

104TH CONGRESS
2D SESSION

S. 2028

To assist the States and local governments in assessing and remediating brownfields and encouraging environmental cleanup programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 1996

Mr. LAUTENBERG (for himself, Mr. BAUCUS, Mr. REID, Mr. GRAHAM, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To assist the States and local governments in assessing and remediating brownfields and encouraging environmental cleanup programs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Brownfields and Envi-
5 ronmental Cleanup Act of 1996”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) past uses of land in the United States for
9 industrial and commercial purposes have created

1 many sites throughout the United States that have
2 environmental contamination;

3 (2) Congress and the governments of States
4 and political subdivisions of States have enacted
5 laws to—

6 (A) prevent environmental contamination;
7 and

8 (B) carry out response actions to correct
9 past instances of environmental contamination;
10 (3) many sites are minimally contaminated, do
11 not pose serious threats to human health or the en-
12 vironment, and can be satisfactorily remediated ex-
13 peditiously with little government oversight;

14 (4) promoting the assessment, cleanup and re-
15 development of contaminated sites could lead to sig-
16 nificant environmental and economic benefits, par-
17 ticularly in any case in which a cleanup can be com-
18 pleted quickly and during a period of time that
19 meets short-term business needs;

20 (5) the private market demand for sites af-
21 fected by environmental contamination frequently is
22 reduced, often due to uncertainties regarding liabil-
23 ity or potential cleanup costs of innocent land-
24 owners, lenders, fiduciaries, and prospective pur-
25 chasers under Federal law;

1 (6) the abandonment or underutilization of af-
2 fected sites impairs the ability of the Federal Gov-
3 ernment and the governments of States and political
4 subdivisions of States to provide economic opportu-
5 nities for the people of the United States, particu-
6 larly the unemployed and economically disadvan-
7 taged;

8 (7) the abandonment or underuse of affected
9 sites also results in the inefficient use of public fa-
10 cilities and services, as well as land and other natu-
11 ral resources, and extends conditions of blight in
12 local communities;

13 (8) cooperation among Federal agencies, de-
14 partments and agencies of States and political sub-
15 divisions of States, local community development or-
16 ganizations, and current owners and prospective
17 purchasers of affected sites is required to accomplish
18 timely response actions and the redevelopment or
19 reuse of affected sites;

20 (9) there is a need for a program to—

21 (A) encourage cleanups of affected sites;

22 and

23 (B) facilitate the establishment and en-
24 hancement of programs by States and local gov-

1 ernments to foster cleanups of affected site
2 through capitalization of loan programs; and
3 (10) there is a need to provide financial incen-
4 tives and assistance to characterize certain affected
5 sites and facilitate the cleanup of the sites so that
6 the sites may be redeveloped for beneficial uses.

7 (b) PURPOSE.—The purpose of this Act is to create
8 new business and employment opportunities through the
9 economic redevelopment of affected sites that generally do
10 not pose a serious threat to human health or the environ-
11 ment and to stimulate the assessment and cleanup of af-
12 fected sites by—

13 (1) encouraging States and local governments
14 to provide for characterization and cleanup of sites
15 that may not be remediated under other environ-
16 mental laws (including regulations) in effect on the
17 date of enactment of this Act;

18 (2) encouraging local governments and private
19 parties, including local community development or-
20 ganizations, to participate in programs, such as
21 State cleanup programs, that facilitate expedited re-
22 sponse actions that are consistent with business
23 needs at affected sites;

24 (3) directing the Administrator to establish pro-
25 grams that provide financial assistance to—

1 (A) facilitate site assessments of certain
2 affected sites;

3 (B) encourage cleanup of appropriate sites
4 through capitalization of loan programs; and

5 (C) encouraging workforce development in
6 areas adversely affected by contaminated prop-
7 erties; and

8 (4) reducing transaction costs and paperwork,
9 and preventing needless duplication of effort and
10 delay at all levels of government.

11 **SEC. 3. DEFINITIONS.**

12 As used in this Act (unless the context clearly re-
13 quires otherwise):

14 (1) ADMINISTRATIVE COSTS.—The term “ad-
15 ministrative costs” means eligible costs that are not
16 nonadministrative costs.

17 (2) ADMINISTRATOR.—The term “Adminis-
18 trator” means the Administrator of the Environ-
19 mental Protection Agency.

20 (3) AFFECTED SITE.—

21 (A) IN GENERAL.—Except as provided in sub-
22 paragraph (B), the term “affected site” means a fa-
23 cility that has or is suspected of having environ-
24 mental contamination that—

1 (i) could prevent the timely use, devel-
2 opment, reuse, or redevelopment of the fa-
3 cility; and

4 (ii) is relatively limited in scope or se-
5 verity and can be comprehensively charac-
6 terized and readily analyzed.

7 (B) EXCEPTIONS.—The term does not in-
8 clude—

9 (i) any facility that is the subject of a
10 planned or an ongoing response action
11 under the Comprehensive Environmental
12 Response, Compensation, and Liability Act
13 of 1980 (42 U.S.C. 9601 et seq.), except
14 that the term includes a facility for which
15 a preliminary assessment, site investigation
16 or removal action has been completed and
17 with respect to which the Administrator
18 has decided not to take further response
19 action, including cost recovery action;

20 (ii) any facility included, or proposed
21 for inclusion, on the National Priorities
22 List maintained by the Administrator
23 under such Act;

24 (iii) any facility with respect to which
25 a record of decision, other than a no-action

1 record of decision, has been issued by the
2 President under section 104 of the Com-
3 prehensive Environmental Response, Com-
4 pensation, and Liability Act of 1980 (42
5 U.S.C. 9604) with respect to the facility;

6 (iv) any facility that is subject to cor-
7 rective action under section 3004(u) or
8 3008(h) of the Solid Waste Disposal Act
9 (42 U.S.C. 6924(u) or 6928(h)) at the
10 time that an application for loan assistance
11 with respect to the facility is submitted
12 under this title, including any facility with
13 respect to which a corrective action permit
14 or order has been issued or modified to re-
15 quire the implementation of corrective
16 measures;

17 (v) any land disposal unit with respect
18 to which a closure notification under sub-
19 title C of the Solid Waste Disposal Act (42
20 U.S.C. 6921 et seq.) has been submitted
21 and closure requirements have been speci-
22 fied in a closure plan or permit;

23 (vi) any facility at which there has
24 been a release of polychlorinated biphenyls
25 and that is subject to the requirements of

1 the Toxic Substances Control Act (15
2 U.S.C. 2601 et seq.);

3 (vii) any facility with respect to which
4 an administrative order on consent or a ju-
5 dicial consent decree requiring cleanup has
6 been entered into by the President and is
7 still in effect under—

8 (I) the Comprehensive Environ-
9 mental Response, Compensation, and
10 Liability Act of 1980 (42 U.S.C. 9601
11 et seq.);

12 (II) the Solid Waste Disposal Act
13 (42 U.S.C. 6901 et seq.);

14 (III) the Federal Water Pollution
15 Control Act (33 U.S.C. 1251 et seq.);

16 (IV) the Toxic Substances Con-
17 trol Act (15 U.S.C. 2601 et seq.); or

18 (V) title XIV of the Public
19 Health Service Act (commonly known
20 as the “Safe Drinking Water Act”)
21 (42 U.S.C. 300f et seq.);

22 (viii) any facility at which assistance
23 for response activities may be obtained
24 pursuant to subtitle I of the Solid Waste
25 Disposal Act (42 U.S.C. 6991 et seq.)

