

105TH CONGRESS
2D SESSION

H. R. 3595

To reauthorize the Comprehensive Environmental Response, Compensation,
and Liability Act of 1980.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 1998

Mr. MANTON (for himself, Mr. DINGELL, Mr. SPRATT, Mr. HALL of Texas, Mr. BOUCHER, Mr. KLINK, Mr. STUPAK, Mr. GORDON, Mr. RUSH, Mr. SAWYER, Ms. MCCARTHY of Missouri, Mr. STRICKLAND, Mr. BROWN of Ohio, Mr. DEUTSCH, Ms. ESHOO, Ms. FURSE, Mr. WAXMAN, Mr. MARKEY, Mr. WYNN, Mr. GREEN, Ms. DEGETTE, Mr. TOWNS, Mr. ENGEL, Mr. HINCHEY, Mrs. LOWEY, Mr. MEEKS of New York, Mrs. MCCARTHY of New York, Mr. ACKERMAN, and Mr. KANJORSKI) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reauthorize the Comprehensive Environmental Response,
Compensation, and Liability Act of 1980.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Superfund Improve-
5 ment Act of 1998”.

1 SEC. 2. TABLE OF CONTENTS.

2 The table of contents is as follows:

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

TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL
CLEANUP

Subtitle A—Innocent Landowners and Prospective Purchaser Liability

- Sec. 101. Innocent landowners.
- Sec. 102. Limitations on liability for response costs for prospective purchasers.
- Sec. 103. Contiguous or nearby properties.

Subtitle B—Brownfield Remediation and Environmental Cleanup

- Sec. 111. Brownfields title.
- Sec. 112. Expenditures from Superfund.

Subtitle C—State Voluntary Response Programs

- Sec. 121. State voluntary response programs.

TITLE II—LIABILITY

- Sec. 201. Liability exemptions and limitations.
- Sec. 202. Scope of rulemaking authority.
- Sec. 203. Extension relating to sureties.
- Sec. 204. Expedited final settlements.
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- Sec. 208. Settlement negotiations and allocation of responsibility for certain facilities.
- Sec. 209. Enhancement of settlement authorities.
- Sec. 210. Recycling transactions.
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TITLE III—REMEDY

- Sec. 301. Amendments relating to selection of remedial action.
- Sec. 302. Authorities for institutional controls.
- Sec. 303. Removal actions.

TITLE IV—COMMUNITY PARTICIPATION AND HUMAN HEALTH

Subtitle A—Community Participation

- Sec. 401. Definitions.
- Sec. 402. Public participation.
- Sec. 403. Waste site information offices.
- Sec. 404. Community advisory groups.
- Sec. 405. Technical outreach services for communities.
- Sec. 406. Recruitment and training program.
- Sec. 407. Facility scoring.

Subtitle B—Human Health

- Sec. 411. Disease registry and health care providers.
- Sec. 412. Substance profiles.
- Sec. 413. Health studies.
- Sec. 414. Grant awards, contracts, and community assistance activities.
- Sec. 415. Indian health provisions.
- Sec. 416. Public health recommendations in remedial actions.

Subtitle C—General Provisions

- Sec. 421. Transition.

TITLE V—NATURAL RESOURCE DAMAGES

- Sec. 501. Statute of limitations.
- Sec. 502. Coordination with remedy and coordination among trustees.
- Sec. 503. Use of recovered sums.
- Sec. 504. Use of Superfund for natural resource damage assessments.

TITLE VI—FEDERAL FACILITIES

- Sec. 601. Federal entities and facilities.
- Sec. 602. Adjoining States.
- Sec. 603. Enforceability of Federal compliance agreements.
- Sec. 604. Requirements relating to property transferred by Federal agencies.
- Sec. 605. Innovative technologies for remedial action at Federal facilities.

TITLE VII—STATE ROLES

- Sec. 701. Delegation of authority to States.
- Sec. 702. State cost share.
- Sec. 703. Conforming and miscellaneous amendments.
- Sec. 704. State role at Federal facilities.

TITLE VIII—FUNDING

- Sec. 801. Authorization of appropriations.
- Sec. 802. Orphan share funding.
- Sec. 803. Agency for Toxic Substances and Disease Registry.
- Sec. 804. Limitations on research, development, and demonstration programs.
- Sec. 805. Authorization of appropriations from general revenues.
- Sec. 806. Additional limitations.
- Sec. 807. Uses of the fund.
- Sec. 808. Worker training and education grants.

TITLE IX—MISCELLANEOUS

- Sec. 901. Small business ombudsman.
- Sec. 902. Consideration of local government cleanup priorities.
- Sec. 903. Report and oversight requirements.
- Sec. 904. Reimbursement to State and local governments.

TITLE X—5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE
SUPERFUND

- Sec. 1001. Extension of Hazardous Substance Superfund.

1 **TITLE I—BROWNFIELD REMEDI-**
2 **ATION AND ENVIRONMENTAL**
3 **CLEANUP**

4 **Subtitle A—Innocent Landowners**
5 **and Prospective Purchaser Li-**
6 **ability**

7 **SEC. 101. INNOCENT LANDOWNERS.**

8 (a) ENVIRONMENTAL SITE ASSESSMENT.—Section
9 107 of the Comprehensive Environmental Response, Com-
10 pensation, and Liability Act of 1980 (42 U.S.C. 9607) is
11 amended by adding at the end the following new sub-
12 section:

13 “(o) INNOCENT LANDOWNERS.—

14 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
15 MENT.—A person who has acquired real property
16 shall have made all appropriate inquiry within the
17 meaning of subparagraph (B) of section 101(35) if
18 he establishes that, within 180 days prior to the
19 time of acquisition, an environmental site assess-
20 ment of the real property was conducted which
21 meets the requirements of paragraph (2).

22 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
23 SESSMENT.—For purposes of this subsection, the
24 term ‘environmental site assessment’ means an as-
25 sessment conducted in accordance with the stand-

1 ards set forth in the American Society for Testing
2 and Materials (ASTM) Standard E1527, titled
3 ‘Standard Practice for Environmental Site Assess-
4 ments: Phase I Environmental Site Assessment
5 Process’ or with alternative standards issued by rule
6 by the President or promulgated or developed by
7 others and designated by rule by the President. Be-
8 fore issuing or designating alternative standards, the
9 President shall first conduct a study of commercial
10 and industrial practices concerning environmental
11 site assessments in the transfer of real property in
12 the United States. Any such standards issued or
13 designated by the President shall also be deemed to
14 constitute commercially reasonable and generally ac-
15 cepted standards and practices for purposes of this
16 paragraph. In issuing or designating any such stand-
17 ards, the President shall consider requirements gov-
18 erning each of the following:

19 “(A) Interviews of owners, operators, and
20 occupants of the property to determine informa-
21 tion regarding the potential for contamination.

22 “(B) Review of historical sources as nec-
23 essary to determine previous uses and occupan-
24 cies of the property since the property was first
25 developed. For purposes of this subclause, the

1 term ‘historical sources’ means any of the fol-
2 lowing, if they are reasonably ascertainable: re-
3 corded chain of title documents regarding the
4 real property, including all deeds, easements,
5 leases, restrictions, and covenants, aerial photo-
6 graphs, fire insurance maps, property tax files,
7 USGS 7.5 minutes topographic maps, local
8 street directories, building department records,
9 zoning/land use records, and any other sources
10 that identify past uses and occupancies of the
11 property.

12 “(C) Determination of the existence of re-
13 corded environmental cleanup liens against the
14 real property which have arisen pursuant to
15 Federal, State, or local statutes.

16 “(D) Review of reasonably ascertainable
17 Federal, State, and local government records of
18 sites or facilities that are likely to cause or con-
19 tribute to contamination at the real property,
20 including, as appropriate, investigation reports
21 for such sites or facilities; records of activities
22 likely to cause or contribute to contamination at
23 the real property, including landfill and other
24 disposal location records, underground storage
25 tank records, hazardous waste handler and gen-

1 erator records and spill reporting records; and
2 such other reasonably ascertainable Federal,
3 State, and local government environmental
4 records which could reflect incidents or activi-
5 ties which are likely to cause or contribute to
6 contamination at the real property.

7 “(E) A visual site inspection of the real
8 property and all facilities and improvements on
9 the real property and a visual inspection of im-
10 mediately adjacent properties, including an in-
11 vestigation of any hazardous substance use,
12 storage, treatment, and disposal practices on
13 the property.

14 “(F) Any specialized knowledge or experi-
15 ence on the part of the landowner.

16 “(G) The relationship of the purchase
17 price to the value of the property if
18 uncontaminated.

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

21 “(I) The obviousness of the presence or
22 likely presence of contamination at the prop-
23 erty, and the ability to detect such contamina-
24 tion by appropriate investigation.

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

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

9 “(A) the person has maintained a compila-
10 tion of the information reviewed and gathered
11 in the course of the environmental site assess-
12 ment;

13 “(B) the person exercised appropriate care
14 with respect to hazardous substances found at
15 the facility by taking reasonable steps to stop
16 on-going releases, prevent threatened future re-
17 leases of hazardous substances, and prevent or
18 limit human or natural resource exposure to
19 hazardous substances previously released into
20 the environment; and

21 “(C) the person provides full cooperation,
22 assistance, and facility access to persons au-
23 thorized to conduct response actions or natural
24 resource restoration at the facility, including
25 the cooperation and access necessary for the in-

1 stallation, integrity, operation, and maintenance
2 of any complete or partial response action or
3 natural resource restoration at the facility.”.

4 (b) **CROSS REFERENCE.**—Section 101(35)(B) (42
5 U.S.C. 9601(35)(B)) is amended by inserting after “all
6 appropriate inquiry” the following: “(as specified in sec-
7 tion 107(o))”.

8 **SEC. 102. LIMITATIONS ON LIABILITY FOR RESPONSE**
9 **COSTS FOR PROSPECTIVE PURCHASERS.**

10 (a) **LIMITATIONS ON LIABILITY.**—Section 107 of the
11 Comprehensive Environmental Response, Compensation,
12 and Liability Act of 1980 (42 U.S.C. 9607) is further
13 amended by adding at the end the following new sub-
14 section:

15 “(p) **LIMITATIONS ON LIABILITY FOR PROSPECTIVE**
16 **PURCHASERS.**—Notwithstanding paragraphs (1) through
17 (4) of subsection (a), to the extent the liability of a person,
18 with respect to a release or the threat of a release from
19 a facility, is based solely on subsection (a)(1), the person
20 shall not be liable under this Act if the person—

21 “(1) is a bona fide prospective purchaser of the
22 facility; and

23 “(2) does not impede the performance of any
24 response action or natural resource restoration at a
25 facility.”.

1 (b) PROSPECTIVE PURCHASER AND WINDFALL
2 LIEN.—Section 107 of the Comprehensive Environmental
3 Response, Compensation, and Liability Act of 1980 (as
4 amended by subsection (a)) is amended by adding after
5 subsection (p) the following new subsection:

6 “(q) PROSPECTIVE PURCHASER AND WINDFALL
7 LIEN.—

8 “(1) IN GENERAL.—In any case in which there
9 are unrecovered response costs at a facility for which
10 an owner of the facility is not liable by reason of
11 subsection (p), and the conditions described in para-
12 graph (3) are met, the United States shall have a
13 lien on the facility, or may obtain, from the appro-
14 priate responsible party or parties, a lien on other
15 property or other assurances of payment satisfactory
16 to the Administrator, for the unrecovered costs.

17 “(2) AMOUNT; DURATION.—The lien—

18 “(A) shall be for an amount not to exceed
19 the increase in fair market value of the prop-
20 erty attributable to the response action at the
21 time of a subsequent sale or other disposition of
22 the property;

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

1 “(C) shall be subject to the requirements
2 for notice and validity specified in subsection
3 (1)(3); and

4 “(D) shall continue until the earlier of sat-
5 isfaction of the lien or recovery of all response
6 costs incurred at the facility.

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

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

12 “(B) FAIR MARKET VALUE.—The response
13 action increases the fair market value of the fa-
14 cility above the fair market value of the facility
15 that existed on the date that is 180 days before
16 the response action was commenced.”.

17 (c) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
18 CHASER.—Section 101 of the Comprehensive Environ-
19 mental Response, Compensation, and Liability Act of
20 1980 (42 U.S.C. 9601) is amended by adding at the end
21 the following:

22 “(39) BONA FIDE PROSPECTIVE PURCHASER.—
23 The term ‘bona fide prospective purchaser’ means a
24 person who acquires ownership of a facility after the
25 date of enactment of the Superfund Improvement

1 Act of 1998, or a tenant of such a person, who can
2 establish each of the following by a preponderance
3 of the evidence:

4 “(A) DISPOSAL PRIOR TO ACQUISITION.—

5 All active disposal of hazardous substances at
6 the facility occurred before the person acquired
7 the facility.

8 “(B) INQUIRY.—

9 “(i) IN GENERAL.—The person made
10 all appropriate inquiry into the previous
11 ownership and uses of the facility in ac-
12 cordance with generally accepted good
13 commercial and customary standards and
14 practices.

15 “(ii) STANDARDS.—The ASTM stand-
16 ards described in section 107(o)(2) or the
17 alternative standards issued or designated
18 by the President pursuant to that section
19 shall satisfy the requirements of this sub-
20 paragraph.

