Act of 1980 (42 U.S.C. 9607(f))  
19 is amended—

20 (1) by inserting “NATURAL RESOURCE DAM-  
21 AGES.—” after “(f)”;

22 (2) by striking “(1) NATURAL RESOURCES LI-  
23 ABILITY.—In the case” and inserting the following:

24 “(1) LIABILITY.—

25 “(A) IN GENERAL.—In the case”;

1           (3) in paragraph (1)(A), as designated by para-  
2 graph (2)—

3           (A) in the first sentence by inserting “the  
4 baseline ecological services of” after “loss of”;

5           (B) in the third and fourth sentences, by  
6 striking “to restore, replace, or acquire the  
7 equivalent” each place it appears and inserting  
8 “for restoration”;

9           (C) by inserting after the fourth sentence  
10 the following: “Sums recovered by an Indian  
11 tribe as trustee under this subsection shall be  
12 available for use only for restoration of such  
13 natural resources by the Indian tribe. A res-  
14 toration conducted by the United States, a  
15 State, or an Indian tribe shall proceed only if  
16 it is technologically practicable, cost-effective,  
17 and consistent with all known or anticipated re-  
18 sponse actions at or near the facility. Any sums  
19 recovered by the United States, a State, or an  
20 Indian tribe shall be placed in an escrow ac-  
21 count. Such sums may be released from the es-  
22 crow account only for the purpose of contribut-  
23 ing to restoration activities carried out in ac-  
24 cordance with specific activities or accounts set  
25 forth in a restoration plan approved by the

1 United States, a State, or an Indian tribe. The  
2 restoration plan may be revised as necessary to  
3 account for new information or extenuating cir-  
4 cumstances on approval of the trustee and rel-  
5 evant responsible parties or on approval by a  
6 United States district court. The trustee shall  
7 issue a public notice and hold a public hearing  
8 every 2 years after approval of the restoration  
9 plan and issue a report describing how the  
10 sums have been expended in accordance with  
11 the restoration plan. Any sums expended by the  
12 United States, a State, or an Indian tribe that  
13 are not expended in accordance with the res-  
14 toration plan may be recovered by the persons  
15 from whom the sums were collected.”; and

16 (D) by striking “The measure of damages  
17 in any action” and all that follows through the  
18 end of the paragraph and inserting the follow-  
19 ing:

20 “(B) LIMITATIONS ON LIABILITY.—

21 “(i) MEASURE OF DAMAGES.—The  
22 measure of damages in any action under  
23 subsection (a)(2)(C) shall be limited to the  
24 reasonable costs of restoration and of as-  
25 sessing damages.

1           “(ii) NONUSE VALUES.—There shall  
2           be no recovery under this Act for any im-  
3           pairment of non-use values.

4           “(iii) NO DOUBLE RECOVERY.—A per-  
5           son that obtains a recovery of damages, re-  
6           sponse costs, assessment costs, or any  
7           other costs under this Act for injury to, de-  
8           struction of, or loss of a natural resource  
9           caused by a release shall not be entitled to  
10          recovery under or any other Federal or  
11          State law for injury to or destruction or  
12          loss of the natural resource caused by the  
13          release.

14          “(iv) NO RETROACTIVE LIABILITY.—

15               “(I) COMPENSATORY RESTORA-  
16               TION.—There shall be no recovery  
17               from any person under of this section  
18               of the costs of compensatory restora-  
19               tion for a natural resource injury, de-  
20               struction, or loss that occurred prior  
21               to December 11, 1980.

22               “(II) PRIMARY RESTORATION.—  
23               There shall be no recovery from any  
24               person under this section for the costs  
25               of primary restoration if the natural



1 resource injury, destruction, or loss  
2 for which primary restoration is  
3 sought and the release of the hazard-  
4 ous substance from which the injury  
5 resulted occurred entirely prior to De-  
6 cember 11, 1980.