1 from the Leaking Underground Storage
2 Tank Trust Fund established by section
3 9508 of the Internal Revenue Code of
4 1986; and

5 (ix) a facility owned or operated by a
6 department, agency or instrumentality of
7 the United States, except for lands held in
8 trust by the United States for Indian
9 tribes.

10 (4) CONTAMINANT.—The term “contaminant”
11 includes any hazardous substance (as defined in sec-
12 tion 101(14) of the Comprehensive Environmental
13 Response, Compensation, and Liability Act of 1980
14 (42 U.S.C. 9601(14)).

15 (5) CURRENT OWNER.—The term “current
16 owner” means, with respect to a voluntary cleanup,
17 an owner of an affected site or facility at the time
18 of the cleanup.

19 (6) DISPOSAL.—The term “disposal” has the
20 meaning provided the term in section 1004(3) of the
21 Solid Waste Disposal Act (42 U.S.C. 6903(3)).

22 (7) ENVIRONMENT.—The term “environment”
23 has the meaning provided the term in section 101(8)
24 of the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980 (42 U.S.C.
2 9601(8)).

3 (8) ENVIRONMENTAL CONTAMINATION.—The
4 term “environmental contamination” means the ex-
5 istence at a facility of 1 or more contaminants that
6 may pose a threat to human health or the environ-
7 ment.

8 (9) FACILITY.—The term “facility” has the
9 meaning provided the term in section 101(9) of the
10 Comprehensive Environmental Response, Compensa-
11 tion, and Liability Act of 1980 (42 U.S.C. 9601(9)).

12 (10) GRANT.—The term “grant” includes a co-
13 operative agreement.

14 (11) GROUND WATER.—The term “ground
15 water” has the meaning provided the term in section
16 101(12) of the Comprehensive Environmental Re-
17 sponse, Compensation, and Liability Act of 1980 (42
18 U.S.C. 9601(12)).

19 (12) INDIAN TRIBE.—The term “Indian tribe”
20 has the meaning provided the term in section
21 101(36) of the Comprehensive Environmental Re-
22 sponse, Compensation, and Liability Act of 1980 (42
23 U.S.C. 9601(36)).

24 (13) LOCAL GOVERNMENT.—The term “local
25 government” has the meaning provided the term

1 “unit of general local government” in the first sen-
2 tence of section 102(a)(1) of the Housing and Com-
3 munity Development Act of 1974 (42 U.S.C.
4 5302(a)(1)), except that the term includes Indian
5 tribe.

6 (14) NATURAL RESOURCES.—The term “natu-
7 ral resources” has the meaning provided the term in
8 section 101(16) of the Comprehensive Environ-
9 mental Response, Compensation, and Liability Act
10 of 1980 (42 U.S.C. 9601(16)).

11 (15) NONADMINISTRATIVE COSTS.—The term
12 “nonadministrative costs” includes the costs of—

13 (A) inventorying and classifying properties
14 with probable contamination;

15 (B) oversight for a cleanup at an affected
16 site by a contractor, current owner, or prospec-
17 tive purchaser;

18 (C) identifying the probable extent and na-
19 ture of environmental contamination at the af-
20 fected site, and the preferred manner of carry-
21 ing out a cleanup at the affected site;

22 (D) the cleanup, including onsite and off-
23 site treatment of contaminants; and

24 (E) monitoring ground water or other nat-
25 ural resources at the affected site.

1 (16) OWNER.—The term “owner” has the
2 meaning provided the term in section 101(20) of the
3 Comprehensive Environmental Response, Compensa-
4 tion, and Liability Act of 1980 (42 U.S.C.
5 9601(20)).

6 (17) PERSON.—The term “person” has the
7 meaning provided the term in section 101(21) of the
8 Comprehensive Environmental Response, Compensa-
9 tion, and Liability Act of 1980 (42 U.S.C.
10 9601(21)).

11 (18) PROSPECTIVE PURCHASER.—The term
12 “prospective purchaser” means a prospective pur-
13 chaser of an affected site.

14 (19) RELEASE.—The term “release” has the
15 meaning provided the term in section 101(22) of the
16 Comprehensive Environmental Response, Compensa-
17 tion, and Liability Act of 1980 (42 U.S.C.
18 9601(22)).

19 (20) RESPONSE ACTION.—The term “response
20 action” has the meaning provided the term “re-
21 sponse” in section 102(25) of such Act (42 U.S.C.
22 9601(25)).

23 (21) SITE CHARACTERIZATION.—

24 (A) IN GENERAL.—The term “site charac-
25 terization” means an investigation that deter-

1 mines the nature and extent of a release or po-
2 tential release of a hazardous substance at a
3 site and meets the requirements referred to in
4 subparagraph (B).

5 (B) INVESTIGATION.—For the purposes of
6 this paragraph, an investigation that meets the
7 requirements of this subparagraph—

8 (i) shall include—

9 (I) an onsite evaluation; and

10 (II) sufficient testing, sampling,
11 and other field data gathering activi-
12 ties to accurately determine whether
13 the site is contaminated and the
14 threats to human health and the envi-
15 ronment posed by the release of con-
16 taminants at the site; and

17 (ii) may also include—

18 (I) review of existing information
19 regarding the site and previous uses
20 (available at the time of the review);
21 and

22 (II) an onsite evaluation, if ap-
23 propriate.

24 (22) STATE.—The term “State” has the mean-
25 ing provided the term under section 101(27) of the

1 Comprehensive Environmental Response, Compensa-
2 tion, and Liability Act of 1980 (42 U.S.C.
3 9601(27)).

4 **TITLE I—BROWNFIELD REMEDI-**
5 **ATION AND ENVIRONMENTAL**
6 **CLEANUP**

7 **SEC. 101. SITE CHARACTERIZATION GRANT PROGRAM.**

8 (a) IN GENERAL.—The Administrator shall establish
9 a program to provide grants to local governments to inven-
10 tory brownfield sites and to conduct site characterizations
11 of affected sites at which cleanups are being conducted
12 or are proposed to be conducted under a State voluntary
13 cleanup program, State superfund program, or other State
14 cleanup program.

15 (b) SCOPE OF PROGRAM.—

16 (1) GRANT AWARDS.—In carrying out the pro-
17 gram established under subsection (a), the Adminis-
18 trator may award a grant to the head of each local
19 government that submits to the Administrator an
20 application (that is approved by the Administrator)
21 to conduct an inventory of sites and a site character-
22 ization at an affected site or sites within the juris-
23 diction of the local government.

1 (2) GRANT APPLICATION.—An application for a
2 grant under this section shall include, at a mini-
3 mum, each of the following:

4 (A) An identification of the brownfield
5 areas for which assistance is sought and a de-
6 scription of the effect of the brownfields on the
7 community, including a description of the na-
8 ture and extent of any known or suspected envi-
9 ronmental contamination within the areas.

10 (B) The need for Federal support.

11 (C) A demonstration of the potential of the
12 assistance to stimulate economic development,
13 including the extent to which the assistance will
14 stimulate the availability of other funds for site
15 characterization, site identification, or environ-
16 mental remediation and subsequent redevelop-
17 ment of the areas in which eligible brownfields
18 sites are situated.

19 (D) The existing local commitment, which
20 shall include a community involvement plan
21 that demonstrates meaningful community in-
22 volvement.