21 “(iii) RESIDENTIAL PROPERTY.—In
22 the case of property in residential or other
23 similar use at the time of purchase by a
24 nongovernmental or noncommercial entity,
25 a site inspection and title search that re-

1 veal no basis for further investigation shall
2 satisfy the requirements of this subpara-
3 graph.

4 “(C) NOTICES.—The person provided all
5 legally required notices with respect to the dis-
6 covery or release of any hazardous substances
7 at the facility.

8 “(D) CARE.—The person exercised appro-
9 priate care with respect to hazardous sub-
10 stances found at the facility by taking reason-
11 able steps to—

12 “(i) stop ongoing releases;

13 “(ii) prevent threatened future re-
14 leases of hazardous substances; and

15 “(iii) prevent or limit human or natu-
16 ral resource exposure to hazardous sub-
17 stances previously released into the envi-
18 ronment.

19 “(E) COOPERATION, ASSISTANCE, AND AC-
20 CESS.—The person provides full cooperation,
21 assistance, and facility access to such persons
22 as are authorized to conduct response actions at
23 the facility, including the cooperation and ac-
24 cess necessary for the installation, integrity, op-

1 eration, and maintenance of any complete or
2 partial response action at the facility.

3 “(F) RELATIONSHIP.—The person is not
4 liable, or is not affiliated with any other person
5 that is potentially liable, for response costs at
6 the facility, through any direct or indirect fa-
7 miliar relationship, or any contractual, cor-
8 porate, or financial relationship other than that
9 created by the instruments by which title to the
10 facility is conveyed or financed.”.

11 **SEC. 103. CONTIGUOUS OR NEARBY PROPERTIES.**

12 Section 107 of the Comprehensive Environmental Re-
13 sponse, Compensation, and Liability Act of 1980 (42
14 U.S.C. 9607) is further amended by adding at the end
15 the following new subsection:

16 “(r) CONTIGUOUS PROPERTIES.—(1) A person who
17 owns or operates real property that is contiguous to or
18 otherwise similarly situated with respect to real property
19 on which there has been a release or threatened release
20 of a hazardous substance and that is or may be contami-
21 nated by such release shall not be considered to be an
22 owner or operator of a facility under subsection (a)(1)
23 solely by reason of such contamination, if such person—

24 “(A) took precautions against any foreseeable
25 act or omission that resulted in the release or

1 threatened release and the consequences that could
2 foreseeably result from such act or omission;

3 “(B) did not cause or contribute or consent to
4 the release or threatened release;

5 “(C) provides full cooperation, assistance, and
6 facility access to such persons as are authorized to
7 conduct response actions at the facility, including
8 the cooperation and access necessary for the installa-
9 tion, integrity, operation, and maintenance of any
10 complete or partial response action at the facility;
11 and

12 “(D) is not liable, or is not affiliated with any
13 other person that is potentially liable, for response
14 costs at the facility, through any direct or indirect
15 familial relationship, or any contractual, corporate,
16 or financial relationship other than that created by
17 the instruments by which title to the facility is con-
18 veyed or financed.

19 “(2) The President may issue an assurance of no en-
20 forcement action under this Act to any such person and
21 may grant any such person protection against cost recov-
22 ery and contribution actions pursuant to section
23 113(f)(2).”.

1 **Subtitle B—Brownfield Remedi-**
2 **ation and Environmental Clean-**
3 **up**

4 **SEC. 111. BROWNFIELDS TITLE.**

5 The Comprehensive Environmental Response, Com-
6 pensation, and Liability Act of 1980 (42 U.S.C. 9601 et
7 seq.) is amended by adding at the end the following new
8 title:

9 **“TITLE V—BROWNFIELD REME-**
10 **DIATION AND ENVIRON-**
11 **MENTAL CLEANUP**

12 **“SEC. 501. DEFINITIONS.**

13 For purposes of this title, the following definitions
14 apply:

15 “(1) IN GENERAL.—Except as otherwise speci-
16 fied in this title, the terms used in this title shall
17 have the meanings provided by section 101 of this
18 Act.

19 “(2) BROWNFIELD SITE.—The term ‘brownfield
20 site’ means a parcel of land that contains or con-
21 tained abandoned or under-used commercial or in-
22 dustrial facilities, the expansion or redevelopment of
23 which may be complicated by the presence or poten-
24 tial presence of hazardous substances, pollutants, or
25 contaminants.

1 “(3) DISPOSAL.—The term ‘disposal’ has the
2 meaning given the term in section 1004 of the Solid
3 Waste Disposal Act (42 U.S.C. 6903).

4 “(4) ENVIRONMENTAL CONTAMINATION.—The
5 term ‘environmental contamination’ means the exist-
6 ence at a brownfield site of one or more hazardous
7 substances, pollutants, or contaminants that may
8 pose a threat to human health or the environment.

9 “(5) GRANT.—The term ‘grant’ includes a co-
10 operative agreement.

11 “(6) LOCAL GOVERNMENT.—The term ‘local
12 government’ has the meaning given the term ‘unit of
13 general local government’ in the first sentence of
14 section 102(a)(1) of the Housing and Community
15 Development Act of 1974 (42 U.S.C. 5302(a)(1)),
16 except that the term includes an Indian tribe.

17 “(7) SITE ASSESSMENT.—

18 “(A) IN GENERAL.—The term ‘site assess-
19 ment’ means an investigation that determines
20 the nature and extent of a release or potential
21 release of a hazardous substance at a
22 brownfield site and meets the requirements of
23 subparagraph (B).

1 “(B) INVESTIGATION.—For the purposes
2 of this paragraph, an investigation that meets
3 the requirements of this subparagraph—

4 “(i) shall include—

5 “(I) an onsite evaluation; and

6 “(II) sufficient testing, sampling,
7 and other field-data-gathering activi-
8 ties to accurately determine whether
9 the brownfield site is contaminated
10 and the threats to human health and
11 the environment posed by the release
12 of hazardous substances, pollutants,
13 or contaminants at the brownfield
14 site; and

15 “(ii) may include—

16 “(I) review of such information
17 regarding the brownfield site and pre-
18 vious uses as is available at the time
19 of the review; and

20 “(II) an offsite evaluation, if ap-
21 propriate.

22 **“SEC. 502. INVENTORY AND ASSESSMENT GRANT PRO-**
23 **GRAM.**

24 “(a) IN GENERAL.—The Administrator shall estab-
25 lish a program to award grants to local governments to

1 inventory brownfield sites and to conduct site assessments
2 of brownfield sites.

3 “(b) SCOPE OF PROGRAM.—

4 “(1) GRANT AWARDS.—To carry out subsection
5 (a), the Administrator may, on approval of an appli-
6 cation, provide grants to a local government.

7 “(2) GRANT APPLICATION.—An application for
8 a grant under this section shall include, to the ex-
9 tent practicable, each of the following:

10 “(A) An identification of the potential
11 brownfield sites for which assistance is sought
12 and a description of the effect of the brownfield
13 sites on the community, including a description
14 of the nature and extent of any known or sus-
15 pected environmental contamination within the
16 sites.

17 “(B) A description of the need of the ap-
18 plicant for financial assistance to inventory
19 brownfield sites and conduct site assessments.

20 “(C) A demonstration of the potential of
21 the grant assistance to stimulate economic de-
22 velopment or creation of recreational areas, in-
23 cluding the extent to which the assistance will
24 stimulate the availability of other funds for site
25 assessment, site identification, or environmental

1 remediation and subsequent redevelopment of
2 the areas in which eligible brownfield sites are
3 situated.

4 “(D) A description of the local commit-
5 ment as of the date of the application, which
6 shall include a community involvement plan
7 that demonstrates meaningful community in-
8 volvement.

9 “(E) A plan that shows how the site as-
10 sessment, site identification, or environmental
11 remediation and subsequent development will be
12 implemented, including—

13 “(i) an environmental plan that en-
14 sures the use of sound environmental pro-
15 cedures;

16 “(ii) an explanation of the appropriate
17 government authority and support for the
18 project as in existence on the date of the
19 application;

20 “(iii) proposed funding mechanisms
21 for any additional work; and

22 “(iv) a proposed land ownership plan.

23 “(F) A statement on the long-term bene-
24 fits and the sustainability of the proposed
25 project that includes—

1 “(i) the ability of the project to be
2 replicated nationally and measures of suc-
3 cess of the project; and

4 “(ii) to the extent known, the poten-
5 tial of the plan for each area in which an
6 eligible brownfield site is situated to stimu-
7 late economic development of the area or
8 creation of recreational areas on comple-
9 tion of the environmental remediation.

10 “(G) Such other factors as the Adminis-
11 trator considers relevant to carry out this title.

12 “(3) APPROVAL OF APPLICATION.—

13 “(A) IN GENERAL.—In making a decision
14 whether to approve an application under this
15 subsection, the Administrator shall—

16 “(i) consider the need of the local gov-
17 ernment for financial assistance to carry
18 out this section;

19 “(ii) consider the ability of the appli-
20 cant to carry out an inventory and site as-
21 sessment under this section; and

22 “(iii) consider such other factors as
23 the Administrator considers relevant to
24 carry out this section.

1 “(B) GRANT CONDITIONS.—As a condition
2 of awarding a grant under this section, the Ad-
3 ministrator—

4 “(i) shall require the recipient of the
5 grant to notify the State in which the re-
6 cipient is located of the receipt of the
7 grant; and

8 “(ii) may, on the basis of the criteria
9 considered under subparagraph (A), attach
10 such other conditions to the grant as the
11 Administrator determines appropriate.

12 “(4) GRANT AMOUNT.—The amount of a grant
13 awarded to any local government under subsection
14 (a) for inventory and site assessment of one or more
15 brownfield sites shall not exceed \$200,000.

16 “(5) TERMINATION OF GRANTS.—If the Admin-
17 istrator determines that a local government that re-
18 ceives a grant under this subsection is in violation
19 of a condition of a grant referred to in paragraph
20 (3)(B), the Administrator may terminate the grant
21 made to the local government and require full or
22 partial repayment of the grant.

23 “(6) AUTHORITY TO AWARD GRANTS TO
24 STATES.—The Administrator may award a grant to
25 a State under the program established under this

1 section at the request of a local government if the
2 Administrator determines that a grant to the State
3 is necessary in order to facilitate the receipt of funds
4 by one or more local governments that otherwise do
5 not have the capabilities, such as personnel and
6 other resources, to manage grants under the pro-
7 gram.

8 “(c) TRAINING AND TECHNICAL ASSISTANCE.—The
9 Administrator may provide training and technical assist-
10 ance to community groups, as appropriate, to inventory
11 brownfield sites and conduct site assessments of
12 brownfield sites, which may include associated rivers and
13 streams.

14 **“SEC. 503. GRANTS FOR REVOLVING LOAN PROGRAMS.**

15 “(a) IN GENERAL.—

16 “(1) ESTABLISHMENT.—The Administrator
17 shall establish a program to award grants to be used
18 by local governments to capitalize revolving loan
19 funds for the cleanup of brownfield sites.

20 “(2) LOANS.—The loans may be provided by
21 the local government to finance cleanups of
22 brownfield sites by the local government, or by an
23 owner or a bona fide prospective purchaser of a
24 brownfield site (including a local government) at

1 which a cleanup is being conducted or is proposed to
2 be conducted.

3 “(b) SCOPE OF PROGRAM.—

4 “(1) IN GENERAL.—

5 “(A) GRANTS.—In carrying out subsection
6 (a), the Administrator may award a grant to a
7 local government that submits an application to
8 the Administrator that is approved by the Ad-
9 ministrators.

10 “(B) USE OF GRANT.—The grant shall be
11 used by the local government to capitalize a re-
12 volving loan fund to be used for cleanup of one
13 or more brownfield sites, which may include as-
14 sociated rivers or streams or mine-scarred land.

15 “(C) GRANT APPLICATION.—An applica-
16 tion for a grant under this section shall be in
17 such form as the Administrator determines ap-
18 propriate. At a minimum, the application shall
19 include the following:

20 “(i) Evidence that the grant applicant
21 has the financial controls and resources to
22 administer a revolving loan fund in accord-
23 ance with this title.

24 “(ii) Provisions that—

1 “(I) ensure that the grant appli-
2 cant has the ability to monitor the use
3 of funds provided to loan recipients
4 under this title;

5 “(II) ensure that any cleanup
6 conducted by the applicant is protec-
7 tive of human health and the environ-
8 ment; and

9 “(III) ensure that any cleanup
10 funded under this Act will comply
11 with all laws that apply to the clean-
12 up.

13 “(iii) Identification of the criteria to
14 be used by the local government in provid-
15 ing for loans under the program. The cri-
16 teria shall include the financial standing of
17 the applicants for the loans, the use to
18 which the loans will be put, the provisions
19 to be used to ensure repayment of the loan
20 funds, and the following:

21 “(I) A complete description of
22 the financial standing of the applicant
23 that includes a description of the as-
24 sets, cash flow, and liabilities of the
25 applicant.

1 “(II) A written statement that
2 attests that the cleanup of the site
3 would not occur without access to the
4 revolving loan fund.

5 “(III) The proposed method, and
6 anticipated period of time required, to
7 clean up the environmental contami-
8 nation at the brownfield site.

9 “(IV) An estimate of the pro-
10 posed total cost of the cleanup to be
11 conducted at the brownfield site.

12 “(V) An analysis that dem-
13 onstrates the potential of the
14 brownfield site for stimulating eco-
15 nomic development or creation of rec-
16 reational areas on completion of the
17 cleanup of the brownfield site.