7 “(v) BURDEN OF PROOF ON THE  
8 ISSUE OF THE DATE OF OCCURRENCE OF  
9 A RELEASE.—The trustee for an injured,  
10 destroyed, or lost natural resource bears  
11 the burden of demonstrating that any  
12 amount of costs of compensatory restora-  
13 tion that the trustee seeks under this sec-  
14 tion is to compensate for an injury, de-  
15 struction, or loss (or portion of an injury,  
16 destruction, or loss) that occurred on or  
17 after December 11, 1980.”; and

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

19 “(3) SELECTION OF RESTORATION METHOD.—  
20 When selecting appropriate restoration measures, in-  
21 cluding natural recovery, a trustee shall select the  
22 most cost-effective method of achieving restoration.”.

23 (d) AMOUNT OF DAMAGES.—Section 107(c) of the  
24 Comprehensive Environmental Response, Compensation,

1 and Liability Act of 1980 (42 U.S.C. 9607(c)) is amend-  
2 ed—

3 (A) by striking “paragraph (2) of this sub-  
4 section,” and inserting “paragraph (2), and  
5 subject to the limitation stated in paragraph  
6 (4),”; and

7 (B) in subparagraph (D) by inserting “, as  
8 limited by paragraph (4)” before the period at  
9 the end; and

10 (2) by adding at the end the following:

11 “(4) LIMITATION.—Except as provided in para-  
12 graph (2), the aggregate liability of all responsible  
13 parties for costs of compensatory restoration in-  
14 curred as a result of a release or releases of hazard-  
15 ous substances from an incineration vessel or a facil-  
16 ity or group of facilities (including those that con-  
17 stitute part or all of 1 or more facilities listed on the  
18 national priorities list under section 105(a)(8)(B))  
19 shall not exceed—

20 “(A) \$25,000,000; or

21 “(B) if the costs of compensatory com-  
22 pensation exceed \$100,000,000, \$50,000,000.”.

23 **SEC. 702. ASSESSMENT OF DAMAGES.**

24 (a) DAMAGE ASSESSMENTS.—Section 107(f)(2) of  
25 the Comprehensive Environmental Response, Compensa-

1 tion, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is  
2 amended by striking subparagraph (C) and inserting the  
3 following:

4 “(C) DAMAGE ASSESSMENT.—

5 “(i) REGULATION.—A natural re-  
6 source damage assessment conducted for  
7 the purposes of this Act or section 311 of  
8 the Federal Water Pollution Control Act  
9 (33 U.S.C. 1321) made by a Federal,  
10 State, or tribal trustee shall be performed  
11 in accordance with—

12 “(I) the regulation issued under  
13 section 301(c); and

14 “(II) generally accepted scientific  
15 and technical standards and meth-  
16 odologies to ensure the validity and  
17 reliability of assessment results.

18 “(ii) FACILITY-SPECIFIC CONDITIONS  
19 AND RESTORATION REQUIREMENTS.—In-  
20 jury determination, restoration planning,  
21 and quantification of restoration costs shall  
22 be based on an assessment of facility-spe-  
23 cific conditions and restoration require-  
24 ments.

1           “(iii) USE BY TRUSTEE.—A natural  
2           resource damage assessment under clause  
3           (i) may be used by a trustee as the basis  
4           for a natural resource damage claim only  
5           if the assessment demonstrates that the  
6           hazardous substance release in question  
7           caused the alleged natural resource injury.

8           “(iv) COST RECOVERY.—As part of a  
9           trustee’s claim, a trustee may recover only  
10          the reasonable damage assessment costs  
11          that were incurred directly in relation to  
12          the site-specific conditions and restoration  
13          measures that are the subject of the natu-  
14          ral resource damage action.

15          “(D) JUDICIAL REVIEW.—

16          “(i) LIABILITY.—In reviewing a claim  
17          brought by a trustee to recover natural re-  
18          source damages costs of compensatory res-  
19          toration or primary restoration under this  
20          section, a district court shall try de novo  
21          the issue whether a defendant is liable and  
22          the issue of the amount of liability, if any,  
23          to be imposed on the defendant.

24          “(ii) TRUSTEE DECISIONS.—In re-  
25          viewing a claim brought to challenge a de-

1           cision of a trustee (such as a decision con-  
2           cerning the extent of injury to or loss or  
3           destruction of a natural resource or the se-  
4           lection of a restoration plan) the district  
5           court, notwithstanding section 706(2)(E)  
6           of title 5, United States Code, shall hold  
7           unlawful and set aside actions, findings,  
8           and conclusions found to be unsupported  
9           by substantial evidence.”.