23 (E) A plan that shows how the site charac-
24 terization, site identification, or environmental
25 remediation and subsequent development shall

1 be implemented, including an environmental
2 plan that ensures the use of sound environ-
3 mental procedures, an explanation of the exist-
4 ing appropriate government authority and sup-
5 port for the project, proposed funding mecha-
6 nisms for any additional work, and the pro-
7 posed land ownership plan.

8 (F) A statement on the long-term benefits
9 and the sustainability of the proposed project
10 that includes the national replicability and
11 measures of success of the project and, to the
12 extent known, the potential of the plan for the
13 areas in which eligible brownfields sites are sit-
14 uated to stimulate economic development of the
15 area on completion of the environmental reme-
16 diation.

17 (G) A statement that describes how the
18 proposed site inventory and characterization
19 program will analyze the extent to which the
20 project or projects will reduce potential health
21 and environmental threats caused by the pres-
22 ence of or potential releases of contaminants at
23 or from the site or sites.

24 (H) A plan for the distribution of the
25 grant monies among sites within the jurisdic-

tion of the State or local government, including mechanisms to ensure a fair distribution of the grant monies.

(I) Such other factors as the Administrator considers relevant to carry out the purposes of this title.

(3) APPROVAL OF APPLICATION.—

(A) IN GENERAL.—In making a decision whether to approve an application submitted under paragraph (1) the Administrator shall consider the criteria in the application, and—

(i) the financial need of the State or local government for funds to conduct a characterization of the site or sites;

(ii) the demonstrable potential of the affected site or sites for stimulating economic development on completion of the cleanup of the affected site if the cleanup is necessary;

(iii) to the extent information is available, the estimated fair market value of the site or sites (4) after cleanup;

(iv) to the extent information is available, other economically viable, commercial activity on real property—

1 (I) located within the immediate
2 vicinity of the affected site at the time
3 of consideration of the application; or

4 (II) projected to be located with-
5 in the immediate vicinity of the af-
6 fected site by the date that is 5 years
7 after the date of the consideration of
8 the application;

9 (v) the potential of the affected site
10 for creating new business and employment
11 opportunities on completion of the cleanup
12 of the site;

13 (vi) whether the affected site is lo-
14 cated in an economically distressed com-
15 munity; and

16 (vii) such other factors as the Admin-
17 istrator considers relevant to carry out the
18 purposes of the grant program under this
19 section.

20 (B) GRANT CONDITIONS.—As a condition
21 for awarding a grant under this section, the
22 Administrator may, on the basis of the criteria
23 considered under subparagraph (A), attach
24 such conditions to the grant award as the Ad-
25 ministrator determines appropriate.

1 (4) GRANT AMOUNT.—The amount of a grant
 2 awarded to any local government under subsection
 3 (a) for characterization of an affected site or sites
 4 shall not exceed \$200,000.

5 (5) TERMINATION OF GRANTS.—If the Admin-
 6 istrator determines that a local government that re-
 7 ceives a grant under this subsection is in violation
 8 of a condition of a grant award referred to in para-
 9 graph (3), the Administrator may terminate the
 10 grant made to the local government and require full
 11 or partial repayment of the grant award.

12 **SEC. 102. ECONOMIC REDEVELOPMENT ASSISTANCE**
 13 **GRANTS FOR LOAN PROGRAMS.**

14 (a) ESTABLISHMENT OF PROGRAM.—The Adminis-
 15 trator shall establish a program to provide grants to be
 16 used by State or local governments to capitalize loan pro-
 17 grams for the cleanup of affected sites. These loans may
 18 be provided by the State or local government to finance
 19 cleanups of affected sites by the State or local government,
 20 or by an owner or a prospective purchaser of an affected
 21 site (including a local government) at which a cleanup is
 22 being conducted or is proposed to be conducted under Fed-
 23 eral or State authority, including a State voluntary clean-
 24 up program.

25 (b) SCOPE OF PROGRAM.—

1 (1) IN GENERAL.—

2 (A) GRANTS.—The Administrator may
3 award a grant to a local or State government
4 that is an eligible applicant described in sub-
5 section (a)(1) that submits an application to the
6 Administrator that is approved by the Adminis-
7 trator. The grant monies shall be used by the
8 local or State government to capitalize a loan
9 fund to be used for cleanup of an affected site
10 or affected sites.

11 (B) GRANT APPLICATION.—An application
12 for a grant under this section shall be in such
13 form as the Administrator determines appro-
14 priate. At a minimum, the application submit-
15 ted by the State or local government to estab-
16 lish a revolving loan program shall include the
17 following:

18 (i) Insofar as the sites within their ju-
19 risdiction have been identified and infor-
20 mation as to the contaminated sites is
21 known, a description of the affected site or
22 sites, including the nature and extent of
23 any known or suspected environmental
24 contamination at the affected site or sites.

1 (ii) Identification of the criteria to be
2 used by the local or State government in
3 providing for loans under the program.
4 This criteria shall include the financial
5 standing of the applicants for the loans,
6 the use to which the loans will be put, and
7 the provisions to be used to ensure repay-
8 ment of the funds. These criteria shall also
9 include:

10 (I) A complete description of the
11 financial standing of the applicant
12 that includes a description of the as-
13 sets, cash flow, and liabilities of the
14 applicant.

15 (II) A written certification that
16 attests that the applicant has at-
17 tempted, and has been unable, to se-
18 cure financing from a private lending
19 institution for the cleanup action that
20 is the subject of the loan application.

21 (III) The proposed method, and
22 anticipated period of time required, to
23 clean up the environmental contami-
24 nation at the affected site.

1 (IV) An estimate of the proposed
2 total cost of the cleanup to be con-
3 ducted at the site.

4 (V) An analysis that dem-
5 onstrates the potential of the affected
6 site for simulating economic develop-
7 ment on completion of the cleanup of
8 the site.

9 (2) GRANT APPROVAL.—In determining wheth-
10 er to award a grant under this section, the Adminis-
11 trator shall consider—

12 (A) the need of the local or State govern-
13 ment for financial assistance to clean up the af-
14 fected site or sites that are the subject of the
15 application, taking into consideration the finan-
16 cial resources available to the local or State
17 government;

18 (B) the ability of the local or State govern-
19 ment to ensure that the applicants repay the
20 loans in a timely manner;

21 (C) the extent to which the cleanup of the
22 affected site or sites would reduce health and
23 environmental risks caused by the release of
24 contaminants at, or from, the affected site or
25 sites;

1 (D) the demonstrable potential of the af-
2 fected site or sites for stimulating economic de-
3 velopment on completion of the cleanup;

4 (E) the demonstrated ability of the local or
5 State government to administer such a loan
6 program;

7 (F) the demonstrated experience of the
8 local or State government regarding brownfields
9 and the reuse of contaminated land, including
10 whether or not the government has received
11 grant monies under the Comprehensive Envi-
12 ronmental Response, Compensation, and Liabil-
13 ity Act of 1980 (42 U.S.C. 9601 et seq.) to
14 characterize brownfields sites provided however
15 that applicants who have not previously received
16 such grant monies may also be considered for
17 awards under this section;

18 (G) the efficiency of having the loan ad-
19 ministered by the applicant entity level of gov-
20 ernment;

21 (H) the experience of administering any
22 loan programs by the entity, including the loan
23 repayment rates;

24 (I) the demonstrations made regarding the
25 ability of the local or State government to en-

1 sure a fair distribution of grant monies among
2 sites within their jurisdiction; and

3 (J) such other factors as the Administrator
4 considers relevant to carry out the purposes of
5 the loan program established under this section.