18 “(2) GRANT APPROVAL.—In determining
19 whether to award a grant under this section, the Ad-
20 ministrators shall consider—

21 “(A) the need of the local government for
22 financial assistance to clean up brownfield sites
23 that are the subject of the application, taking
24 into consideration the financial resources avail-
25 able to the local government;

1 “(B) the ability of the local government to
2 ensure that the applicants repay the loans in a
3 timely manner;

4 “(C) the extent to which the cleanup of the
5 brownfield site or sites would reduce health and
6 environmental risks caused by the release of
7 hazardous substances, pollutants, or contami-
8 nants at, or from, the brownfield site or sites;

9 “(D) the demonstrable potential of the
10 brownfield site or sites for stimulating economic
11 development or creation of recreational areas on
12 completion of the cleanup;

13 “(E) the demonstrated ability of the local
14 government to administer such a loan program;

15 “(F) the demonstrated experience of the
16 local government regarding brownfield sites and
17 the reuse of contaminated land, including
18 whether the government has received any grant
19 under this Act to assess brownfield sites, except
20 that applicants who have not previously received
21 such a grant may be considered for awards
22 under this section;

23 “(G) the experience of administering any
24 loan programs by the entity, including the loan
25 repayment rates;

1 “(H) the demonstrations made regarding
2 the ability of the local government to ensure a
3 fair distribution of grant funds among
4 brownfield sites within the jurisdiction of the
5 local government; and

6 “(I) such other factors as the Adminis-
7 trator considers relevant to carry out this sec-
8 tion.

9 “(3) GRANT AMOUNT.—The amount of a grant
10 made to an applicant under this section shall not ex-
11 ceed \$500,000.

12 “(4) REVOLVING LOAN FUND APPROVAL.—
13 Each application for a grant to capitalize a revolving
14 loan fund under this section shall, as a condition of
15 approval by the Administrator, include a written
16 statement by the local government that cleanups to
17 be funded under the loan program of the local gov-
18 ernment shall be conducted under the auspices of,
19 and in compliance with, the State voluntary cleanup
20 program or State Superfund program or Federal au-
21 thority.

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

1 “(1) COMPLIANCE WITH LAW.—The local gov-
2 ernment will include in all loan agreements a re-
3 quirement that the loan recipient shall comply with
4 all laws applicable to the cleanup and shall ensure
5 that the cleanup is protective of human health and
6 the environment.

7 “(2) REPAYMENT.—The local government will
8 require repayment of the loan consistent with this
9 title.

10 “(3) USE OF FUNDS.—The local government
11 will use the funds solely for purposes of establishing
12 and capitalizing a loan program in accordance with
13 this title and of cleaning up the environmental con-
14 tamination at the brownfield site or sites.

15 “(4) REPAYMENT OF FUNDS.—The local gov-
16 ernment will require in each loan agreement, and
17 take necessary steps to ensure, that the loan recipi-
18 ent will use the loan funds solely for the purposes
19 stated in paragraph (3), and will require the return
20 of any excess funds immediately on a determination
21 by the appropriate local official that the cleanup has
22 been completed.

23 “(5) NONTRANSFERABILITY.—The funds will
24 not be transferable, unless the Administrator agrees
25 to the transfer in writing.

1 “(6) LIENS.—

2 “(A) DEFINITIONS.—In this paragraph,
3 the terms ‘security interest’ and ‘purchaser’
4 have the meanings given the terms in section
5 6323(h) of the Internal Revenue Code of 1986.

6 “(B) LIENS.—A lien in favor of the grant
7 recipient shall arise on the contaminated prop-
8 erty subject to a loan under this section.

9 “(C) COVERAGE.—The lien shall cover all
10 real property included in the legal description of
11 the property at the time the loan agreement
12 provided for in this section is signed, and all
13 rights to the property, and shall continue until
14 the terms and conditions of the loan agreement
15 have been fully satisfied.

16 “(D) TIMING.—The lien shall—

17 “(i) arise at the time a security inter-
18 est is appropriately recorded in the real
19 property records of the appropriate office
20 of the State, county, or other governmental
21 subdivision, as designated by State law, in
22 which the real property subject to the lien
23 is located; and

24 “(ii) be subject to the rights of any
25 purchaser, holder of a security interest, or

1 judgment lien creditor whose interest is or
2 has been perfected under applicable State
3 law before the notice has been filed in the
4 appropriate office of the State, county, or
5 other governmental subdivision, as des-
6 ignated by State law, in which the real
7 property subject to the lien is located.

8 “(7) NOTICE TO STATE.—The local government
9 will notify the State in which the local government
10 is located of the receipt of the grant and of the iden-
11 tity of recipients of loans made under the revolving
12 loan fund.

13 “(d) AUDITS.—

14 “(1) IN GENERAL.—The Inspector General of
15 the Environmental Protection Agency shall audit a
16 portion of the grants awarded under this section to
17 ensure that all funds are used for the purposes set
18 forth in this section.

19 “(2) FUTURE GRANTS.—The result of the audit
20 shall be taken into account in awarding any future
21 grants to the local government.

22 “(e) AUTHORITY TO AWARD GRANTS TO STATES.—
23 The Administrator may award a grant to a State under
24 the program established under this section at the request
25 of a local government in the State if the Administrator

1 determines that a grant to the State is necessary in order
2 to facilitate the receipt of funds by one or more local gov-
3 ernments that otherwise do not have the capabilities, such
4 as personnel and other resources, to manage grants under
5 the program.

6 **“SEC. 504. REPORTS.**

7 “(a) IN GENERAL.—Not later than one year after the
8 date of enactment of this title, and not later than January
9 31 of each of the 3 calendar years thereafter, the Adminis-
10 trator shall prepare and submit a report describing the
11 results of each program established under this title to—

12 “(1) the Committees on Commerce and on
13 Transportation and Infrastructure of the House of
14 Representatives; and

15 “(2) the Committee on Environment and Public
16 Works of the Senate.

17 “(b) CONTENTS OF REPORT.—Each report shall,
18 with respect to each of the programs established under
19 this title, include a description of—

20 “(1) the number of applications received by the
21 Administrator during the preceding calendar year;

22 “(2) the number of applications approved by
23 the Administrator during the preceding calendar
24 year; and

1 “(3) the allocation of assistance under sections
2 502 and 503 among the local governments.

3 **“SEC. 505. LIMITATIONS ON USE OF FUNDS.**

4 “(a) EXCLUDED FACILITIES.—(1) A grant for site
5 inventory and assessment under section 502 or to capital-
6 ize a revolving loan fund under section 503 may not be
7 used for any activity involving—

8 “(A) a facility or portion of a facility that is the
9 subject of a response action (including a facility or
10 portion of a facility with respect to which a record
11 of decision, other than a no-action record of deci-
12 sion, has been issued) under title I of this Act, un-
13 less a preliminary assessment, site investigation, or
14 response action has been completed at such facility
15 or portion of a facility and the President has decided
16 not to take further response action at such facility
17 or portion of a facility;

18 “(B) a facility included, or proposed for inclu-
19 sion, on the National Priorities List maintained by
20 the President under title I of this Act;

21 “(C) an NPL-caliber facility, as defined in
22 paragraph (2);

23 “(D) a facility that is subject to corrective ac-
24 tion under section 3004(u) or 3008(h) of the Solid
25 Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h))

1 to which a corrective action permit or order has been
2 issued or modified to require the implementation of
3 corrective measures;

4 “(E) any land disposal unit with respect to
5 which a closure notification under subtitle C of the
6 Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)
7 has been submitted and closure requirements have
8 been specified in a closure plan or permit;

9 “(F) a facility at which there has been a release
10 of a polychlorinated biphenyl and that is subject to
11 the Toxic Substances Control Act (15 U.S.C. 2601
12 et seq.);

13 “(G) a facility with respect to which an admin-
14 istrative or judicial order or decree requiring cleanup
15 has been issued or entered into by the President
16 under—

17 “(i) title I of this Act;

18 “(ii) the Solid Waste Disposal Act (42
19 U.S.C. 6901 et seq.);

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

22 “(iv) the Toxic Substances Control Act (15
23 U.S.C. 2601 et seq.); or

24 “(v) the Safe Drinking Water Act (42
25 U.S.C. 300f et seq.);

1 “(H) the portion of a facility at which assist-
2 ance for response activities may be obtained under
3 subtitle I of the Solid Waste Disposal Act (42
4 U.S.C. 6991 et seq.) from the Leaking Underground
5 Storage Tank Trust Fund established by section
6 9508 of the Internal Revenue Code of 1986; and

7 “(I) a facility owned or operated by a depart-
8 ment, agency, or instrumentality of the United
9 States, except for land held in trust by the United
10 States for an Indian tribe.

11 “(2) For purposes of paragraph (1), the term ‘NPL-
12 caliber facility’ means a facility for which the President,
13 in consultation with the State concerned, has prepared or
14 is preparing a hazardous ranking system scoring package
15 or that satisfies such other definition as the Administrator
16 may promulgate by regulation. The term does not include
17 a facility for which the President—

18 “(A) has obtained a score under the hazardous
19 ranking system; and

20 “(B) based on that score, has made a deter-
21 mination not to list on the National Priorities List.

22 “(3) Notwithstanding paragraph (1), the President
23 may, on a facility-by-facility basis, allow a grant under
24 section 502 or section 503 to be used for an activity in-
25 volving any facility listed in subparagraph (D), (E), (F),

1 (G)(ii), (G)(iii), (G)(iv), (G)(v), (H), or (I) of paragraph
2 (1). In the case of a facility listed in subparagraph (I),
3 the President may use the authority in the preceding sen-
4 tence only if the facility is not a facility described in sub-
5 paragraph (A), (B), (C), or (G)(i).

6 “(b) FINES AND COST-SHARING.—A grant made
7 under this title may not be used to pay any fine or penalty
8 owed to a State or the Federal Government, or to meet
9 any Federal cost-sharing requirement.

10 “(c) OTHER LIMITATIONS.—

11 “(1) IN GENERAL.—Funds made available to a
12 local government under the grant programs estab-
13 lished under section 502 shall be used only to inven-
14 tory and assess brownfield sites as authorized by
15 this title. Funds made available to a local govern-
16 ment under the grant programs established under
17 section 503 shall be used only for capitalizing a re-
18 volving loan fund as authorized by this title.

19 “(2) RESPONSIBILITY FOR CLEANUP ACTION.—
20 Funds made available under this title may not be
21 used to relieve a local government of the commit-
22 ment or responsibilities of the local government
23 under State law to assist or carry out cleanup ac-
24 tions at brownfield sites.

1 **“SEC. 506. EFFECT ON OTHER LAWS.**

2 “Nothing in this title changes, modifies, or otherwise
3 affects the liability of any person or the obligations im-
4 posed or authorities provided under any other law or regu-
5 lation, including—

6 “(1) title I of this Act;

7 “(2) the Solid Waste Disposal Act (42 U.S.C.
8 6901 et seq.);

9 “(3) the Federal Water Pollution Control Act
10 (33 U.S.C. 1251 et seq.);

11 “(4) the Toxic Substances Control Act (15
12 U.S.C. 2601 et seq.); and

13 “(5) the Safe Drinking Water Act (42 U.S.C.
14 300f et seq.).

15 **“SEC. 507. REGULATIONS.**

16 “(a) IN GENERAL.—The Administrator may issue
17 such regulations as are necessary to carry out this title.

18 “(b) PROCEDURES AND STANDARDS.—The regula-
19 tions shall include such procedures and standards as the
20 Administrator considers necessary, including procedures
21 and standards for evaluating an application for a grant
22 or loan submitted under this title.

23 **“SEC. 508. AUTHORIZATIONS OF APPROPRIATIONS.**

24 “(a) SITE ASSESSMENT PROGRAM.—To carry out
25 section 502, there is authorized to be appropriated from
26 the Hazardous Substance Superfund established under

1 section 9507 of the Internal Revenue Code of 1986
2 \$25,000,000 for each of fiscal years 1999 through 2003.

3 “(b) GRANTS FOR REVOLVING LOAN PROGRAMS.—
4 To carry out section 503, there is authorized to be appro-
5 priated from the Hazardous Substance Superfund estab-
6 lished under section 9507 of the Internal Revenue Code
7 of 1986 \$65,000,000 for each of fiscal years 1998 through
8 2003.”.

9 **SEC. 112. EXPENDITURES FROM SUPERFUND.**

10 Section 111(c) of the Comprehensive Environmental
11 Response, Compensation, and Liability Act of 1980 (42
12 U.S.C. 9611(c)) is amended by adding at the end the fol-
13 lowing new paragraphs:

14 “(15) SITE ASSESSMENT PROGRAM.—Costs of
15 carrying out section 502, as authorized under that
16 section.

17 “(16) GRANTS FOR REVOLVING LOAN PRO-
18 GRAMS.—Costs of carrying out section 503, as au-
19 thorized under that section.”.

20 **Subtitle C—State Voluntary**
21 **Response Programs**

22 **SEC. 121. STATE VOLUNTARY RESPONSE PROGRAMS.**

23 (a) STATE VOLUNTARY RESPONSE PROGRAMS.—
24 Title I of the Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980 (42 U.S.C. 9601

1 et seq.) is amended by adding at the end the following
2 new section:

3 **“SEC. 127. STATE VOLUNTARY RESPONSE PROGRAMS.**

4 “(a) PURPOSES AND OBJECTIVES.—The purposes
5 and objectives of this section are—

6 “(1) to significantly increase the pace of re-
7 sponse activities at contaminated sites by promoting
8 and encouraging the creation, development, and en-
9 hancement of State voluntary response programs;
10 and

11 “(2) to benefit the public health, welfare, and
12 the environment by cleaning up and returning con-
13 taminated sites to economically productive or other
14 beneficial uses.