10       (b) REGULATIONS.—Section 301 of the Comprehen-  
11       sive Environmental Response, Compensation, and Liabil-  
12       ity Act of 1980 (42 U.S.C. 9651) is amended by striking  
13       subsection (c) and inserting the following:

14       “(c) REGULATIONS FOR DAMAGE ASSESSMENTS.—

15       “(1) IN GENERAL.—The President, acting  
16       through Federal officials designated by the National  
17       Contingency Plan under section 107(f)(2), shall  
18       issue a regulation for the assessment of restoration  
19       damages and assessment costs for injury to, destruc-  
20       tion of, or loss of natural resources resulting from  
21       a release of oil or a hazardous substance for the pur-  
22       poses of this Act and section 311(f) (4) and (5) of  
23       the Federal Water Pollution Control Act (33 U.S.C.  
24       1321(f) (4), (5)).

1           “(2) CONTENTS.—The regulation under para-  
2 graph (1) shall—

3           “(A) specify protocols for conducting as-  
4 sessments in individual cases to determine the  
5 injury, destruction, or loss of baseline ecological  
6 services of the environment;

7           “(B) identify the best available procedures  
8 to determine damages for the reasonable cost of  
9 restoration and assessment;

10          “(C) take into consideration the ability of  
11 a natural resource to recover naturally and the  
12 availability of replacement or alternative re-  
13 sources; and

14          “(D) specify an appropriate mechanism for  
15 the cooperative designation of a single lead de-  
16 cisionmaking trustee at a site where more than  
17 one Federal, State, or Indian tribe trustee in-  
18 tends to conduct an assessment, which designa-  
19 tion shall occur not later than 180 days after  
20 the date of first notice to the responsible parties  
21 that a natural resource damage assessment will  
22 be made.

23          “(3) BIENNIAL REVIEW.—The regulation under  
24 paragraph (1) shall be reviewed and revised as ap-  
25 propriate every 2 years.”.

1 **SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS**  
2 **AND RESOURCE RESTORATION STANDARDS**  
3 **AND ALTERNATIVES.**

4 (a) RESTORATION STANDARDS AND ALTER-  
5 NATIVES.—Section 107(f) of the Comprehensive Environ-  
6 mental Response, Compensation, and Liability Act of  
7 1980 (42 U.S.C. 9607(f)), as amended by section  
8 701(b)(4), is amended by adding at the end the following:

9 “(4) CONSISTENCY WITH RESPONSE AC-  
10 TIONS.—A restoration standard or restoration alter-  
11 native selected by a trustee shall not be duplicative  
12 of or inconsistent with actions undertaken pursuant  
13 to section 104, 106, 121, or 129.”.

14 (b) RESPONSE ACTIONS.—

15 (1) ABATEMENT ACTION.—Section 106(a) of  
16 the Comprehensive Environmental Response, Com-  
17 pensation, and Liability Act of 1980 (42 U.S.C.  
18 9606(a)) is amended by adding at the end the fol-  
19 lowing: “The President shall not take action under  
20 this subsection except such action as is necessary to  
21 protect the public health and the baseline ecological  
22 services of the environment.”.

23 (2) LIMITATION ON DEGREE OF CLEANUP.—  
24 Section 121(a) of the Comprehensive Environmental  
25 Response, Compensation, and Liability Act of 1980

1 (42 U.S.C. 9621(a)), as amended by section 402(1),  
2 is amended by adding at the end the following:

3 “(7) LIMITATION.—

4 “(A) IN GENERAL.—The Administrator  
5 shall not select a remedial action under this sec-  
6 tion that goes beyond the measures necessary to  
7 protect human health and the baseline ecologi-  
8 cal services of the environment.

9 “(B) CONSIDERATIONS.—In evaluating  
10 and selecting remedial actions, the Adminis-  
11 trator shall take into account the potential for  
12 injury to, destruction of, or loss of a natural re-  
13 source resulting from such actions.

14 “(C) NO LIABILITY.—No person shall be  
15 liable for injury to, destruction of, or loss of a  
16 natural resource resulting from a response ac-  
17 tion or remedial action selected by the Adminis-  
18 trator.”.