6 (3) GRANT AMOUNT.—The amount of a grant
7 made to a local or State applicant under this section
8 shall not exceed \$500,000.

9 (4) STATE APPROVAL.—Each application for a
10 grant under this section shall, as a condition for ap-
11 proval by the Administrator, include a written state-
12 ment by the local or State government that cleanups
13 to be funded under their loan programs shall be con-
14 ducted under the auspices of and compliant with the
15 State voluntary cleanup program or State Superfund
16 program or Federal authority, and that—

17 (A) the cleanup or proposed voluntary
18 cleanup is cost-effective; and

19 (B) the estimated total cost of the cleanup
20 is reasonable.

21 (c) GRANT AGREEMENTS.—Each grant under this
22 section shall be made pursuant to a grant agreement. At
23 a minimum, the grant agreement shall include provisions
24 that ensure the following:

1 (1) The grant recipient shall include in all loan
2 agreements a requirement that the loan recipient
3 shall comply with all applicable Federal and State
4 laws applicable to the cleanup and shall ensure that
5 the cleanup is protective of human health and the
6 environment.

7 (2) The local or State government shall require
8 and ensure repayment of the loan consistent with
9 this title.

10 (3) The State or local government shall use the
11 funds solely for purposes of establishing and capital-
12 izing a loan program pursuant to the provisions of
13 this title and of cleaning up the environmental con-
14 tamination at the affected site or sites.

15 (4) The State or local government shall require
16 in each loan agreement, and take necessary steps to
17 ensure, that the loan recipient shall use the loan
18 funds solely for the purposes stated in paragraph
19 (3), and shall require the return of any excess funds
20 immediately on a determination by the appropriate
21 State or local official that the cleanup has been com-
22 pleted.

23 (5) The funds shall not be transferable, unless
24 the Administrator agrees to the transfer in writing.

25 (6) LIEN.—

1 (A) IN GENERAL.—A lien in favor of the
2 State shall arise on the contaminated property
3 subject to a loan under this section. The lien
4 shall cover all real property included in the
5 legal description of the property at the time the
6 loan agreement provided for in this section is
7 signed, and all rights to the property, and shall
8 continue until the terms and conditions of the
9 loan agreement have been fully satisfied. The
10 lien shall arise at the time a security interest is
11 appropriately recorded in the real property
12 records of the appropriate office of the State,
13 county, or other governmental subdivision, as
14 designated by State law, in which the real prop-
15 erty subject to the lien is located, and shall be
16 subject to the rights of any purchaser, holder of
17 a security interest, or judgment lien creditor
18 whose interest is or has been perfected under
19 applicable State law before the notice has been
20 filed in the appropriate office within the State,
21 county, or other governmental subdivision, as
22 designated by State law, in which the real prop-
23 erty subject to the lien is located.

24 (B) DEFINITIONS.—In this paragraph, the
25 terms “security interest” and “purchaser” have

1 the meanings provided in section 6323(h) of the
2 Internal Revenue Code of 1986.

3 (7) Such other terms and conditions that the
4 Administrator determines to be necessary to protect
5 the financial interests of the United States or to
6 protect human health and the environment.

7 (e) AUDITS.—The Inspector General of the Environ-
8 mental Protection Agency shall audit a portion of the
9 grants awarded under this section to ensure that all funds
10 are used for the purposes set forth in this section. The
11 result of the audit shall be taken into account in awarding
12 any future grant monies to the entity of State or local
13 government.

14 **SEC. 103. REGULATIONS.**

15 The Administrator may promulgate such regulations
16 as are necessary to carry out this Act. The regulations
17 shall include the procedures and standards that the Ad-
18 ministrator considers necessary, including procedures and
19 standards for evaluating an application for a grant or loan
20 submitted under this Act.

21 **SEC. 104. ECONOMIC REDEVELOPMENT GRANTS.**

22 (a) EXPENDITURES FROM THE SUPERFUND.—
23 Amounts in the Superfund shall be made available, con-
24 sistent with and for the purposes of carrying out the grant
25 program established under sections 101 and 102.

1 (b) AUTHORITY TO AWARD GRANTS.—There are au-
 2 thorized to be appropriated from the Superfund, as grants
 3 to local and State governments as provided for in sections
 4 101 and 102, an amount equal to \$25,000,000 for each
 5 of fiscal years 1997, 1998, 1999, 2000, and 2001.

6 **SEC. 105. AUTHORIZATIONS OF APPROPRIATIONS.**

7 (a) SITE CHARACTERIZATION PROGRAM.—There are
 8 authorized to be appropriated to the Environmental Pro-
 9 tection Agency to carry out section 101, an amount not
 10 to exceed \$10,000,000 for each of fiscal years 1997
 11 through 2001.

12 (b) ECONOMIC REDEVELOPMENT ASSISTANCE PRO-
 13 GRAM.—There are authorized to be appropriated to the
 14 Environmental Protection Agency to carry out section 102
 15 an amount not to exceed \$15,000,000 for each of fiscal
 16 years 1997 through 2001.

17 (c) AVAILABILITY OF FUNDS.—The amounts appro-
 18 priated pursuant to this section shall remain available
 19 until expended.

20 **SEC. 106. REPORTS.**

21 (a) IN GENERAL.—Not later than 1 year after the
 22 date of enactment of this Act, and not later than January
 23 31 of each of the 3 calendar years thereafter, the Adminis-
 24 trator shall prepare and submit a report describing the

1 achievements of each program established under this title
2 to—

3 (1) the Committee on Environment and Public
4 Works of the Senate; and

5 (2) the Committee on Energy and Commerce of
6 the House of Representatives.

7 (b) CONTENTS OF REPORT.—Each report shall, with
8 respect to each of the programs established under this
9 title, include a description of—

10 (1) the number of applications received by the
11 Administrator during the preceding calendar year;

12 (2) the number of applications approved by the
13 Administrator during the preceding calendar year;
14 and

15 (3) the allocation of assistance under sections
16 101 and 102 among the States and local govern-
17 ments for assistance under this title.

18 **SEC. 107. FUNDING.**

19 (a) ADMINISTRATIVE COST LIMITATION.—Not more
20 than 15 percent of the amount of a grant made pursuant
21 to this title may be used for administrative costs. No grant
22 made pursuant to this title may be used to pay for fines
23 or penalties owed to a State or the Federal Government,
24 or for Federal cost-sharing requirements.

1 (b) OTHER LIMITATIONS.—Funds made available to
2 a State or local government pursuant to the grant pro-
3 grams established under sections 101 and 102 shall be
4 used only for inventorying, assessing, and characterizing
5 sites as authorized by this Act, and for capitalizing a loan
6 program as authorized by this Act. Funds made available
7 under this title may not be used to relieve a local govern-
8 ment or State of the commitment or responsibilities of the
9 local government or State under State law to assist or
10 carry out cleanup actions at affected sites.

11 **SEC. 108. STATUTORY CONSTRUCTION.**

12 Nothing in this title is intended to affect the liability
13 or response authorities for environmental contamination
14 of any other law (including any regulation), including—

15 (1) the Comprehensive Environmental Re-
16 sponse, Compensation, and Liability Act of 1980 (42
17 U.S.C. 9601 et seq.);

18 (2) the Solid Waste Disposal Act (42 U.S.C.
19 9601 et seq.);

20 (3) the Federal Water Pollution Control Act
21 (33 U.S.C. 1251 et seq.);

22 (4) the Toxic Substances Control Act (15
23 U.S.C. 2601 et seq.); and

1 (5) title XIV of the Public Health Service Act
2 (commonly known as the “Safe Drinking Water
3 Act”) (42 U.S.C. 300f et seq.).