15 “(b) ASSISTANCE TO STATES.—The Administrator
16 shall provide technical, financial, and other assistance to
17 States to establish and enhance voluntary response pro-
18 grams. The Administrator shall encourage the States to
19 develop risk sharing pools, indemnity pools, or insurance
20 mechanisms to provide financing for response actions
21 under their voluntary response programs.

22 “(c) LIMITATION ON FEDERAL AUTHORITY TO LIST
23 ON NATIONAL PRIORITIES LIST.—Except as provided in
24 subsection (e), the President shall not list on the National
25 Priorities List the portion of a facility subject to a re-

1 sponse action plan approved under a State program quali-
2 fied under subsection (i)—

3 “(1) while substantial and continuous voluntary
4 response activities are being conducted in compliance
5 with the plan at that portion of the facility; or

6 “(2) after response activities conducted in com-
7 pliance with the plan at that portion of the facility
8 have been certified by the State as complete.

9 “(d) LIMITATION ON FEDERAL AUTHORITY TO RE-
10 COVER COSTS.—(1) Except as provided in subsection (e),
11 if substantial and continuous voluntary response activities
12 are being conducted at a voluntary response action site
13 in compliance with a response action plan approved under
14 a State program qualified under subsection (i) or if re-
15 sponse activities conducted at such a site in compliance
16 with the plan have been certified by the State as complete,
17 then no person shall be liable to the Administrator under
18 section 107(a) for response costs incurred with respect to
19 a release or substantial threat of release of a hazardous
20 substance addressed by the response action plan unless
21 one or more of the following conditions is met:

22 “(A) The Administrator determines that the re-
23 lease or threat of release may present an imminent
24 and substantial danger to the public health or wel-
25 fare or the environment.

1 “(B) The State requests the Administrator to
2 take action.

3 “(C) Conditions at the site that were unknown
4 to the State at the time the response action plan
5 was approved by the State are discovered, and such
6 conditions indicate, as determined by the Adminis-
7 trator or the State, that the response action is not
8 protective of human health or the environment.

9 “(D) The cleanup of the site under the response
10 action plan of the State program is no longer protec-
11 tive of human health or the environment, as deter-
12 mined by the Administrator or the State, because of
13 a change or a proposed change in the use of the site.

14 “(2) For purposes of this subsection, the term ‘vol-
15 untary response action site’ means a site subject to a re-
16 sponse action plan under a State program qualified under
17 subsection (i).

18 “(3) Nothing in this subsection shall preclude the Ad-
19 ministrator from recovering costs incurred by the Admin-
20 istrator at a site before State approval of a response action
21 plan for that site.

22 “(e) FACILITIES INELIGIBLE FOR LIMITATIONS.—(1)
23 The limitations on Federal authority provided under sub-
24 sections (c) and (d) do not apply to any of the following
25 facilities:

1 “(A) A facility or portion of a facility that is
2 the subject of a response action (including a facility
3 or portion of a facility with respect to which a record
4 of decision, other than a no-action record of deci-
5 sion, has been issued) under this Act, unless a pre-
6 liminary assessment, site investigation, or response
7 action has been completed at such facility or portion
8 of a facility and the President has decided not to
9 take further response action at such facility or por-
10 tion of a facility.

11 “(B) A facility included, or proposed for inclu-
12 sion, on the National Priorities List maintained by
13 the President under this Act.

14 “(C) An NPL-caliber facility, as defined in
15 paragraph (2).

16 “(D) A facility that is subject to corrective ac-
17 tion under section 3004(u) or 3008(h) of the Solid
18 Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h))
19 to which a corrective action permit or order has been
20 issued or modified to require the implementation of
21 corrective measures.

22 “(E) Any land disposal unit with respect to
23 which a closure notification under subtitle C of the
24 Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)

1 has been submitted and closure requirements have
2 been specified in a closure plan or permit.

3 “(F) A facility at which there has been a re-
4 lease of a polychlorinated biphenyl and that is sub-
5 ject to the Toxic Substances Control Act (15 U.S.C.
6 2601 et seq.).

7 “(G) A facility with respect to which an admin-
8 istrative or judicial order or decree requiring cleanup
9 has been issued or entered into by the President
10 under—

11 “(i) this Act;

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

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

16 “(iv) the Toxic Substances Control Act (15
17 U.S.C. 2601 et seq.); or

18 “(v) the Safe Drinking Water Act (42
19 U.S.C. 300f et seq.).

20 “(H) The portion of a facility at which assist-
21 ance for response activities may be obtained under
22 subtitle I of the Solid Waste Disposal Act (42
23 U.S.C. 6991 et seq.) from the Leaking Underground
24 Storage Tank Trust Fund established by section
25 9508 of the Internal Revenue Code of 1986.

1 “(I) A facility owned or operated by a depart-
2 ment, agency, or instrumentality of the United
3 States, except for land held in trust by the United
4 States for an Indian tribe.

5 “(2) For purposes of paragraph (1), the term ‘NPL-
6 caliber facility’ means a facility for which the President,
7 in consultation with the State concerned, has prepared or
8 is preparing a hazardous ranking system scoring package
9 or that satisfies such other definition as the Administrator
10 may promulgate by regulation. The term does not include
11 a facility for which the President—

12 “(A) has obtained a score under the hazardous
13 ranking system; and

14 “(B) based on that score, has made a deter-
15 mination not to list on the National Priorities List.

16 “(3) Notwithstanding paragraph (1), the President
17 may, on a facility-by-facility basis and pursuant to an
18 agreement with the State concerned, apply the limitations
19 on authority provided under subsections (c) and (d) to any
20 facility listed in subparagraph (D), (E), (F), (G)(ii),
21 (G)(iii), (G)(iv), (G)(v), (H), or (I) of paragraph (1). In
22 the case of a facility listed in subparagraph (I), the Presi-
23 dent may use the authority in the preceding sentence only
24 if the facility is not a facility described in subparagraph
25 (A), (B), (C), or (G)(i).

1 “(f) EPA ASSISTANCE TO STATES FOR STATE VOL-
2 UNTARY RESPONSE PROGRAMS.—The Administrator shall
3 assist States to establish and administer State voluntary
4 response programs that—

5 “(1) provide voluntary response actions that en-
6 sure adequate site assessment and are protective of
7 human health and the environment;

8 “(2) provide opportunities for technical assist-
9 ance (including grants) for voluntary response ac-
10 tions;

11 “(3) provide meaningful opportunities for public
12 participation on issues that affect the community,
13 which shall include prior notice and opportunity for
14 comment in the selection of response actions and
15 which may include involvement of State and local
16 health officials during site assessment;

17 “(4) provide streamlined procedures to ensure
18 expeditious voluntary response actions;

19 “(5) provide adequate oversight, enforcement
20 authorities, resources, and practices—

21 “(A) to ensure that voluntary response ac-
22 tions are protective of human health and the
23 environment, as provided in paragraph (1), and
24 are conducted in a timely manner in accordance
25 with a State-approved response action plan;

1 “(B) to ensure completion of response ac-
2 tions if the person conducting the response ac-
3 tion fails or refuses to complete the necessary
4 response activities that are protective of human
5 health and the environment, including operation
6 and maintenance or long-term monitoring ac-
7 tivities;

8 “(6) provide mechanisms for the approval of a
9 response action plan; and

10 “(7) provide mechanisms for a certification or
11 similar documentation to the person who conducted
12 the response action indicating that the response is
13 complete.

14 “(g) FINANCIAL ASSISTANCE FOR DEVELOPMENT
15 AND ENHANCEMENT OF STATE VOLUNTARY RESPONSE
16 PROGRAMS AND REPORTING REQUIREMENT.—

17 “(1) PUBLIC RECORD.—To assist the Adminis-
18 trator in determining the needs of States for assist-
19 ance under this section, the Administrator shall en-
20 courage the States to maintain a public record of fa-
21 cilities, by name and location, that have been or are
22 planned to be addressed under a State voluntary re-
23 sponse program.

24 “(2) REPORTING REQUIREMENT.—Each State
25 receiving financial assistance under this section shall

1 submit to the Administrator a report at the end of
2 each calendar year on the progress of its voluntary
3 response program, which shall include the following
4 information with respect to that calendar year:

5 “(A) The number of sites, if any, under-
6 going voluntary cleanup, with the number of
7 sites in each stage of such cleanup set forth
8 separately.

9 “(B) The number of sites, if any, entering
10 voluntary cleanup.

11 “(C) The number of sites, if any, that re-
12 ceived a certification from the State indicating
13 that a response action is complete.

14 “(h) EPA REVIEW OF STATE PROGRAMS.—At any
15 time after the date of enactment of this section, a State
16 may submit, for review by the Administrator, documenta-
17 tion that the State considers appropriate to describe a
18 State voluntary response program, together with a certifi-
19 cation that the program is consistent with the elements
20 set forth in subsection (f), and, if such program is devel-
21 oped by administrative action or regulation, documenta-
22 tion of public comment and State response to comment
23 on the adequacy of the State voluntary response program.

24 “(i) QUALIFICATION OF STATE PROGRAM.—

1 “(1) APPROVAL OR DISAPPROVAL.—(A) The
2 Administrator shall approve a State voluntary re-
3 sponse program submitted under subsection (h)
4 within 180 days after the Administrator receives
5 documentation and certification under subsection (h)
6 if the Administrator determines that the State’s sub-
7 mission is consistent with the elements set forth in
8 subsection (f). A program so approved by the Ad-
9 ministrator shall be considered a qualified program
10 under this Act.

11 “(B) The Administrator shall publish in the
12 Federal Register the reasons for the approval or dis-
13 approval of any such program.

14 “(C) If the Administrator needs additional in-
15 formation under subparagraph (A)(ii), the 180-day
16 time period referred to in subparagraph (A) shall be
17 extended until such date as the Administrator is sat-
18 isfied that enough additional information has been
19 obtained in order to make a determination.

20 “(2) WITHDRAWAL OF QUALIFICATION.—When-
21 ever the Administrator determines that a State is
22 not administering and enforcing a qualified program
23 in accordance with subsection (f), the Administrator
24 shall notify the State in writing of such determina-
25 tion. If appropriate corrective action is not taken by

1 the State within 120 days after receipt of the notice,
2 the Administrator shall propose to withdraw ap-
3 proval of the program and publish a notice of such
4 proposed withdrawal in the Federal Register. The
5 Administrator shall not withdraw approval of any
6 such program unless the Administrator provides to
7 the State in writing and publishes in the Federal
8 Register the reasons for such withdrawal. If the
9 State subsequently completes the necessary correc-
10 tive measures as determined by the Administrator,
11 the Administrator shall reinstate the program as a
12 qualified program under this section.

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

18 “(k) COMPLIANCE WITH NCP.—Solely for the pur-
19 pose of private cost recovery and contribution claims
20 under this Act, response actions conducted pursuant to
21 a qualified program shall be presumed to be consistent
22 with the National Contingency Plan.

23 “(l) ANNUAL REPORTING.—

24 “(1) REPORTS BY STATE.—Each State with a
25 qualified program under this section shall submit to

1 the Administrator a report at the end of each cal-
2 endar year on the status of its program. Each such
3 report shall include a statement regarding whether
4 the program continues to be consistent with the ele-
5 ments set forth in subsection (f).

6 “(2) REPORT BY ADMINISTRATOR.—The Ad-
7 ministrator shall report, not later than two years
8 after the enactment of this section, and annually
9 thereafter, to the Congress on the status of State
10 voluntary response programs. The report shall in-
11 clude an analysis of whether qualified State vol-
12 untary response action programs continue to be con-
13 sistent with the elements set forth in subsection (f).

14 “(m) EFFECT ON EXISTING STATE PROGRAMS.—
15 This section is not intended to impose any requirement
16 on any State voluntary response program, including a pro-
17 gram existing on or before the date of the enactment of
18 the Superfund Improvement Act of 1998. A program shall
19 not be considered to be a qualified program under this
20 Act unless the program is approved in accordance with
21 this section.

22 “(n) EFFECT ON AGREEMENTS BETWEEN STATE
23 AND EPA.—This section is not intended to modify or oth-
24 erwise affect a memorandum of agreement, or a coopera-
25 tive agreement, relating to Superfund between a State

1 agency and the Environmental Protection Agency in effect
2 on or before the date of the enactment of the Superfund
3 Improvement Act of 1998. Such an agreement shall re-
4 main in effect, subject to the terms of the agreement. This
5 section is not intended to restrict or limit the President’s
6 discretionary authority to enter into or modify an agree-
7 ment with a State or other person relating to the Presi-
8 dent’s implementation of statutory authorities.

9 “(o) EFFECT ON OTHER LAWS.—Except as provided
10 in subsections (c) and (d), this section does not change,
11 modify, or otherwise affect the liability of any person or
12 the obligations imposed or authorities provided under any
13 law or regulation, including this Act, the Solid Waste Dis-
14 posal Act, the Federal Water Pollution Control Act, the
15 Toxic Substances Control Act, and title XIV of the Public
16 Health Service Act (the Safe Drinking Water Act).