19 **SEC. 704. MISCELLANEOUS AMENDMENTS.**

20 (a) CONTRIBUTION.—Section 113(f)(1) of the Com-  
21 prehensive Environmental Response, Compensation, and  
22 Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended  
23 in the third sentence by inserting “and natural resource  
24 damages” after “costs”.



1       (b) STATUTE OF LIMITATIONS.—Section 113(g)(1)  
2 of the Comprehensive Environmental Response, Com-  
3 pensation, and Liability Act of 1980 (42 U.S.C.  
4 9613(g)(1)) is amended—

5           (1) by striking the first sentence and inserting  
6 the following:

7           “(A) IN GENERAL.—Except as provided in  
8 paragraphs (3) and (4), no action for damages  
9 under this Act may be commenced unless the  
10 action is commenced within 3 years after the  
11 earlier of—

12           “(i) the date on which the trustee  
13 agency knew or should have known of the  
14 injury, destruction, or loss; or

15           “(ii) the date on which the vessel or  
16 facility is proposed for listing on the Na-  
17 tional Priorities List.”;

18           (2) by striking “With respect to” and inserting  
19 the following:

20           “(B) LISTED FACILITIES.—With respect  
21 to”;

22           (3) in subparagraph (B), as designated by para-  
23 graph (2), by striking “within” and all that follows  
24 through the end of the subparagraph and inserting  
25 “by the earlier of—

1 “(i) the date referred to in subparagraph  
2 (A); or

3 “(ii) the date that is 3 years after the date  
4 of completion of the remedial action (excluding  
5 operation and maintenance activities).”;

6 (4) in the third sentence—

7 (A) by striking “In no event” and insert-  
8 ing the following:

9 “(C) LIMITATION.—

10 “(i) IN GENERAL.—In no event”;

11 (B) by striking “commenced (i) prior” and  
12 inserting “commenced—

13 “(I) prior”; and

14 (C) by striking “suit, or (ii) before” and  
15 inserting “suit; or

16 “(II) before”; and

17 (5) by striking “The limitation in the preceding  
18 sentence and inserting the following:

19 “(ii) APPLICATION.—The limitation  
20 stated in clause (i)”.

## 21 **TITLE VIII—MISCELLANEOUS**

### 22 **SEC. 801. RESULT-ORIENTED CLEANUPS.**

23 (a) AMENDMENT.—Section 105(a) of the Com-  
24 prehensive Environmental Response, Compensation, and  
25 Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

1           (1) by striking “and” at the end of paragraph  
2           (9);

3           (2) by striking the period at the end of para-  
4           graph (10) and inserting “; and”; and

5           (3) by inserting after paragraph (10) the fol-  
6           lowing:

7           “(11) procedures for conducting response ac-  
8           tions, including facility evaluations, remedial inves-  
9           tigations, feasibility studies, remedial action plans,  
10          remedial designs, and remedial actions, which proce-  
11          dures shall—

12                 “(A) use a results-oriented approach to  
13                 minimize the time required to conduct response  
14                 measures and reduce the potential for exposure  
15                 to the hazardous substances, pollutants, and  
16                 contaminants in an efficient, timely, and cost-  
17                 effective manner;

18                 “(B) require, at a minimum, expedited fa-  
19                 cility evaluations and risk assessments, timely  
20                 negotiation of response action goals, a single  
21                 engineering study, streamlined oversight of re-  
22                 sponse actions, and consultation with interested  
23                 parties throughout the response action process;

24                 “(C) be subject to the requirements of sec-  
25                 tions 117, 120, 121, and 129 in the same man-

1           ner and to the same degree as those sections  
2           apply to response actions; and

3           “(D) be required to be used for each reme-  
4           dial action conducted under this Act unless the  
5           Administrator determines that their use would  
6           not be cost-effective or result in the selection of  
7           a response action that achieves the goals of pro-  
8           tecting human health and the environment stat-  
9           ed in section 121(a)(1)(B).”.

10       (b) AMENDMENT OF NATIONAL HAZARDOUS SUB-  
11       STANCE RESPONSE PLAN.—Not later than 180 days after  
12       the date of enactment of this Act, the Administrator, after  
13       notice and opportunity for public comment, shall amend  
14       the National Hazardous Substance Response Plan under  
15       section 105(a) of the Comprehensive Environmental Re-  
16       sponse, Compensation, and Liability Act of 1980 (42  
17       U.S.C. 9605(a)) to include the procedures required by the  
18       amendment made by subsection (a).