4 **TITLE II—PROSPECTIVE**
5 **PURCHASERS**

6 **SEC. 201. LIMITATIONS ON LIABILITY FOR RESPONSE**
7 **COSTS FOR PROSPECTIVE PURCHASERS.**

8 (a) LIMITATIONS ON LIABILITY.—Section 107 of the
9 Comprehensive Environmental Response, Compensation,
10 and Liability Act of 1980 (42 U.S.C. 9607) is amended
11 by adding at the end the following new subsection:

12 “(n) LIMITATIONS ON LIABILITY FOR PROSPECTIVE
13 PURCHASERS.—Notwithstanding paragraphs (1) through
14 (4) of subsection (a), a person who does not impede the
15 performance of response actions or natural resource res-
16 toration at a facility shall not be liable under this Act,
17 to the extent liability is based solely on subsection (a)(1)
18 for a release or threat of release from a facility, and the
19 person is a bona fide prospective purchaser of the facil-
20 ity.”.

21 (b) PROSPECTIVE PURCHASER AND WINDFALL
22 LIEN.—Section 107 of the Comprehensive Environmental
23 Response, Compensation, and Liability Act of 1980 (as
24 amended by subsection (a)) is further amended by insert-
25 ing after subsection (n) the following new subsection:

1 “(o) PROSPECTIVE PURCHASER AND WINDFALL
2 LIEN.—

3 “(1) LIEN.—In any case in which there are un-
4 recovered response costs at a facility for which an
5 owner of the facility is not liable by reason of sub-
6 section (n), and the conditions described in para-
7 graph (2) are met, the United States shall have a
8 lien upon such facility, or may obtain from the ap-
9 propriate responsible party or parties, a lien on
10 other property or other assurances of payment satis-
11 factory to the Administrator, for such unrecovered
12 costs. Such lien—

13 “(A) shall not exceed the increase in fair
14 market value of the property attributable to the
15 response action at the time of a subsequent sale
16 or other disposition of the property;

17 “(B) shall arise at the time costs are first
18 incurred by the United States with respect to a
19 response action at the facility;

20 “(C) shall be subject to the requirements
21 for notice and validity established in paragraph
22 (3) of subsection (l); and

23 “(D) shall continue until the earlier of sat-
24 isfaction of the lien or recovery of all response
25 costs incurred at the facility.

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

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

6 “(B) FAIR MARKET VALUE.—Such re-
7 sponse action increases the fair market value of
8 the facility above the fair market value of the
9 facility that existed 180 days before the re-
10 sponse action was taken.”.

11 (c) Section 101 of the Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980 (42
13 U.S.C. 9601) is amended by adding at the end the follow-
14 ing new paragraph:

15 “(39) BONA FIDE PROSPECTIVE PURCHASER.—
16 The term ‘bona fide prospective purchaser’ means a
17 person who acquires ownership of a facility after the
18 date of enactment of the Brownfields and Environ-
19 mental Cleanup Act of 1996, or a tenant of such a
20 person, who can establish each of the following by a
21 preponderance of the evidence:

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

1 “(B) INQUIRY.—The person made all ap-
2 propriate inquiry into the previous ownership
3 and uses of the facility and its real property in
4 accordance with generally accepted good com-
5 mercial and customary standards and practices.
6 The standards and practices issued by the Ad-
7 ministrators pursuant to paragraph (35)(B)(ii)
8 shall satisfy the requirements of this subpara-
9 graph. In the case of property for residential or
10 other similar use purchased by a nongovern-
11 mental or noncommercial entity, a site inspec-
12 tion and title search that reveal no basis for
13 further investigation satisfy the requirements of
14 this subparagraph.

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

19 “(D) CARE.—The person exercised appro-
20 priate care with respect to hazardous sub-
21 stances found at the facility by taking reason-
22 able steps to stop on-going releases, prevent
23 threatened future releases of hazardous sub-
24 stances, and prevent or limit human or natural

resource exposure to hazardous substances previously released into the environment.

“(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to those persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

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

TITLE III—FIDUCIARY AND LENDER LIABILITY

SEC. 301. FIDUCIARY LIABILITY.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 201(c)) is amended by adding at the end the following:

1 “(40) FIDUCIARY.—The term ‘fiduciary’—

2 “(A) means a person acting for the benefit
3 of another party as a bona fide—

4 “(i) trustee;

5 “(ii) executor;

6 “(iii) administrator of an estate;

7 “(iv) custodian;

8 “(v) guardian of estates or guardian
9 ad litem;

10 “(vi) court-appointed receiver;

11 “(vii) conservator;

12 “(viii) committee of estates of inca-
13 pacitated persons or other incapacitated
14 persons;

15 “(ix) personal representative; or

16 “(x) representative in any other ca-
17 pacity that the Administrator, pursuant to
18 public notice, determines to be similar to
19 those listed in clauses (i) through (ix); and

20 “(B) does not include any person who—

21 “(i) had a role in establishing a trust,
22 estate, or fiduciary relationship if such
23 trust, estate, or fiduciary relationship has
24 no objectively reasonable or substantial

purpose apart from the avoidance or limitation of liability under this Act; or

“(ii) is acting as a fiduciary with respect to a trust or other fiduciary estate that—

“(I) was not created as part of, or to facilitate, one or more estate plans or pursuant to the incapacity of a natural person; and

“(II) was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit.

“(41) FIDUCIARY CAPACITY.—The term ‘fiduciary capacity’, in reference to an act of a person with respect to a vessel or facility, means a capacity in which the person holds title to a vessel or facility, or otherwise has control of or an interest in a vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.”.

(b) LIABILITY OF FIDUCIARIES.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following new section:

1 **“SEC. 127. LIABILITY OF FIDUCIARIES.**

2 “(a) IN GENERAL.—The liability of a fiduciary that
3 is liable under any other provision of this Act for the re-
4 lease or threatened release of a hazardous substance at,
5 from, or in connection with a vessel or facility held in a
6 fiduciary capacity, may not exceed the assets held in such
7 fiduciary capacity that are available to indemnify the fidu-
8 ciary.

9 “(b) EXCLUSION.—Subsection (a) does not apply to
10 the extent that a person is liable under this Act independ-
11 ent of such person’s ownership or actions taken in a fidu-
12 ciary capacity.

13 “(c) LIMITATION.—Subsections (a) and (d) shall not
14 limit the liability of a fiduciary whose failure to exercise
15 due care caused or contributed to the release of a hazard-
16 ous substance.

17 “(d) SAFE HARBOR.—A fiduciary shall not be liable
18 in its personal capacity under this Act for—

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

22 “(2) undertaking or directing another to under-
23 take any other lawful means of addressing hazard-
24 ous substances in connection with the vessel or facil-
25 ity;

26 “(3) terminating the fiduciary relationship;

1 “(4) including in the terms of a fiduciary agree-
2 ment covenant, warranty, or other terms or condi-
3 tions that relate to compliance with environmental
4 laws, or monitoring or enforcing such terms;

5 “(5) monitoring or undertaking one or more in-
6 spections of the vessel or facility;

7 “(6) providing financial or other advice or coun-
8 seling to any other party to the fiduciary relation-
9 ship, including the settler or beneficiary;

10 “(7) restructuring, renegotiating, or otherwise
11 altering a term or condition of the fiduciary relation-
12 ship;

13 “(8) acting in a fiduciary capacity with respect
14 to a vessel or facility that was contaminated before
15 the fiduciary’s period of service; or

16 “(9) declining to take any of the actions de-
17 scribed in paragraphs (2) through (8).