17 “(p) RELATIONSHIP TO INNOCENT LANDOWNER AND
18 PROSPECTIVE PURCHASER.—(1) The successful comple-
19 tion of a response action at a facility pursuant to a re-
20 sponse action plan approved under a qualified program
21 under this section shall be evidence to be considered for
22 purposes of section 107(o)(3)(B) and section 101(39)(D).

23 “(2) Nothing in this section shall be construed to re-
24 quire any person to participate in a qualified voluntary
25 response program under this section or in any other vol-

1 unitary response program in order to qualify as an inno-
2 cent landowner or bona fide prospective purchaser for pur-
3 poses of subsections (o) and (p) of section 107.

4 “(q) AUTHORIZATION OF APPROPRIATIONS.—To
5 carry out this section, there is authorized to be appro-
6 priated from the Hazardous Substance Superfund estab-
7 lished under section 9507 of the Internal Revenue Code
8 of 1986 \$15,000,000 for each of fiscal years 1999 through
9 2003.”.

10 (b) EXPENDITURES FROM SUPERFUND.—Section
11 111(c) of the Comprehensive Environmental Response,
12 Compensation, and Liability Act of 1980 (42 U.S.C.
13 9611(c)) is further amended by adding at the end the fol-
14 lowing new paragraph:

15 “(17) ASSISTANCE TO STATES TO DEVELOP OR
16 ENHANCE STATE VOLUNTARY RESPONSE PRO-
17 GRAMS.—Costs under section 127, as authorized
18 under subsection (q) of that section.”.

19 **TITLE II—LIABILITY**

20 **SEC. 201. LIABILITY EXEMPTIONS AND LIMITATIONS.**

21 (a) LIABILITY EXEMPTIONS.—Section 107 of the
22 Comprehensive Environmental Response, Compensation,
23 and Liability Act of 1980 (42 U.S.C. 9607), as amended
24 by title I, is further amended by adding at the end the
25 following new subsection:

1 “(s) LIABILITY EXEMPTIONS.—

2 “(1) SMALL BUSINESS EXEMPTION.—

3 “(A) IN GENERAL.—Notwithstanding
4 paragraphs (1) through (4) of subsection (a), a
5 person shall not be liable for response costs or
6 response actions under this Act with respect to
7 a facility on the National Priorities List if li-
8 ability is based solely on paragraph (3) or (4)
9 of subsection (a), and the person can dem-
10 onstrate that—

11 “(i) the person is a business that, in-
12 cluding its parents, subsidiaries, and other
13 affiliates, during each of the 3 taxable
14 years preceding the date of transmittal of
15 notification that the business is a poten-
16 tially responsible party—

17 “(I) had annual gross revenues of
18 no more than \$3,000,000, as reported
19 to the Internal Revenue Service; and

20 “(II) employed no more than 50
21 individuals; and

22 “(ii) the acts upon which liability is
23 based took place wholly before the date of
24 enactment of this paragraph.

1 “(B) DEFINITION OF AFFILIATE.—For
2 purposes of this paragraph, the term ‘affiliate’
3 has the meaning of that term provided in the
4 definition of ‘small business concern’ in regula-
5 tions promulgated by the Small Business Ad-
6 ministration under the Small Business Act (15
7 U.S.C. 631 et seq.).

8 “(C) EXCEPTIONS.—The exemption pursu-
9 ant to subparagraph (A) shall not apply in a
10 case in which the President, in his sole discre-
11 tion, determines that—

12 “(i) the materials containing hazard-
13 ous substances that the person arranged
14 for disposal or treatment of, arranged with
15 a transporter for transport for disposal or
16 treatment of, or accepted for transport for
17 disposal or treatment, have contributed
18 significantly or could contribute signifi-
19 cantly, either individually or in the aggre-
20 gate, to the cost of the response action or
21 natural resource restoration with respect to
22 the facility; or

23 “(ii) the person has failed to comply
24 fully and completely with information re-
25 quests, administrative subpoenas, or dis-

1 covery requests issued by the President or
2 has impeded or is impeding, through action
3 or inaction, the performance of a response
4 action or natural resource restoration with
5 respect to the facility.

6 “(D) PRESERVATION OF CERTAIN
7 CLAIMS.—The exemption under this paragraph
8 shall not apply with respect to a contribution
9 claim by any party arising out of an obligation
10 assumed by the party in a settlement with the
11 United States or a State under this Act entered
12 into by such party as of the date of enactment
13 of this paragraph. Such contribution claims
14 shall be subject to subparagraphs (E) and (F).

15 “(E) MORATORIUM ON COMMENCEMENT
16 OR CONTINUATION OF SUITS.—

17 “(i) MORATORIUM.—No person may
18 commence a civil action for a contribution
19 claim preserved under subparagraph (D)
20 until the date that is the earliest of—

21 “(I) in the event that no request
22 for a settlement is made to the United
23 States under subparagraph (F)(ii), 90
24 days after the small business receives
25 notice under subparagraph (F)(i);

1 “(II) the date of receipt of notice
2 of the conclusion of settlement nego-
3 tiations under subparagraph (F)(vii);
4 or

5 “(III) 2 years after the date of
6 enactment of this paragraph.

7 “(ii) STATUTE OF LIMITATIONS.—Any
8 applicable limitations period with respect
9 to a contribution claim preserved under
10 subparagraph (D) shall be tolled from the
11 date of enactment of this paragraph until
12 the end of the moratorium period under
13 clause (i) of this subparagraph.

14 “(iii) STAY OF EXISTING ACTIONS.—If
15 a contribution claim preserved under sub-
16 paragraph (D) is pending on the date of
17 enactment of this paragraph, the action or
18 claim shall be stayed for a period of no less
19 than 180 days for the purpose of permit-
20 ting the small business to negotiate a set-
21 tlement with the United States pursuant to
22 subparagraph (F), unless the court deter-
23 mines that the stay will result in manifest
24 injustice.

25 “(F) SETTLEMENT PROCESS.—

1 “(i) NOTICE OF CLAIM.—Any party
2 that intends to file a contribution claim
3 that is preserved under subparagraph (D)
4 shall, within 1 year after the date of enact-
5 ment of this paragraph, notify the small
6 business with respect to such claim in writ-
7 ing of such intent and shall provide such
8 person with information concerning all of
9 the available evidence that indicates that
10 each element of liability contained in sub-
11 section (a) is present, with a copy to the
12 Administrator. The preservation of con-
13 tribution claims provided in subparagraph
14 (D) shall not apply to any claim for which
15 the notice required under this paragraph
16 has not been provided within 1 year after
17 the date of enactment of this subsection.

18 “(ii) NOTICE TO UNITED STATES.—A
19 person that receives notice under clause (i)
20 and that desires to enter into a settlement
21 under this subparagraph shall make a
22 written request to the United States re-
23 questing such a settlement within 90 days
24 after the receipt of such notice. If no such
25 request is made within the period provided

1 in this clause, the moratorium provided in
2 subparagraph (E)(i) shall cease.

3 “(iii) SETTLEMENT NEGOTIATIONS.—
4 Following receipt of notice under clause
5 (ii), the United States shall offer a settle-
6 ment to the small business on terms that
7 take into account all relevant factors, in-
8 cluding the ability of the small business to
9 finance a settlement.

10 “(iv) SETTLEMENT PROCEDURES.—
11 Settlements under this section shall be
12 subject to paragraphs (2) through (4) of
13 section 122(g).

14 “(v) EFFECT OF SETTLEMENT.—A
15 small business that has resolved its liability
16 in a settlement under this paragraph shall
17 not be liable under this Act to any other
18 person (including liability for contribution)
19 with respect to the facility.

20 “(vi) TERMS OF SETTLEMENT.—The
21 President shall have authority to enter into
22 settlements under this paragraph that in-
23 clude terms providing for the disposition of
24 the proceeds of such settlement in a man-
25 ner that is fair and reasonable, including,

1 where appropriate, the placement of settle-
2 ment proceeds in interest-bearing accounts
3 to conduct or enable other persons to con-
4 duct response actions, or other dispositions
5 for the benefit of persons whose claims are
6 extinguished by operation of clause (v).

7 “(vii) FAILURE OF NEGOTIATIONS.—

8 In the event that the President determines
9 that a settlement with the small business
10 under this paragraph cannot be reached,
11 the Environmental Protection Agency shall
12 give written notice of the conclusion of ne-
13 gotiations to the small business, to any
14 party that provided notice under clause
15 (ii), and to any plaintiff in an action
16 stayed under subparagraph (E)(iii).

17 “(2) DE MICROMIS EXEMPTION.—

18 “(A) IN GENERAL.—Notwithstanding
19 paragraphs (1) through (4) of subsection (a), a
20 person shall not be liable under this Act if li-
21 ability is based solely on paragraph (3) or (4)
22 of subsection (a), and the person can dem-
23 onstrate that the total amount of the material
24 containing hazardous substances that the per-
25 son arranged for disposal or treatment of, ar-

1 ranged with a transporter for transport for dis-
2 posal or treatment of, or accepted for transport
3 for disposal or treatment, at the facility was
4 less than 110 gallons of liquid materials or less
5 than 200 pounds of solid materials (or such
6 greater or lesser amounts as the Administrator
7 may determine by regulation).

8 “(B) EXCEPTIONS.—The exemption pursu-
9 ant to subparagraph (A) shall not apply in a
10 case in which—

11 “(i) all or part of the disposal or
12 treatment concerned occurred after Decem-
13 ber 31, 1997; or

14 “(ii) the President, in his sole discre-
15 tion, determines that—

16 “(I) the materials containing
17 hazardous substances referred to in
18 subparagraph (A) have contributed
19 significantly or could contribute sig-
20 nificantly, either individually or in the
21 aggregate, to the cost of the response
22 action or natural resource restoration
23 with respect to the facility; or

24 “(II) the person has failed to
25 comply fully and completely with in-

1 formation requests, administrative
2 subpoenas, or discovery requests
3 issued by the President or has im-
4 peded or is impeding, through action
5 or inaction, the performance of a re-
6 sponse action or natural resource res-
7 toration with respect to the facility.

8 “(3) MUNICIPAL SOLID WASTE EXEMPTION.—

9 “(A) IN GENERAL.—Notwithstanding
10 paragraphs (1) through (4) of subsection (a), a
11 person shall not be liable under this Act to the
12 extent that—

13 “(i) liability is based solely on para-
14 graph (3) or (4) of subsection (a);

15 “(ii) the person can demonstrate that
16 it arranged for disposal or treatment of,
17 arranged with a transporter for transport
18 for disposal or treatment of, or accepted
19 for transport for disposal or treatment,
20 municipal solid waste; and

21 “(iii) the person is—

22 “(I) the owner, operator, or les-
23 see of residential property from which
24 all of the municipal solid waste attrib-
25 utable to such person was generated;

1 “(II) a business entity that, in-
2 cluding its parents, subsidiaries, and
3 other affiliates, during the tax year of
4 the entity preceding the date of trans-
5 mittal to the entity of written notifica-
6 tion from the President of its poten-
7 tial liability under this Act, employed
8 no more than 100 individuals and is a
9 ‘small business concern’ as defined
10 under the Small Business Act (15
11 U.S.C. 631 et seq.); or

12 “(III) a small nonprofit organiza-
13 tion where the particular chapter, of-
14 fice, or department employing fewer
15 than 100 individuals was the location
16 from which all of the municipal solid
17 waste attributable to such organiza-
18 tion with respect to the facility was
19 generated.

20 For purposes of this paragraph, the term ‘affili-
21 ate’ has the meaning of that term provided in
22 the definition of ‘small business concern’ in reg-
23 ulations promulgated by the Small Business
24 Administration in accordance with the Small
25 Business Act (15 U.S.C. 631 et seq.).

1 “(B) EXCEPTION.—The exemption pursu-
2 ant to subparagraph (A) shall not apply in a
3 case in which the President determines that—

4 “(i) the person has failed to comply
5 fully and completely with information re-
6 quests, administrative subpoenas, or dis-
7 covery requests issued by the President; or

8 “(ii) the person has impeded or is im-
9 peding, through action or inaction, the per-
10 formance of a response action or natural
11 resource restoration with respect to the fa-
12 cility.

13 “(4) INHERITANCE OR BEQUEST EXEMPTION.—
14 Notwithstanding paragraphs (1) through (4) of sub-
15 section (a), a person shall not be liable under this
16 Act to the extent liability at such facility is based
17 solely on the person’s status as owner under sub-
18 section (a)(1) for a release or threat of release from
19 the facility, and the person acquired the facility by
20 inheritance or bequest, if the person—

21 “(A) acquired the real property on which
22 the facility concerned is located after disposal
23 or placement of the hazardous substance took
24 place;

1 “(B) exercised appropriate care with re-
2 spect to hazardous substances found at the fa-
3 cility by taking reasonable steps to—

4 “(i) stop ongoing releases;

5 “(ii) prevent any threatened future re-
6 leases of hazardous substances; and

7 “(iii) prevent or limit human or natu-
8 ral resource exposure to hazardous sub-
9 stances previously released into the envi-
10 ronment; and

11 “(C) provides full cooperation, assistance,
12 and facility access to persons authorized to con-
13 duct response actions at the vessel or facility,
14 including the cooperation and access necessary
15 for the assessment of contamination and the in-
16 stallation, preservation of integrity, operation,
17 and maintenance of any complete or partial re-
18 sponse action at the vessel or facility.