19       **SEC. 802. NATIONAL PRIORITIES LIST.**

20       Section 105 of the Comprehensive Environmental Re-  
21       sponse, Compensation, and Liability Act of 1980 (42  
22       U.S.C. 9605), as amended by section 408(a)(1)(B), is  
23       amended by adding at the end the following:

24       “(i) NATIONAL PRIORITIES LIST.—

25       “(1) ADDITIONAL VESSELS AND FACILITIES.—

1           “(A) LIMITATION.—During each of the 3  
2           12-month periods following the date of enact-  
3           ment of this subsection, the Administrator may  
4           add not more than 30 new vessels and facilities  
5           to the National Priorities List.

6           “(B) PRIORITIZATION.—The Adminis-  
7           trator shall prioritize the vessels and facilities  
8           added under subparagraph (A) on a national  
9           basis in accordance with the threat to human  
10          health and the environment presented by each  
11          of the vessels and facilities, respectively.

12          “(C) STATE CONCURRENCE.—A vessel or  
13          facility may be added to the National Priorities  
14          List under subparagraph (A) only with the con-  
15          currence of the State in which the vessel or fa-  
16          cility is located.

17          “(2) SUNSET.—

18                 “(A) NO ADDITIONAL VESSELS OR FACILI-  
19                 TIES.—The authority of the Administrator to  
20                 add vessels and facilities to the National Prior-  
21                 ities List shall expire on the date that is 3  
22                 years after the date of enactment of this sub-  
23                 section.

24                 “(B) LIMITATION ON ACTION BY THE AD-  
25                 MINISTRATOR.—At the completion of response

1 actions for all vessels and facilities on the Na-  
2 tional Priorities List, the authority of the Ad-  
3 ministrator under this Act shall be limited to—

4 “(i) providing a national emergency  
5 response capability;

6 “(ii) conducting research and develop-  
7 ment;

8 “(iii) providing technical assistance;  
9 and

10 “(iv) conducting oversight of grants  
11 and loans to the States.”.

12 **SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE**  
13 **ACTIONS.**

14 Section 104(c)(1) of the Comprehensive Environ-  
15 mental Response, Compensation, and Liability Act of  
16 1980 (42 U.S.C. 9604(c)(1)) is amended—

17 (1) in subparagraph (C) by striking “consistent  
18 with the remedial action to be taken” and inserting  
19 “not inconsistent with any remedial action that has  
20 been selected or is anticipated at the time of any re-  
21 moval action at a facility.”;

22 (2) by striking “\$2,000,000” and inserting  
23 “\$4,000,000”; and

24 (3) by striking “12 months” and inserting “2  
25 years”.

1 **SEC. 804. REMEDIATION WASTE.**

2 (a) DEFINITIONS.—Section 1004 of the Solid Waste  
3 Disposal Act (42 U.S.C. 6903) is amended by adding at  
4 the end the following:

5 “(42) DEBRIS.—The term ‘debris’—

6 “(A) means—

7 “(i) a solid manufactured object ex-  
8 ceeding a 60 millimeter particle size;

9 “(ii) plant or animal matter; and

10 “(iii) natural geologic material; but

11 “(B) does not include material that the  
12 Administrator may exclude from the meaning of  
13 the term by regulation.

14 “(43) IDENTIFIED CHARACTERISTIC WASTE.—

15 The term ‘identified characteristic waste’ means a  
16 solid waste that has been identified as having the  
17 characteristics of hazardous waste under section  
18 3001.

19 “(44) LISTED WASTE.—The term ‘listed waste’  
20 means a solid waste that has been listed as a haz-  
21 ardous waste under section 3001.

22 “(45) MEDIA.—The term ‘media’ means ground  
23 water, surface water, soil, and sediment.

24 “(46) REMEDIATION ACTIVITY.—The term ‘re-  
25 mediation activity’ means the remediation, removal,  
26 containment, or stabilization of—

1           “(A) solid waste that has been released to  
2           the environment; or

3           “(B) media and debris that are contami-  
4           nated as a result of a release.