18 “(e) SAVINGS CLAUSE.—Nothing in this section shall
19 affect the rights or immunities or other defenses that are
20 available under this Act or other applicable law to any per-
21 son subject to the provisions of this section. Nothing in
22 this section shall create any liability for any party. Noth-
23 ing in this section shall create a private right of action
24 against a fiduciary or any other party.

1 “(f) NO EFFECT ON CERTAIN PERSONS.—Nothing
 2 in this section shall be construed to affect the liability,
 3 if any, of a person who—

4 “(1)(A) acts in a capacity other than a fidu-
 5 ciary capacity; and

6 “(B) directly or indirectly benefits from a trust
 7 or fiduciary relationship; or

8 “(2) who—

9 “(A) is a beneficiary and a fiduciary with
 10 respect to the same fiduciary estate; and

11 “(B) as a fiduciary, receives benefits that
 12 exceed customary or reasonable compensation,
 13 and incidental benefits, permitted under other
 14 applicable law.

15 “(g) REGULATORY AUTHORITY.—

16 “(1) IN GENERAL.—The Administrator may—

17 “(A) issue such regulations as the Admin-
 18 istrator deems necessary to carry out this sec-
 19 tion; and

20 “(B) delegate and assign any duties or
 21 powers imposed upon or assigned to the Admin-
 22 istrator by this section, including the authority
 23 to issue regulations.

24 “(2) AUTHORITY TO CLARIFY.—The authority
 25 under paragraph (1) includes authority to clarify or

1 interpret all terms, including those used in this sec-
 2 tion, and to implement any provision of this sec-
 3 tion.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to any claim that has not been
 6 fully adjudicated as of the date of enactment of this Act.

7 **SEC. 302. LIABILITY OF LENDERS.**

8 (a) DEFINITION OF PARTICIPATION IN MANAGE-
 9 MENT.—Section 101(20) of the Comprehensive Environ-
 10 mental Response, Liability, and Compensation Act of
 11 1980 (42 U.S.C. 9601(20)) is amended—

12 (1) in subparagraph (A), by striking the second
 13 sentence;

14 (2) by amending paragraph (A)(iii) to read as
 15 follows:

16 “(iii) any person who owned, operated
 17 or otherwise controlled activities at a vessel
 18 or facility immediately before the United
 19 States (including any department, agency
 20 or instrumentality), a unit of State or local
 21 government, or their agents or appointees,
 22 acquired title or control of such vessel or
 23 facility in any of the following ways:

24 “(I) through bankruptcy, tax de-
 25 linquency, abandonment, or escheat;

1 “(II) through foreclosure that is
2 connected with the provision of loans,
3 discounts, advances, guarantees, in-
4 surance, or other financial assistance,
5 if the United States or unit of State
6 or local government meets the require-
7 ments of paragraph (F)(ii) (I) and
8 (II) of this section;

9 “(III) through the exercise of
10 statutory receivership or
11 conservatorship authority, including
12 any liquidating or winding up the af-
13 fairs of any person or any subsidiary
14 thereof, if the governmental entity did
15 not participate in management of the
16 vessel or facility prior to acquiring
17 title or control and meets the require-
18 ments of paragraph (F)(ii)(II) of this
19 section;

20 “(IV) through the exercise of any
21 seizure or forfeiture authority;

22 “(V) in any civil, criminal, or ad-
23 ministrative enforcement proceeding,
24 whether by order or settlement, in
25 which an interest in a vessel or facility

1 is conveyed to satisfy a claim of the
2 governmental entity, and the govern-
3 mental entity meets the requirements
4 of this section; and

5 “(VI) temporarily in connection
6 with a law enforcement operation.”;

7 (3) by amending paragraph (D) to read as fol-
8 lows:

9 “(D)(i) The term ‘owner or operator’ does
10 not include the United States (including any de-
11 partment, agency, or instrumentality) or a unit
12 of State or local government that acquires title
13 or control of a vessel or facility in a manner de-
14 scribed in paragraph (A)(iii), or in any other
15 circumstances in which the government involun-
16 tary acquires title by virtue of its function as
17 sovereign.

18 “(ii) Notwithstanding subparagraph (i), if
19 the United States or a unit of State or a unit
20 of State or local government caused or contrib-
21 uted to the release or threatened release of a
22 hazardous substance from the facility, this Act
23 (including section 107) shall apply in the same
24 manner and to the same extent, procedurally

and substantively, as the Act does to any non-governmental entity.”; and

(4) by adding at the end the following:

“(E) EXCLUSION OF PERSONS NOT PARTICIPANTS IN MANAGEMENT.—

“(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY INTEREST.—The term ‘owner or operator’ does not include—

“(I) a person, including a successor or assign of such person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect such person’s security interest in the vessel or facility; or

“(II) a successor or assign of a person described in subclause (I).

“(ii) NONPARTICIPATION IN MANAGEMENT PRIOR TO FORECLOSURE.—The term ‘owner or operator’ does not include a person that forecloses on a vessel or a facility even if such person forecloses on such vessel or facility, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains

1 business activities, winds up operations, or
2 undertakes any response action under sec-
3 tion 107(d)(1) or under the direction of an
4 on-scene coordinator, with respect to the
5 vessel or facility, or takes other measures
6 to preserve, protect, or prepare the vessel
7 or facility prior to sale or disposition, if—

8 “(I) the person did not partici-
9 pate in management prior to fore-
10 closure; and

11 “(II) such person seeks to sell,
12 re-lease (in the case of a lease finance
13 transaction), or otherwise divest such
14 vessel or facility at the earliest prac-
15 tical, commercially reasonable time,
16 on commercially reasonable terms,
17 taking into account market conditions
18 and legal and regulatory require-
19 ments.

20 “(F) PARTICIPATION IN MANAGEMENT.—

21 For purposes of subparagraph (E)—

22 “(i) the term ‘participate in manage-
23 ment’ means actually participating in the
24 management or operational affairs of the
25 vessel or facility, and does not include

1 merely having the capacity to influence, or
2 the unexercised right to control, vessel or
3 facility operations;

4 “(ii) a person shall be considered to
5 ‘participate in management’ only if, while
6 the borrower is still in possession of the
7 vessel or facility encumbered by the secu-
8 rity interest, such person—

9 “(I) exercises decisionmaking
10 control over the environmental compli-
11 ance of a borrower, such that the per-
12 son has undertaken responsibility for
13 the hazardous substance handling or
14 disposal practices of the borrower; or

15 “(II) exercises control at a level
16 comparable to that of a manager of
17 the enterprise of the borrower, such
18 that the person has assumed or mani-
19 fested responsibility for the overall
20 management of the enterprise encom-
21 passing day-to-day decisionmaking
22 with respect to environmental compli-
23 ance, or with respect to all or sub-
24 stantially all of the operational as-
25 pects (as distinguished from financial

1 or administrative aspects) of the en-
2 terprise, other than environmental
3 compliance;

4 “(iii) the term ‘participate in manage-
5 ment’ does not include conducting an act
6 or failing to act prior to the time that a se-
7 curity interest is created in a vessel or fa-
8 cility; and

9 “(iv) the term ‘participate in manage-
10 ment’ does not include—

11 “(I) holding such a security in-
12 terest or, prior to foreclosure, aban-
13 doning or releasing such a security in-
14 terest;