19 “(5) RIGHT-OF-WAY OR BUSINESS LICENSE EX-
20 EMPTION.—Notwithstanding paragraphs (1) through
21 (4) of subsection (a), a Federal or State govern-
22 mental entity or municipality shall not be liable
23 under this Act to the extent the liability of the entity
24 or municipality at such facility is based solely on
25 its—

1 “(A) ownership of a road, street, or other
2 right-of-way or public transportation route
3 (other than railroad rights-of-way and railroad
4 property) over which hazardous substances are
5 transported; or

6 “(B) granting of a license or permit to
7 conduct business.

8 “(6) SPUR TRACK EXEMPTION.—Notwithstand-
9 ing paragraphs (1) through (4) of subsection (a), a
10 person that does not impede the performance of a
11 response action or natural resource restoration shall
12 not be liable under this Act to the extent that liabil-
13 ity is based solely on the status of the person as
14 a railroad owner or operator of a spur track, includ-
15 ing a spur track over land subject to an easement,
16 to a facility that is owned or operated by a person
17 that is not affiliated with the owner or operator if—

18 “(A) the spur track provides access to a
19 main line or branch line track that is owned or
20 operated by the railroad;

21 “(B) the spur track is 10 miles long or
22 less;

23 “(C) the railroad owner or operator does
24 not cause or contribute to a release or threat-
25 ened release at the spur track;

1 “(D) the railroad owner or operator exer-
2 cised appropriate care with respect to hazard-
3 ous substances found at the facility by taking
4 reasonable steps to—

5 “(i) stop ongoing releases;

6 “(ii) prevent any threatened future re-
7 leases of hazardous substances; and

8 “(iii) prevent or limit human or natu-
9 ral resource exposure to hazardous sub-
10 stances previously released into the envi-
11 ronment; and

12 “(E) the railroad owner or operator pro-
13 vides full cooperation, assistance, and facility
14 access to persons authorized to conduct re-
15 sponse actions at the vessel or facility, including
16 the cooperation and access necessary for the as-
17 sessment of contamination and the installation,
18 preservation of integrity, operation, and mainte-
19 nance of any complete or partial response ac-
20 tion at the vessel or facility.

21 “(7) PENALTY FOR INAPPROPRIATE LAW-
22 SUITS.—Any person who commences an action after
23 the date of enactment of this section for recovery of
24 response costs or in contribution against a person
25 who is not liable by operation of paragraph (1), (2),

1 or (3) shall be liable to that person for all reasonable
2 costs of defending that action, including all reason-
3 able attorneys' fees and expert witness fees.”.

4 (b) RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDU-
5 CATIONAL ORGANIZATION.—Section 107 of such Act (42
6 U.S.C. 9607) is further amended by adding at the end
7 the following new subsection:

8 “(t) RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDU-
9 CATIONAL ORGANIZATION.—

10 “(1) LIMITATION ON LIABILITY.—In the event
11 that an organization described in section 101(20)(H)
12 holds title to a vessel or facility, either directly or in
13 trust, as a result of a charitable gift that is allow-
14 able as a deduction under section 170, 2055, or
15 2522 of the Internal Revenue Code of 1986 (deter-
16 mined without regard to dollar limitations), the or-
17 ganization's liability under subsection (a)(1) shall be
18 limited to the lesser of the fair market value of the
19 vessel or facility or the actual proceeds of the sale
20 of the vessel or facility received by the organization,
21 subject to paragraph (2).

22 “(2) CONDITIONS.—In order for an organiza-
23 tion described in section 101(20)(H) to be eligible
24 for the limited liability described in paragraph (1),
25 the organization shall—

1 “(A) provide full cooperation, assistance,
2 and facility access to persons authorized to con-
3 duct response actions at the vessel or facility,
4 including the cooperation and access necessary
5 for the assessment of contamination and the in-
6 stallation, preservation of integrity, operation,
7 and maintenance of any complete or partial re-
8 sponse action at the vessel or facility;

9 “(B) establish by a preponderance of the
10 evidence that all active disposal of hazardous
11 substances at the facility or vessel occurred be-
12 fore the organization acquired the vessel or fa-
13 cility;

14 “(C) establish by a preponderance of the
15 evidence that the organization exercised appro-
16 priate care with respect to hazardous sub-
17 stances found at the facility by taking reason-
18 able steps to—

19 “(i) stop ongoing releases;

20 “(ii) prevent threatened future re-
21 leases of hazardous substances; and

22 “(iii) prevent or limit human or natu-
23 ral resource exposure to hazardous sub-
24 stances previously released into the envi-
25 ronment; and

1 “(D) establish by a preponderance of the
2 evidence that the organization is not affiliated
3 with any other potentially liable person at the
4 facility, through any familial relationship, or
5 any contractual, corporate, or financial relation-
6 ship other than that created by the instrument
7 by which title to the facility is conveyed or fi-
8 nanced.

9 “(3) LIMITATION.—Nothing in this subsection
10 shall affect the liability of any person, other than a
11 person described in section 101(20)(H), who meets
12 the conditions specified in paragraph (2).”.

13 (c) MUNICIPAL OWNERS AND OPERATORS.—Section
14 107 of such Act (42 U.S.C. 9607) is further amended by
15 adding at the end the following new subsection:

16 “(u) MUNICIPAL OWNERS AND OPERATORS.—

17 “(1) IN GENERAL.—A municipality that is lia-
18 ble for response costs under paragraph (1) or (2) of
19 subsection (a) on the basis of ownership or operation
20 of a municipal landfill that is listed on the National
21 Priorities List on or before October 1, 1997 (as
22 identified by the President), shall be eligible for a
23 settlement under this subsection.

24 “(2) SETTLEMENT AMOUNT.—(A) The Presi-
25 dent shall offer a settlement to a party with respect

1 to such liability on the basis of a payment or other
2 obligation equivalent in value to no more than 20
3 percent of the total response costs in connection with
4 the facility. The President may increase this per-
5 centage to no more than 35 percent of the total re-
6 sponse costs in connection with the facility if the
7 President determines—

8 “(i) the municipality exacerbated environ-
9 mental contamination or exposure with respect
10 to the facility; or

11 “(ii) the municipality, during the period of
12 ownership or operation of the facility, received
13 operating revenues substantially in excess of the
14 sum of the waste system operating costs plus
15 20 percent of total estimated response costs in
16 connection with the facility.

17 “(B) Such a settlement shall pertain to only the
18 party’s liability under paragraph (1) or (2) of sub-
19 section (a).

20 “(3) PERFORMANCE OF RESPONSE ACTIONS.—
21 Subject to the limitations of paragraph (2), the
22 President may require, as a condition of a settle-
23 ment with a municipality under this subsection, that
24 the municipality perform, or participate in the per-
25 formance of, the response actions at the site.

1 “(4) JOINT OWNERSHIP OR OPERATION.—A
2 combination of 2 or more municipalities that jointly
3 owned or operated the facility at the same time or
4 during continuous operations under municipal con-
5 trol, shall be considered a single owner/operator for
6 the purpose of calculating a settlement offer pursu-
7 ant to this subsection.

8 “(5) WAIVER OF CLAIMS.—The President may
9 require, as a condition of a settlement under this
10 subsection, that the municipality waive some or all
11 of the claims or causes of action that such munici-
12 pality may have against other potentially responsible
13 parties relating to the site, including claims for con-
14 tribution under section 113.

15 “(6) CONDITIONS.—In order for a municipality
16 to be eligible for the limited liability described in this
17 subsection, the acts or omissions giving rise to liabil-
18 ity must have occurred before a date 2 years after
19 the date of enactment of this Act, or the municipal-
20 ity asserting the limitation must institute or partici-
21 pate in a qualified household hazardous waste dis-
22 posal program before a date 2 years after the date
23 of enactment of this Act.

1 “(7) EXCEPTIONS.—The President may decline
2 to offer a settlement under this subsection where the
3 President determines—

4 “(A) there is only municipal solid waste or
5 sewage sludge at the facility;

6 “(B) all other identified potentially respon-
7 sible parties are insolvent, defunct, or eligible
8 for a settlement under this subsection or under
9 section 122(g);

10 “(C) the municipality has failed to comply
11 fully and completely with information requests,
12 administrative subpoenas, or discovery requests
13 issued by the United States; or

14 “(D) the municipality has impeded or is
15 impeding, through action or inaction, the per-
16 formance of a response action or a natural re-
17 source restoration with respect to the facility.

18 “(8) EXPIRATION OF OFFER.—The President’s
19 obligation to offer a settlement under this section
20 shall expire if the municipality to which the offer is
21 made fails to accept such an offer within a reason-
22 able time period.”.

23 (d) RELATIONSHIP TO LIABILITY UNDER OTHER
24 LAWS.—Section 107 of such Act (42 U.S.C. 9607) is fur-

1 ther amended by adding at the end the following new sub-
2 section:

3 “(v) RELATIONSHIP TO LIABILITY UNDER OTHER
4 LAWS.—Nothing in this section shall affect a person’s li-
5 ability under any other Federal, State, or local statute or
6 regulation promulgated pursuant to any such statute, in-
7 cluding any obligation to comply with the requirements
8 promulgated by the Administrator under the Solid Waste
9 Disposal Act (42 U.S.C. 6901 et seq.).”.

10 (e) CLARIFICATION OF COMMON CARRIER LIABIL-
11 ITY.—Section 107(b)(3) of such Act (42 U.S.C.
12 9607(b)(3)) is amended by striking out “from a published
13 tariff and acceptance for” and inserting “exclusively from
14 a contract for”.

15 (f) MISCELLANEOUS AMENDMENTS.—(1) Section
16 107 of such Act (42 U.S.C. 9607) is further amended as
17 follows:

18 (A) Subsection (a)(1) is amended by striking
19 “and” and inserting “or”.

20 (B) Subsection (a)(2) is amended by inserting
21 “vessel or” before “facility”.

22 (C) Subsection (c)(3) is amended in the first
23 sentence by striking “such person may be liable”
24 and all that follows through the end of the sentence
25 and inserting the following: “such person is liable to

1 the United States for any response costs incurred by
2 the United States as a result of such failure to take
3 proper action and may be liable to the United States
4 for punitive damages in an amount up to three times
5 the amount of such response costs.”.

6 (2) Section 101(35)(A) of such Act (42 U.S.C.
7 9601(35)(A)) is amended—

8 (A) by striking clause (iii); and

9 (B) by striking “clause (i), (ii), or (iii)” and in-
10 sserting “the following clauses”.

11 **SEC. 202. SCOPE OF RULEMAKING AUTHORITY.**

12 Section 115 of the Comprehensive Environmental Re-
13 sponse, Compensation, and Liability Act of 1980 (42
14 U.S.C. 9615) is amended to read as follows:

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

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

1 cludes authority to clarify or interpret all terms and to
2 implement any provision of this Act.”.

3 **SEC. 203. EXTENSION RELATING TO SURETIES.**

4 Section 119 of the Comprehensive Environmental Re-
5 sponse, Compensation, and Liability Act of 1980 (42
6 U.S.C. 9619) is amended—

7 (1) in subsection (e)(2)(C), by striking “and be-
8 fore January 1, 1996,”; and

9 (2) in subsection (g)(5), by striking “, or after
10 December 31, 1995”.

11 **SEC. 204. EXPEDITED FINAL SETTLEMENTS.**

12 (a) PARTIES ELIGIBLE FOR EXPEDITED FINAL SET-
13 TLEMENTS.—Section 122(g) of the Comprehensive Envi-
14 ronmental Response, Compensation, and Liability Act of
15 1980 (42 U.S.C. 9622(g)) is amended—

16 (1) by striking the subsection heading and all
17 that follows through the end of subparagraph (A) of
18 paragraph (1) and inserting the following:

19 “(g) EXPEDITED FINAL SETTLEMENT.—

20 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-
21 TLEMENT.—The President shall, as expeditiously as
22 practicable, offer to reach a final administrative or
23 judicial settlement with any potentially responsible
24 party that, in the judgment of the President, meets

1 1 or more of the following conditions for eligibility
2 for an expedited settlement:

3 “(A) DE MINIMIS CONTRIBUTION.—The
4 person’s liability is based on paragraph (3) or
5 (4) of section 107(a) and the person’s individ-
6 ual contribution of hazardous substances at the
7 facility is de minimis. For purposes of this sub-
8 paragraph, the contribution of hazardous sub-
9 stances to a facility by a potentially responsible
10 party is de minimis if the President determines
11 that both of the following conditions are met:

12 “(i) The amount of materials contain-
13 ing hazardous substances contributed by
14 that person to the facility is minimal in
15 comparison to the total amount of mate-
16 rials containing hazardous substances at
17 the facility. Such individual contribution is
18 presumed to be minimal if it is 1 percent
19 or less of the total amount of materials
20 containing hazardous substances at the fa-
21 cility, unless the Administrator identifies a
22 different threshold based on site-specific
23 factors.