5           “(47) REMEDIATION WASTE.—The term ‘reme-  
6           diation waste’ means—

7           “(A) solid and hazardous waste that is  
8           generated by a remediation activity; and

9           “(B) debris and media that are generated  
10          by a remediation activity and contain a listed  
11          waste or identified characteristic waste.

12          “(48) STATE VOLUNTARY REMEDIATION PRO-  
13          GRAM.—The term ‘State voluntary remediation pro-  
14          gram’ means a program established by a State that  
15          permits a person to conduct remediation activity at  
16          a facility under general guidance or guidelines with-  
17          out being subject to a State order or consent agree-  
18          ment specifically applicable to the person.”.

19          (b) IDENTIFICATION AND LISTING.—Section 3001 of  
20          the Solid Waste Disposal Act (42 U.S.C. 6921) is amend-  
21          ed by adding at the end the following:

22          “(j) REMEDIATION WASTE.—

23                 “(1) IN GENERAL.—Except as provided in para-  
24                 graph (2), a person that manages remediation waste  
25                 that is an identified characteristic waste or listed



1 waste or that contains an identified characteristic  
2 waste or listed waste shall be subject to the require-  
3 ments of this subtitle (including regulations issued  
4 under this subtitle, including the regulation for cor-  
5 rective action management units published in section  
6 264.552, Code of Federal Regulations, and the regu-  
7 lation for temporary units published in section  
8 264.553, Code of Federal Regulations, or any suc-  
9 cessor regulation).

10 “(2) EXCEPTIONS.—

11 “(A) REQUIREMENTS UNDER SECTION  
12 3004.—Media and debris generated by a remedi-  
13 ation activity that are identified characteristic  
14 wastes or listed wastes or that contain an iden-  
15 tified characteristic waste or a listed waste shall  
16 not be subject to the requirements of section  
17 3004 (d), (e), (f), (g), (j), (m), or (o).

18 “(B) PERMIT REQUIREMENTS.—No Fed-  
19 eral, State, or local permit shall be required for  
20 the treatment, storage, or disposal of remedi-  
21 ation waste that is conducted entirely at the fa-  
22 cility at which the remediation takes place.

23 “(3) REMEDIATION WASTE SUBJECT TO OR-  
24 DERS, CONSENT AGREEMENTS, VOLUNTARY REMEDI-  
25 ATION PROGRAMS, AND OTHER MECHANISMS.—

1           “(A) REQUIREMENTS NOT APPLICABLE.—

2           Notwithstanding paragraph (1), a person that  
3           manages remediation waste that—

4                   “(i) is identified characteristic waste  
5                   or listed waste or that contains an identi-  
6                   fied characteristic waste or listed waste;  
7                   and

8                   “(ii) is subject to a Federal or State  
9                   order, Federal or State consent agreement,  
10                  a State voluntary remediation program, or  
11                  such other mechanism as the Adminis-  
12                  trator considers appropriate,

13          shall not be subject to the requirements of this sub-  
14          title (including any regulation under this subsection)  
15          unless the requirements are specified in the Federal  
16          or State order, Federal or State consent agreement,  
17          State voluntary cleanup program, or other mecha-  
18          nism, as determined by the Administrator.

19                  “(B) ENFORCEMENT.—Unless other en-  
20                  forcement procedures are specified in the order,  
21                  consent agreement, or other mechanism, a per-  
22                  son described in subparagraph (A) (except a  
23                  person that manages remediation waste under a  
24                  State voluntary remediation program) shall be  
25                  subject to enforcement of the requirements of

1 the order, consent agreement, or other mecha-  
2 nism by use of enforcement procedures under  
3 section 3008.”.

4 (c) REGULATION.—Not later than 180 days after the  
5 date of enactment of this Act, the Administrator shall  
6 issue a regulation implementing section 3001(j) of the  
7 Solid Waste Disposal Act, as added by subsection (b).