15 “(II) including in the terms of an
16 extension of credit, or in a contract or
17 security agreement relating to such an
18 extension, covenant, warranty, or any
19 other term or condition that relates to
20 environmental compliance;

21 “(III) monitoring or enforcing
22 the term or condition of the extension
23 of credit or security interest;

1 “(IV) monitoring or undertaking
2 1 or more inspections of the vessel or
3 facility;

4 “(V) requiring the borrower to
5 undertake response action or other
6 lawful means of addressing the release
7 or threatened release of a hazardous
8 substance in connection with the ves-
9 sel or facility prior to, during, or upon
10 the expiration of the term of the ex-
11 tension of credit;

12 “(VI) providing financial or other
13 advice or counseling in an effort to
14 mitigate, prevent, or cure default or
15 diminution in the value of the vessel
16 or facility;

17 “(VII) restructuring, renegotiat-
18 ing, or otherwise agreeing to alter a
19 term or condition of the extension of
20 credit or security interest;

21 “(VIII) exercising other remedies
22 that may be available under applicable
23 law for the breach of any term or con-
24 dition of the extension of credit or se-
25 curity agreement; or

1 “(IX) conducting a response ac-
 2 tion under section 107(d)(1) or under
 3 the direction of an on-scene coordina-
 4 tor,

5 if such actions do not rise to the level of
 6 participating in management, as defined in
 7 clauses (i) and (ii).

8 “(G) OTHER TERMS.—As used in subpara-
 9 graph (E), subparagraph (F), and this subpara-
 10 graph, the following definitions shall apply:

11 “(i) BORROWER.—The term ‘bor-
 12 rower’ means a person whose vessel or fa-
 13 cility is encumbered by a security interest.

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

17 “(I) in which the lessor does not
 18 initially select the leased vessel or fa-
 19 cility and does not during the lease
 20 term control the daily operations or
 21 maintenance of the vessel or facility;
 22 or

23 “(II) that conforms with regula-
 24 tions issued by the appropriate Fed-
 25 eral banking agency or the appro-

1 prate State bank supervisor (as those
 2 terms are defined in section 3 of the
 3 Federal Deposit Insurance Act (12
 4 U.S.C. 1813)) or with regulations is-
 5 sued by the National Credit Union
 6 Administration Board, as appropriate.

7 “(iii) FINANCIAL OR ADMINISTRATIVE
 8 ASPECT.—The term ‘financial or adminis-
 9 trative aspect’ includes a function such as
 10 a function of a credit manager, accounts
 11 payable officer, accounts receivable officer,
 12 personnel manager, comptroller, or chief fi-
 13 nancial officer, or any similar function.

14 “(iv) FORECLOSURE; FORECLOSE.—
 15 The term ‘foreclosure’ and ‘foreclose’
 16 mean, respectively, acquiring, and to ac-
 17 quire from a nonaffiliated party for subse-
 18 quent disposition, a vessel or facility
 19 through—

20 “(I) purchase at sale under a
 21 judgment or decree, a power of sale, a
 22 nonjudicial foreclosure sale, or from a
 23 trustee, deed in lieu of foreclosure, or
 24 similar conveyance, or through repos-
 25 session, if such vessel or facility was

1 security for an extension of credit pre-
2 viously contracted;

3 “(II) conveyance pursuant to an
4 extension of credit previously con-
5 tracted, including the termination of a
6 lease agreement; or

7 “(III) any other formal or infor-
8 mal manner by which the person ac-
9 quires, for subsequent disposition,
10 possession of collateral in order to
11 protect the security interest of the
12 person.

13 “(v) OPERATIONAL ASPECT.—The
14 term ‘operational aspect’ includes a func-
15 tion such as a function of a facility or
16 plant manager, operations manager, chief
17 operating officer, or chief executive officer.

18 “(vi) SECURITY INTEREST.—The term
19 ‘security interest’ includes a right under a
20 mortgage, deed of trust, assignment, judg-
21 ment lien, pledge, security agreement, fac-
22 toring agreement, or lease, or any other
23 right accruing to a person to secure the re-
24 payment of money, the performance of a
25 duty, or some other obligation.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall be applicable with respect to any claim
3 that has not been finally adjudicated as of the date of en-
4 actment of this Act.

5 (c) LENDER LIABILITY RULE.—(1) Effective on the
6 date of enactment of this section, the final rule issued by
7 the Administrator of the Environmental Protection Agen-
8 cy on April 29, 1992 (57 Stat. Fed. Reg. 18344), shall
9 be deemed to have been validly issued pursuant to the au-
10 thority of the Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980, and to have
12 been effective according to the final rule’s terms. No addi-
13 tional administrative or judicial proceedings shall be nec-
14 essary with respect to such final rule.

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

21 (3) Nothing in this subsection shall be construed to
22 limit the authority of the President or his delegate to
23 amend the final rule issued by the Administrator of the
24 Environmental Protection Agency on April 29, 1992 (57

1 Fed. Reg. 18344), in accordance with applicable provi-
 2 sions of law.

3 (d) REGULATORY AUTHORITY.—

4 (1) IN GENERAL.—The Administrator may—

5 (A) issue such regulations as the Adminis-
 6 trator deems necessary to carry out the amend-
 7 ments made by this section; and

8 (B) delegate and assign any duties or pow-
 9 ers imposed upon or assigned to the Adminis-
 10 trator by the amendments made by this section,
 11 including the authority to issue regulations.

12 (2) AUTHORITY TO CLARIFY.—The authority
 13 under paragraph (1) includes authority to clarify or
 14 interpret all terms, including those used in this sec-
 15 tion, and to implement any provision of the amend-
 16 ments made by this section.

17 **TITLE IV—INNOCENT** 18 **LANDOWNERS**

19 **SEC. 401. INNOCENT LANDOWNERS.**

20 (a) ENVIRONMENTAL SITE ASSESSMENT.—Section
 21 107 (as amended by section 201(b)) is amended by adding
 22 at the end the following new subsection:

23 “(p) INNOCENT LANDOWNERS.—

24 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
 25 MENT.—A person who has acquired real property

1 shall have made all appropriate inquiry within the
2 meaning of subparagraph (B) of section 101(35) if
3 the person establishes that, within 180 days prior to
4 the time of acquisition, an environmental site assess-
5 ment of the real property was conducted which
6 meets the requirements of paragraph (2).

7 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
8 SESSMENT.—For purposes of this subsection, the
9 term ‘environmental site assessment’ means an as-
10 sessment conducted in accordance with the stand-
11 ards set forth in the American Society for Testing
12 and Materials (ASTM) Standard E1527–94, titled
13 ‘Standard practice for Environmental Site Assess-
14 ments: Phase I Environmental Site Assessment
15 Process’ or with alternative standards issued by rule
16 by the President or promulgated or developed by
17 others and designated by rule by the President. Be-
18 fore issuing or designating alternative standards, the
19 President shall first conduct a study of commercial
20 and industrial practices concerning environmental
21 site assessments in the transfer of real property in
22 the United States. Any such standards issued or
23 designated by the President shall also be deemed to
24 constitute commercially reasonable and generally ac-
25 cepted standards and practices for purposes of this

1 paragraph. In issuing or designating any such stand-
2 ards, the President shall consider requirements gov-
3 erning each of the following:

4 “(A) Interviews of owners, operators, and
5 occupants of the property to determine informa-
6 tion regarding the potential for contamination.