24 “(ii) The materials containing hazard-
25 ous substances contributed by the person

1 do not present toxic or other hazardous ef-
2 fects that are significantly greater than
3 those of other materials containing hazard-
4 ous substances at the facility.”;

5 (2) by inserting into subparagraph (B) the fol-
6 lowing heading before the first sentence: “OWNERS
7 OF REAL PROPERTY.—”; and

8 (3) by inserting after subparagraph (B) of
9 paragraph (1) the following:

10 “(C) CONTRIBUTION OF MUNICIPAL SOLID
11 WASTE AND SEWAGE SLUDGE.—

12 “(i) IN GENERAL.—The potentially re-
13 sponsible party’s liability for response costs
14 is based on paragraph (3) or (4) of section
15 107(a), and the person can demonstrate
16 that it arranged for disposal or treatment
17 of, arranged with a transporter for trans-
18 port for disposal or treatment of, or ac-
19 cepted for transport for disposal or treat-
20 ment, municipal solid waste or sewage
21 sludge at a facility listed on the National
22 Priorities List.

23 “(ii) SETTLEMENT AMOUNT.—To the
24 extent that liability is based on municipal
25 solid waste or sewage sludge, the President

1 shall offer a settlement to such a party
2 under this subparagraph on the basis of a
3 payment of \$5.30 per ton of municipal
4 solid waste or sewage sludge that the
5 President estimates is attributable to such
6 party. Where the party has been forthcom-
7 ing with requested information, but the in-
8 formation is nonetheless incomplete, the
9 President shall estimate the party's quan-
10 tity of municipal solid waste or sewage
11 sludge by incorporating reasonable as-
12 sumptions based on relevant information,
13 such as census data and national per cap-
14 ita solid waste generation information.
15 Such a settlement shall pertain only to the
16 party's liability with respect to municipal
17 solid waste or sewage sludge under para-
18 graph (3) or (4) of section 107.

19 “(iii) CONDITIONS.—In order for a
20 municipality to be eligible for the settle-
21 ment described in this subparagraph (C),
22 the acts or omissions giving rise to liability
23 must have occurred before a date 2 years
24 after the date of enactment of this sub-
25 paragraph, or the municipality asserting

1 the limitation must institute or participate
2 in a qualified household hazardous waste
3 disposal program before a date 2 years
4 after the date of enactment of this sub-
5 paragraph.

6 “(iv) EXCLUSION OF CERTAIN FACILI-
7 TIES.—A potentially responsible party de-
8 scribed in clause (i) shall not be eligible for
9 a settlement described in this subpara-
10 graph if the facility at which the disposal
11 or treatment occurred contains only munic-
12 ipal solid waste or sewage sludge.

13 “(v) EXCEPTION FOR CERTAIN SEW-
14 AGE SLUDGE.—The President may decline
15 to offer a settlement under this subsection
16 to a person that arranged for disposal or
17 treatment of, arranged with a transporter
18 for transport for disposal or treatment of,
19 or accepted for transport for disposal or
20 treatment, sewage sludge, if the President
21 determines that the sewage sludge contrib-
22 uted or could contribute significantly to
23 the cost of response.

24 “(vi) ADJUSTMENT FOR INFLATION.—
25 The settlement rate per ton of municipal

1 solid waste or sewage sludge under this
2 subparagraph (C) shall be adjusted annu-
3 ally for inflation. Such adjustments shall
4 take effect on July 1 of each year after the
5 enactment of this subparagraph. The infla-
6 tion adjustment shall be determined by in-
7 creasing the settlement rate per ton of mu-
8 nicipal solid waste or sewage sludge under
9 this subparagraph (C) by the cost-of-living
10 adjustment. The cost-of-living adjustment
11 shall be the percentage difference by which
12 the Consumer Price Index for the month
13 of the June preceding a settlement exceeds
14 the Consumer Price Index for the imme-
15 diate prior month of June.

16 “(vii) OTHER MATERIALS.—Notwith-
17 standing clause (i), a potentially respon-
18 sible party that arranged for disposal or
19 treatment of, arranged with a transporter
20 for transport for disposal or treatment of,
21 or accepted for transport for disposal or
22 treatment, municipal solid waste or sewage
23 sludge and other materials containing haz-
24 ardous substances shall be eligible for the
25 per-ton settlement rate described in this

1 subparagraph as to the municipal solid
2 waste or sewage sludge only if the poten-
3 tially responsible party demonstrates to the
4 President's satisfaction the quantity of the
5 municipal solid waste and sewage sludge
6 contributed by such party and the quantity
7 and composition of the other materials
8 containing hazardous substances contrib-
9 uted by such party. Where such party
10 demonstrates to the President's satisfac-
11 tion that the material other than municipal
12 solid waste or sewage sludge contributed
13 by such party is eligible for the de micro-
14 mis exemption under section 107(s)(2) or
15 a de minimis settlement under subpara-
16 graph (A), such party shall be eligible for
17 the per-ton settlement rate as to its munic-
18 ipal solid waste or municipal sewage sludge
19 in an expedited settlement under this para-
20 graph. In other cases, the President shall
21 offer to resolve the party's liability with re-
22 spect to the municipal solid waste or sew-
23 age sludge at the per-ton settlement rate
24 described in this paragraph at such time as
25 the party also agrees to a settlement with

1 respect to other materials containing haz-
2 ardous substances on terms and conditions
3 acceptable to the President.

4 “(viii) MUNICIPAL OWNERS AND OP-
5 ERATORS.—Where a municipality is eligible
6 for the per-ton settlement rate under this
7 subparagraph, and is also eligible for a set-
8 tlement under section 107(u) with respect
9 to the same facility, the President shall
10 offer a settlement to such municipality for
11 an amount equal to the settlement amount
12 under clause (ii) with respect to its con-
13 tribution of municipal solid waste or sew-
14 age sludge, plus the amount provided in
15 section 107(u) as to the liability of the mu-
16 nicipality under paragraph (1) or (2) of
17 section 107(a). Notwithstanding any other
18 requirement in this section, such a settle-
19 ment offer shall be made at such time as
20 the President determines is appropriate.

21 “(ix) EXPIRATION OF OFFER.—The
22 President’s obligation to offer a settlement
23 at the rate provided under this subpara-
24 graph shall expire if the party to which the

1 offer has been made fails to accept such an
2 offer within a reasonable time period.

3 “(D) ABILITY TO PAY.—

4 “(i) IN GENERAL.—The potentially re-
5 sponsible party is a natural person, a small
6 business as defined in clause (ii), or a mu-
7 nicipality and demonstrates to the United
8 States an inability or a limited ability to
9 pay response costs.

10 “(ii) SMALL BUSINESS.—For purposes
11 of this subparagraph, each of the following
12 provisions apply:

13 “(I) DEFINITION.—The term
14 ‘small business’ means any business
15 entity that is described in clauses (i)
16 and (ii) of section 107(s)(1)(A).

17 “(II) DETERMINATION.—The
18 small business shall demonstrate the
19 amount of its ability to pay response
20 costs. If the small business employs
21 fewer than 20 employees and has
22 gross income revenues of less than
23 \$1,800,000, the President shall per-
24 form any analysis that the President
25 determines may assist in demonstrat-

1 ing the impact of a settlement upon
2 the small business’s ability to main-
3 tain its basic operations. The Presi-
4 dent, in his discretion, may perform
5 such analysis for any other party or
6 require such other party to perform
7 the analysis.

8 “(III) ALTERNATIVE PAYMENT
9 METHODS.—If the President deter-
10 mines that a small business is unable
11 to pay its total settlement amount im-
12 mediately, the President shall consider
13 such alternative payment methods as
14 may be necessary or appropriate. The
15 methods to be considered may include
16 installment payments, to be paid dur-
17 ing a period not to exceed 10 years,
18 and the provision of in-kind services.

19 “(iii) MUNICIPALITIES.—For purposes
20 of this subparagraph, each of the following
21 provisions apply:

22 “(I) CONSIDERATIONS.—In the
23 case of a municipality, the President
24 shall consider, to the extent that in-

1 formation is provided by the municipi-
2 pality—

3 “(aa) the general obligation
4 bond rating and information
5 about the most recent bond issue
6 for which the rating was pre-
7 pared;

8 “(bb) the amount of total
9 available funds (other than dedi-
10 cated funds or State assistance
11 payments for remediation of inac-
12 tive hazardous waste sites);

13 “(cc) the amount of total
14 operating revenues (other than
15 obligated or encumbered reve-
16 nues);

17 “(dd) the amount of total
18 expenses;

19 “(ee) the amounts of total
20 debt and debt service;

21 “(ff) per capita income and
22 cost of living;

23 “(gg) real property values;

24 “(hh) unemployment infor-
25 mation; and

1 “(ii) population information
2 of the municipality.

3 “(II) EVALUATION OF IMPACT.—

4 A municipality may also submit for
5 consideration by the President an
6 evaluation of the potential impact of
7 the settlement on the provision of es-
8 sential municipal services and the fea-
9 sibility of making delayed payments or
10 payments over time. If a municipality
11 asserts that it has additional environ-
12 mental obligations besides its poten-
13 tial liability under this Act, the mu-
14 nicipality may create a list of the obli-
15 gations, including an estimate of the
16 costs of complying with such obliga-
17 tions.

18 “(III) RISK OF DEFAULT OR VIO-
19 LATION.—A municipality may estab-
20 lish an inability to pay for purposes of
21 this subparagraph through an affirm-
22 ative showing that such payment of
23 its liability under this Act would—

24 “(aa) create a substantial
25 demonstrable risk that the mu-

1 municipality would default on exist-
2 ing debt obligations (existing as
3 of the time of the showing), be
4 forced into bankruptcy, be forced
5 to dissolve, or be forced to make
6 budgetary cutbacks that would
7 substantially reduce current lev-
8 els (as of the time of the show-
9 ing) of protection of public health
10 and safety; or

11 “(bb) necessitate a violation
12 of legal requirements or limita-
13 tions of general applicability con-
14 cerning the assumption and
15 maintenance of fiscal municipal
16 obligations.

17 “(IV) ADDITIONAL FACTOR REL-
18 EVANT TO SETTLEMENTS WITH MU-
19 NICIPALITIES.—In any settlement
20 with a municipality pursuant to this
21 title, the President may consider the
22 fair-market value of any in-kind serv-
23 ices that the party may provide to
24 support the response action at the fa-

1 cility in determining an appropriate
2 settlement amount.

3 “(iv) EFFECT ON AUTHORITY.—This
4 subparagraph shall not be construed to
5 limit or affect the President’s authority to
6 evaluate any person’s ability to pay or to
7 enter into settlements with any person
8 based on that person’s inability to pay.

9 “(E) ADDITIONAL CONDITIONS FOR EXPE-
10 DITED SETTLEMENTS.—

11 “(i) WAIVER OF CLAIMS.—The Presi-
12 dent may require, as a condition of a set-
13 tlement under this paragraph (1), that the
14 potentially responsible party waive some or
15 all of the claims or causes of action that
16 such party may have against other poten-
17 tially responsible parties relating to the
18 site, including claims for contribution
19 under section 113.

20 “(ii) EXCEPTION.—The President
21 may decline to offer a settlement under
22 this paragraph (1) where the President de-
23 termines—

24 “(I) the person has failed to com-
25 ply fully and completely with informa-

1 tion requests, administrative subpoe-
2 nas, or discovery requests issued by
3 the United States; or

4 “(II) the person has impeded or
5 is impeding, through action or inae-
6 tion, the performance of a response
7 action or natural resource restoration
8 with respect to the facility.

9 “(iii) BASIS OF DETERMINATION.—If
10 the President determines that a party is
11 not eligible for a settlement pursuant to
12 this subsection, the basis for that deter-
13 mination shall be explained in writing to
14 any person who requests such a settlement.
15 Such a determination shall not be subject
16 to judicial review.”.

17 (b) NOTIFICATION.—Section 122(g) of such Act (42
18 U.S.C. 9622(g)) is further amended by redesignating
19 paragraph (6) as paragraph (10) and inserting the follow-
20 ing new paragraphs:

21 “(6) NOTIFICATION OF PARTIES.—

22 “(A) NOTIFICATION.—As soon as prac-
23 ticable after receipt of sufficient information,
24 the Administrator shall notify any person that
25 the Administrator determines is eligible for an

1 expedited final settlement in accordance with
2 paragraph (1) of its eligibility, based on infor-
3 mation available to the Administrator at the
4 time the determination is made.

5 “(B) SETTLEMENT OFFER.—As soon as
6 practicable after receipt of sufficient informa-
7 tion, the Administrator shall submit a written
8 settlement offer to each party notified under
9 subparagraph (A). Upon request by any recipi-
10 ent of a settlement offer under paragraph (1),
11 the Administrator shall make available any in-
12 formation available under section 552 of title 5,
13 United States Code, on which the Adminis-
14 trator based the settlement offer. If the settle-
15 ment offer is based in whole or in part on infor-
16 mation not available under section 552 of title
17 5, United States Code, the Administrator shall
18 so inform the party.

19 “(7) LITIGATION MORATORIUM.—

20 “(A) IN GENERAL.—No person that has
21 received notice under paragraph (6) that it is
22 eligible for an expedited settlement under para-
23 graph (1) shall be named as a defendant in any
24 action under section 107 for recovery of re-
25 sponse costs (including an action for contribu-

1 tion) during the period beginning on the date
2 on which the person receives from the President
3 written notice that it is a party that may qual-
4 ify for an expedited settlement, and ending on
5 the earlier of—

6 “(i) the date that is 90 days after the
7 date on which the President tenders a
8 written settlement offer to the person; or

9 “(ii) the date that is 1 year after the
10 date specified in subparagraph (A).

11 This moratorium shall not apply with respect to
12 a person eligible for a settlement under para-
13 graph (1)(C) (vii) or (viii).