## 8 **TITLE IX—FUNDING**

### 9 **Subtitle A—General Provisions**

#### 10 **SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE** 11 **FUND.**

12 Section 111(a) of the Comprehensive Environmental  
13 Response, Compensation, and Liability Act of 1980 (42  
14 U.S.C. 9611(a)) is amended in the first sentence by strik-  
15 ing “not more than \$8,500,000,000 for the 5-year period  
16 beginning on the date of enactment of the Superfund  
17 Amendments and Reauthorization Act of 1986, and not  
18 more than \$5,100,000,000 for the period commencing Oc-  
19 tober 1, 1991, and ending September 30, 1994” and in-  
20 serting “a total of \$8,500,000 for fiscal years 1996, 1997,  
21 1998, 1999, and 2000”.

#### 22 **SEC. 902. ORPHAN SHARE FUNDING.**

23 Section 111(a) of the Comprehensive Environmental  
24 Response, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9611(a)), as amended by section 301(c), is amend-  
2 ed by inserting after paragraph (8) the following:

3 “(9) ORPHAN SHARE FUNDING.—Payment of  
4 orphan shares under section 132.”.

5 **SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERV-**  
6 **ICES.**

7 Section 111 of the Comprehensive Environmental Re-  
8 sponse, Compensation, and Liability Act of 1980 (42  
9 U.S.C. 9611) is amended by striking subsection (m) and  
10 inserting the following:

11 “(m) HEALTH AUTHORITIES.—There are authorized  
12 to be appropriated from the Fund to the Secretary of  
13 Health and Human Services to be used for the purposes  
14 of carrying out the activities described in subsection (c)(4)  
15 and the activities described in section 104(i), \$50,000,000  
16 for each of fiscal years 1996, 1997, 1998, 1999, and 2000.  
17 Funds appropriated under this subsection for a fiscal year,  
18 but not obligated by the end of the fiscal year, shall be  
19 returned to the Fund.”.

20 **SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT,**  
21 **AND DEMONSTRATION PROGRAMS.**

22 Section 111 of the Comprehensive Environmental Re-  
23 sponse, Compensation, and Liability Act of 1980 (42  
24 U.S.C. 9611) is amended by striking subsection (n) and  
25 inserting the following:

1       “(n) LIMITATIONS ON RESEARCH, DEVELOPMENT,  
2 AND DEMONSTRATION PROGRAMS.—

3               “(1) ALTERNATIVE OR INNOVATIVE TECH-  
4 NOLOGIES RESEARCH, DEVELOPMENT, AND DEM-  
5 ONSTRATION PROGRAMS.—

6               “(A) LIMITATION.—For each of fiscal  
7 years 1996, 1997, 1998, 1999, and 2000, not  
8 more than \$20,000,000 of the amounts avail-  
9 able in the Fund may be used for the purposes  
10 of carrying out the applied research, develop-  
11 ment, and demonstration program for alter-  
12 native or innovative technologies and training  
13 program authorized under section 311(b) other  
14 than basic research.

15               “(B) CONTINUING AVAILABILITY.—Such  
16 amounts shall remain available until expended.

17               “(2) HAZARDOUS SUBSTANCE RESEARCH, DEM-  
18 ONSTRATION, AND TRAINING.—

19               “(A) LIMITATION.—For each of fiscal  
20 years 1996, 1997, 1998, 1999, and 2000 not  
21 more than \$20,000,000 of the amounts avail-  
22 able in the Fund may be used for the purposes  
23 of section 311(a).

24               “(B) FURTHER LIMITATION.—No more  
25 than 10 percent of such amounts shall be used

1           for training under section 311(a) for any fiscal  
2           year.

3           “(3) UNIVERSITY HAZARDOUS SUBSTANCE RE-  
4           SEARCH CENTERS.—For each of fiscal years 1996,  
5           1997, 1998, 1999, and 2000, not more than  
6           \$5,000,000 of the amounts available in the Fund  
7           may be used for the purposes of section 311(d).”.