7 “(B) Review of historical sources as nec-
8 essary to determine previous uses and occupan-
9 cies of the property since the property was first
10 developed. For purposes of this subclause, the
11 term ‘historical sources’ means any of the fol-
12 lowing, if they are reasonably ascertainable: re-
13 corded chain of title documents regarding the
14 real property, including all deeds, easements,
15 leases, restrictions, and covenants, aerial photo-
16 graphs, fire insurance maps, property tax files,
17 USGS 7.5 minutes topographic maps, local
18 street directories, building department records,
19 zoning/land use records, and any other sources
20 that identify past uses and occupancies of the
21 property.

22 “(C) Determination of the existence of re-
23 corded environmental cleanup liens against the
24 real property which have arisen pursuant to
25 Federal, State, or local statutes.

1 “(D) Review of reasonably ascertainable
2 Federal, State, and local government records of
3 sites or facilities that are likely to cause or con-
4 tribute to contamination at the real property,
5 including, as appropriate, investigation reports
6 for such sites or facilities, records of activities
7 likely to cause or contribute to contamination at
8 the real property, including landfill and other
9 disposal location records, underground storage
10 tank records, hazardous waste handler and gen-
11 erator records and spill reporting records; and
12 such other reasonably ascertainable Federal,
13 State, and local government environmental
14 records which could reflect incidents or activi-
15 ties which are likely to cause or contribute to
16 contamination at the real property.

17 “(E) A visual site inspection of the real
18 property and all facilities and improvements on
19 the real property and a visual inspection of im-
20 mediately adjacent properties, including an in-
21 vestigation of any hazardous substance use,
22 storage, treatment, and disposal practices on
23 the property.

24 “(F) Any specialized knowledge or experi-
25 ence on the part of the defendant.

1 “(G) The relationship of the purchase
2 price to the value of the property if
3 uncontaminated.

4 “(H) Commonly known or reasonably as-
5 certainable information about the property.

6 “(I) The obviousness of the presence or
7 likely presence of contamination at the prop-
8 erty, and the ability to detect such contamina-
9 tion by appropriate investigation.

10 A record shall be considered to be ‘reasonably ascer-
11 tainable’ for purposes of this paragraph if a copy or
12 reasonable facsimile of the record is publicly avail-
13 able by request (within reasonable time and cost
14 constraints) and the record is practically reviewable.

15 “(3) APPROPRIATE INQUIRY.—A person shall
16 not be treated as having made all appropriate in-
17 quiry under paragraph (1) unless—

18 “(A) the person has maintained a compila-
19 tion of the information reviewed and gathered
20 in the course of the environmental site assess-
21 ment;

22 “(B) the person exercised appropriate care
23 with respect to hazardous substances found at
24 the facility by taking reasonable steps to stop
25 on-going releases, prevent threatened future re-

1 leases of hazardous substances, and prevent or
 2 limit human or natural resource exposure to
 3 hazardous substances previously released into
 4 the environment; and

5 “(C) the person provides full cooperation,
 6 assistance, and facility access to persons au-
 7 thorized to conduct response actions at the fa-
 8 cility, including the cooperation and access nec-
 9 essary for the installation, integrity, operation,
 10 and maintenance of any complete or partial re-
 11 sponse action at the facility.

12 “(4) DEFINITION OF CONTAMINATION.—For
 13 the purposes of this subsection and section 101(35),
 14 the term ‘contamination’ means an existing release,
 15 a past release, or the threat of a release of a hazard-
 16 ous substance.”.

17 (b) Section 101(35) of the Comprehensive Environ-
 18 mental Response, Compensation, and Liability Act of
 19 1980 (42 U.S.C. 9601(35)) is by striking subparagraph
 20 (B) and inserting the following new subparagraph:

21 “(B) KNOWLEDGE OF INQUIRY REQUIRE-
 22 MENT.—

23 “(i) IN GENERAL.—To establish that
 24 the defendant had no reason to know, as
 25 provided in subparagraph (A)(i), the de-

1 fendant must have undertaken, at the time
2 of the acquisition, all appropriate inquiry
3 (in accordance with section 107(p)) into
4 the previous ownership and uses of the fa-
5 cility and its real property in accordance
6 with generally accepted good commercial
7 and customary standards and practices.
8 For the purposes of the preceding sentence
9 and until the Administrator issues or des-
10 ignates standards and practices as pro-
11 vided in clause (ii), the court shall take
12 into account any specialized knowledge or
13 experience on the part of the defendant,
14 the relationship of the purchase price to
15 the value of the property if
16 uncontaminated, commonly known or rea-
17 sonably ascertainable information about
18 the property, the obviousness of the pres-
19 ence or likely presence of contamination at
20 the property, and the ability to detect such
21 contamination by appropriate investigation.

22 “(ii) RULE.—Within 1 year after the
23 date of enactment of this Act, the Admin-
24 istrator shall, by rule, issue standards and
25 practices or designate standards and prac-

1 tices promulgated or developed by others,
2 that satisfy the requirements of this sub-
3 paragraph. In issuing or designating such
4 standards and practices, the Administrator
5 shall consider each of the following:

6 “(I) Conduct of an inquiry by an
7 environmental professional.

8 “(II) Inclusion of interviews with
9 past and present owners, operators,
10 and occupants of the facility and its
11 real property for the purpose of gath-
12 ering information regarding the poten-
13 tial for contamination at the facility
14 and its real property.

15 “(III) Inclusion of a review of
16 historical sources, such as chain of
17 title documents, aerial photographs,
18 building department records, and land
19 use records, to determine previous
20 uses and occupancies of the real prop-
21 erty since it was first developed.

22 “(IV) Inclusion of a search for
23 recorded environmental cleanup liens,
24 filed under Federal, State, or local

1 law, against the facility or its real
2 property.

3 “(V) Inclusion of a review of
4 Federal, State, and local government
5 records (such as waste disposal
6 records), underground storage tank
7 records, and hazardous waste han-
8 dling, generation, treatment, disposal,
9 and spill records, concerning contami-
10 nation at or near the facility or its
11 real property.

12 “(VI) Inclusion of a visual in-
13 spection of the facility and its real
14 property and of adjoining properties.

15 “(VII) Any specialized knowledge
16 or experience on the part of the de-
17 fendant.

18 “(VIII) The relationship of the
19 purchase price to the value of the
20 property if uncontaminated.

21 “(IX) Commonly known or rea-
22 sonably ascertainable information
23 about the property.

24 “(X) The obviousness of the
25 presence or likely presence of contami-

1 nation at the property, and the ability
 2 to detect such contamination by ap-
 3 propriate investigation.

4 “(iii) SITE INSPECTION AND TITLE
 5 SEARCH.—In the case of property for resi-
 6 dential use or other similar use purchased
 7 by a nongovernmental or noncommercial
 8 entity, a site inspection and title search
 9 that reveal no basis for further investiga-
 10 tion satisfy the requirements of this sub-
 11 paragraph.”; and

12 (c) REGULATORY AUTHORITY.—

13 (1) IN GENERAL.—The Administrator may—

14 (A) issue such regulations as the Adminis-
 15 trator deems necessary to carry out the amend-
 16 ments made by this section; and

17 (B) delegate and assign any duties or pow-
 18 ers imposed upon or assigned to the Adminis-
 19 trator by the amendments made by this section,
 20 including the authority to issue regulations.

21 (2) AUTHORITY TO CLARIFY.—The authority
 22 under paragraph (1) includes authority to clarify or
 23 interpret all terms, including those used in this sec-

- 1 tion, and to implement any provision of the amend-
- 2 ments made by this section.