8   **SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM**  
9           **GENERAL REVENUES.**

10          Section 111(p) of the Comprehensive Environmental  
11   Response, Compensation, and Liability Act of 1980 (42  
12   U.S.C. 9611(p)) is amended by striking paragraph (1) and  
13   inserting the following:

14           “(1) AUTHORIZATION OF APPROPRIATIONS.—

15                   “(A) IN GENERAL.—There are authorized  
16           to be appropriated, out of any money in the  
17           Treasury not otherwise appropriated, to the  
18           Hazardous Substance Superfund—

19                           “(i)   for   fiscal   year   1996,  
20                           \$250,000,000;

21                           “(ii)   for   fiscal   year   1997,  
22                           \$250,000,000;

23                           “(iii)   for   fiscal   year   1998,  
24                           \$250,000,000;

1                   “(iv) for fiscal year 1999,  
2                   \$250,000,000; and

3                   “(v) for fiscal year 2000,  
4                   \$250,000,000.

5                   “(B) ADDITIONAL AMOUNTS.—There is  
6                   authorized to be appropriated to the Hazardous  
7                   Substance Superfund for each such fiscal year  
8                   an amount, in addition to the amount author-  
9                   ized by subparagraph (A), equal to so much of  
10                  the aggregate amount authorized to be appro-  
11                  priated under this subsection and section  
12                  9507(b) of the Internal Revenue Code of 1986  
13                  as has not been appropriated before the begin-  
14                  ning of the fiscal year.”.

15 **SEC. 906. ADDITIONAL LIMITATIONS.**

16                  Section 111 of the Comprehensive Environmental Re-  
17                  sponse, Compensation, and Liability Act of 1980 (42  
18                  U.S.C. 9611) is amended by adding at the end the follow-  
19                  ing:

20                  “(q) QUALIFYING STATE VOLUNTARY RESPONSE  
21                  PROGRAM.—For each of fiscal years 1996, 1997, 1998,  
22                  1999, and 2000, not more than \$25,000,000 of the  
23                  amounts available in the Fund may be used for the pur-  
24                  poses of subsection (a)(7) (relating to qualifying State vol-  
25                  untary response programs).

1       “(r) BROWNFIELD CLEANUP ASSISTANCE.—For  
 2 each of fiscal years 1996 through 2000, not more than  
 3 \$15,000,000 of the amounts available in the Fund may  
 4 be used to carry out section 134(b) (relating to Citizen  
 5 Information and Access Offices).

6       “(s) COMMUNITY RESPONSE ORGANIZATION.—For  
 7 the period commencing October 1, 1995, and ending Sep-  
 8 tember 30, 2000, not more than \$15,000,000 of the  
 9 amounts available in the Fund may be used to make  
 10 grants under section 117(f) (relating to Community Re-  
 11 sponse Organizations).

12       “(t) RECOVERIES.—Effective beginning October 1,  
 13 1995, any recoveries collected pursuant to this Act shall  
 14 be credited as offsetting collections to the Superfund ap-  
 15 propriations account.”.

16 **SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPON-**  
 17 **SIBLE PARTIES.**

18       Section 111(a) of the Comprehensive Environmental  
 19 Response, Compensation, and Liability Act of 1980 (42  
 20 U.S.C. 9611(a)), as amended by section 902, is amended  
 21 by inserting after paragraph (9) the following:

22               “(10) REIMBURSEMENT OF POTENTIALLY RE-  
 23 SPONSIBLE PARTIES.—If—

24                       “(A) a potentially responsible party and  
 25                       the Administrator enter into a settlement under



1           this Act under which the Administrator is reim-  
 2           bursed for the response costs of the Adminis-  
 3           trator; and

4           “(B) the Administrator determines,  
 5           through a Federal audit of response costs, that  
 6           the costs for which the Administrator is reim-  
 7           bursed—

8           “(i) are unallowable due to contractor  
 9           fraud;

10           “(ii) are unallowable under the Fed-  
 11           eral Acquisition Regulation; or

12           “(iii) should be adjusted due to rou-  
 13           tine contract and Environmental Protec-  
 14           tion Agency response cost audit proce-  
 15           dures,

16           reimbursement of a potentially responsible  
 17           party for those costs.”.

○

S 1285 IS—2

S 1285 IS—3

S 1285 IS—4

S 1285 IS—5

S 1285 IS—6

S 1285 IS—7

S 1285 IS—8

S 1285 IS—9

S 1285 IS—10

S 1285 IS—11

S 1285 IS—12

S 1285 IS—13

S 1285 IS—14

S 1285 IS—15

S 1285 IS—16

S 1285 IS—17

S 1285 IS—18

S 1285 IS—19