14 “(B) TOLLING OF PERIOD OF LIMITA-
15 TION.—The period of limitation under section
16 113(g) applicable to a claim against a person
17 described in subparagraph (A) for response
18 costs or contribution shall be tolled during the
19 period described in subparagraph (A).

20 “(C) STAY OF LITIGATION.—If, before the
21 date of enactment of this paragraph, a person
22 described in subparagraph (A) has been named
23 as a defendant in an action for recovery of re-
24 sponse costs or contribution, the court shall,
25 unless a stay would result in manifest injustice,

1 stay the action as to that claim until the end
2 of the period described in subparagraph (A).

3 “(8) NOTICE OF SETTLEMENT.—After a settle-
4 ment under this subsection becomes final with any
5 person with respect to a facility, the President shall
6 promptly notify potentially responsible parties at the
7 facility that have not resolved their liability to the
8 United States of the settlement.”.

9 **SEC. 205. INFORMATION GATHERING AND ACCESS.**

10 (a) ADDITIONAL INFORMATION.—Section 104(e)(2)
11 of the Comprehensive Environmental Response, Com-
12 pensation, and Liability Act of 1980 (42 U.S.C.
13 9604(e)(2)) is amended—

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

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

17 (2) by inserting after subparagraph (C) the fol-
18 lowing:

19 “(D) The identity of any persons engaged
20 in, responsible for, controlling, or having the
21 ability to control activities or operations at a
22 vessel or facility giving rise to liability under
23 this Act.

1 “(E) The potential liability or responsibil-
2 ity of any person to perform or pay for a re-
3 sponse action.

4 “(F) For a person conducting a response
5 action, an accounting of direct and indirect
6 costs the person has incurred in conducting
7 such response action.

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

10 (b) CERTIFICATIONS.—Section 104(e) of such Act
11 (42 U.S.C. 9604(e)) is amended—

12 (1) by redesignating paragraphs (3), (4), (5),
13 (6), and (7) as paragraphs (4), (5), (6), (7), and
14 (8), respectively; and

15 (2) by inserting after paragraph (2) the follow-
16 ing:

17 “(3) CERTIFICATION.—The President may re-
18 quire respondents to requests made pursuant to this
19 subsection to certify that—

20 “(A) the responses are true, accurate, and
21 complete to the best of the respondent’s knowl-
22 edge;

23 “(B) the responses are based on a diligent,
24 good faith search of records in the possession or

1 control of the person to whom the request was
2 directed;

3 “(C) the responses are based on a reason-
4 able inquiry of the current and former officers,
5 directors, employees, and agents of the person
6 to whom the request was directed;

7 “(D) the responses accurately and com-
8 pletely reflect information obtained in the
9 course of conducting such search and inquiry;

10 “(E) the respondent understands that
11 there is a continuing obligation to supplement
12 the response if any additional, new, or different
13 information relevant to the matters addressed
14 in the request or the response thereto becomes
15 known or available to the respondent; and

16 “(F) the respondent understands that
17 there are significant penalties for knowingly
18 and willfully submitting false information, in-
19 cluding the possibility of fine and imprison-
20 ment.”.

21 (c) ADMINISTRATIVE SUBPOENAS.—Section 104(e)
22 of such Act (42 U.S.C. 9604(e)) is further amended by
23 inserting after paragraph (8) (as redesignated by sub-
24 section (b)) the following new paragraph:

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

18 (d) CONFIDENTIALITY OF INFORMATION.—Subpara-
19 graph (A) of section 104(e)(8) of such Act (as redesign-
20 nated by subsection (b)), is amended to read as follows:

21 “(A) Any records, reports, documents, or infor-
22 mation obtained from any person under this section
23 (including records, reports, documents, or informa-
24 tion obtained by representatives of the President (or
25 the State as the case may be) and records, reports,

1 documents, or information obtained pursuant to a
2 contract, grant, or other agreement to perform work
3 pursuant to this section) shall be available to the
4 public not later than 45 days after the records, re-
5 ports, or information is obtained, except as follows:

6 “(i) Upon a showing satisfactory to the
7 President (or the State, as the case may be) by
8 any person that records, reports, documents, or
9 information, or any particular part thereof
10 (other than health or safety effects data), to
11 which the President (or the State, as the case
12 may be) or any officer, employee, or representa-
13 tive has access under this section if made public
14 would divulge information entitled to protection
15 under section 1905 of title 18, United States
16 Code, such information or particular portion
17 thereof shall be considered confidential in ac-
18 cordance with the purposes of that section, ex-
19 cept as otherwise provided in this clause. Any
20 such record, report, document, or information
21 may be disclosed to other officers, employees, or
22 authorized representatives of the United States
23 carrying out this Act, when relevant in any pro-
24 ceeding under this Act, including any allocator
25 appointed pursuant to section 130. If such

1 records, reports, documents, or information are
2 obtained or submitted to the United States (or
3 the State, as the case may be) pursuant to a
4 contract, grant, or other agreement to perform
5 work pursuant to this section, such record, re-
6 port, document, or information may be dis-
7 closed to persons from whom the President
8 seeks to recover costs pursuant to this Act.

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

18 (e) CONFIDENTIALITY REQUIREMENTS FOR CON-
19 TRACTORS.—Paragraph (8) of section 104(e) of such Act
20 (as redesignated by subsection (b)) is amended by adding
21 at the end the following new subparagraph:

22 “(G)(i) No person described in clause (ii) may
23 disclose any record, report, document, or other infor-
24 mation referred to in subparagraph (A)(i) without

1 the permission of the President (or the State, as the
2 case may be).

3 “(ii) A person described in this clause is any
4 person—

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

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

19 (f) AVAILABILITY OF INFORMATION TO CONGRESS.—
20 Subsection 104(e) of such Act (42 U.S.C. 9604(e)) is fur-
21 ther amended by adding after paragraph (9) the following
22 new paragraph:

23 “(10) AVAILABILITY OF INFORMATION TO CON-
24 GRESS.—Nothing in this subsection shall be con-
25 strued to authorize any person, including any allo-

1 cator appointed pursuant to section 128, to withhold
2 any documents or information from Congress, acting
3 through any duly authorized Committee thereof, or
4 limit in any manner the right of Congress, acting
5 through any duly authorized Committee thereof, to
6 obtain such documents or information.”.

7 **SEC. 206. COMPLIANCE WITH ADMINISTRATIVE ORDERS.**

8 Section 106(a) of the Comprehensive Environmental
9 Response, Compensation, and Liability Act of 1980 (42
10 U.S.C. 9606(a)) is amended by adding at the end the fol-
11 lowing: “The President may amend such administrative
12 orders and issue additional orders relating to the facility,
13 as appropriate, without a subsequent determination that
14 there may be an imminent and substantial endangerment,
15 to complete all response actions necessary to respond to
16 an actual or threatened release or to require additional
17 response actions that are necessary or appropriate to re-
18 spond to the actual or threatened release that was the sub-
19 ject of the original administrative order.”.

20 **SEC. 207. CIVIL PROCEEDINGS.**

21 (a) PETITIONS.—Section 113(a) of the Comprehen-
22 sive Environmental Response, Compensation, and Liabil-
23 ity Act of 1980 (42 U.S.C. 9613(a)) is amended as fol-
24 lows:

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

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

6 (b) PERIOD IN WHICH ACTION MAY BE BROUGHT.—
7 Section 113(g) of such Act (42 U.S.C. 9613(g)) is amend-
8 ed by striking paragraphs (2) and (3) and inserting in
9 lieu thereof the following:

10 “(2) ACTIONS FOR RECOVERY OF COSTS.—(A)

11 Except as provided in subparagraph (C), an initial
12 action for recovery of costs referred to in section
13 107 must be commenced—

14 “(i) for a removal action, within 3
15 years after completion of all removal action
16 taken with respect to the facility (including
17 off-site disposal of any removed materials,
18 any site evaluation including evaluations
19 for selection of a remedial action in accord-
20 ance with section 121, or design of a reme-
21 dial action), except that if physical on-site
22 construction of the remedial action is initi-
23 ated within 3 years after the completion of
24 all removal action taken with respect to the
25 facility, costs incurred for removal action

1 may be recovered in a cost recovery action
2 brought under clause (ii); and

3 “(ii) for each remedial action, within
4 6 years after initiation of physical on-site
5 construction of that remedial action, unless
6 that remedial action has been the subject
7 of a previous cost recovery action.

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

22 “(C) An action by any potentially responsible
23 party against another potentially responsible party
24 for recovery of any response costs or damages must
25 be commenced within the later of—

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

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

6 “(I) the date of judgment in any ac-
7 tion under this Act for recovery of such
8 costs or damages, or

9 “(II) the date of any administrative
10 order or judicial settlement for recovery of
11 the costs or damages paid or incurred pur-
12 suant to such a settlement.

13 “(3) CLAIMS BY THE UNITED STATES OR
14 STATES.—Claims by the United States under section
15 106 and claims by the United States or a State
16 under section 107(a) shall not be deemed compul-
17 sory counterclaims in an action against the United
18 States or a State seeking response costs, contribu-
19 tion, damages, or any other claim by any person
20 under this Act.”.

21 **SEC. 208. SETTLEMENT NEGOTIATIONS AND ALLOCATION**
22 **OF RESPONSIBILITY FOR CERTAIN FACILI-**
23 **TIES.**

24 Title I of the Comprehensive Environmental Re-
25 sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9601 et seq.), as amended by title I of this Act,
2 is further amended by adding at the end of the following
3 new section:

4 **“SEC. 128. SETTLEMENT NEGOTIATIONS AND ALLOCATION**
5 **OF RESPONSIBILITY FOR CERTAIN FACILI-**
6 **TIES.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) ALLOCATOR.—The term ‘allocator’ means
9 a neutral third party retained to conduct an alloca-
10 tion under this section.

11 “(2) MANDATORY ALLOCATION.—The term
12 ‘mandatory allocation’ means an allocation at a non-
13 federally owned vessel or facility listed on the Na-
14 tional Priorities List—

15 “(A) concerning which the Administrator
16 selects a remedial action (as identified in a
17 record of decision) after March 30, 1998;

18 “(B) for which, in the record of decision,
19 the Administrator estimates that future re-
20 sponse costs for that remedial action will exceed
21 \$3,000,000; and

22 “(C) that involves 2 or more unaffiliated
23 potentially responsible parties.

24 “(3) ESTIMATED CONTRIBUTION SHARE.—

1 “(A) IN GENERAL.—The term ‘estimated
2 contribution share’ means the estimated per-
3 centage amount attributable to potentially re-
4 sponsible parties and to the orphan share in a
5 settlement under subsection (e) or by an allo-
6 cator under subsection (f).

7 “(B) UNATTRIBUTED WASTE.—The esti-
8 mated contribution share associated with haz-
9 ardous substances that cannot be attributed to
10 any identifiable potentially responsible party or
11 allocation party shall be distributed pro rata
12 among the potentially responsible parties and
13 the orphan share.

14 “(4) ORPHAN SHARE.—The term ‘orphan
15 share’ means the sum of—

16 “(A) the estimated contribution share spe-
17 cifically attributable to potentially responsible
18 parties determined by the Administrator to be
19 insolvent or defunct, who are not affiliated with
20 any viable potentially responsible party or allo-
21 cation party;

22 “(B) the estimated contribution share spe-
23 cifically attributable to parties that are not lia-
24 ble pursuant to the small business exemption
25 set forth in section 107(s)(1); and

1 “(C) the difference between each poten-
2 tially responsible party’s settlement amount in
3 a settlement under section 122(g)(1)(D) and
4 the estimated contribution share specifically at-
5 tributable to that party in the absence of limita-
6 tions on that party’s financial ability to pay.

7 “(b) GENERAL PROVISIONS.—

8 “(1) MANDATORY PROCESS.—For each manda-
9 tory allocation, the Administrator shall, after con-
10 ducting any settlement negotiation pursuant to sec-
11 tion 122(e), initiate the allocation process in accord-
12 ance with subsection (f) (subject to subsection
13 (f)(3)).

14 “(2) PERMISSIVE PROCESS.—The Adminis-
15 trator may use any part of the allocation process de-
16 scribed in this section in order to promote a settle-
17 ment with respect to any response actions or re-
18 sponse costs that are not subject to a mandatory al-
19 location, but shall not be required to provide orphan
20 share funding with respect to any such response ac-
21 tions or response costs.

22 “(3) EXCLUDED REMEDIAL ACTIONS.—Settle-
23 ment negotiations or the allocation process under
24 this section shall not be required with respect to a

1 remedial action (as identified in a record of decision)
2 for which—

3 “(A) there is, as of the date of enactment
4 of this section, a settlement or consent decree
5 with a party other than a de minimis party
6 under section 122(g)(1) or a party that settled
7 on the basis of an inability or limited ability to
8 pay response costs;

9 “(B) a remedial action is being addressed
10 by a unilateral order issued by the Adminis-
11 trator under section 106 before the date of en-
12 actment of this section;

13 “(C) all potentially responsible parties are
14 liable or potentially liable as owners or opera-
15 tors under paragraph (1) or (2) of section
16 107(a) (notwithstanding any other bases for li-
17 ability); or

18 “(D) the remedial action is being carried
19 out by a State under the authority of this Act,
20 unless otherwise provided in section 130.

21 “(4) RESPONSE COSTS.—A mandatory alloca-
22 tion under this section shall apply to—

23 “(A) response costs relating to the reme-
24 dial action referred to in subsection (a)(2) in-

1 curred after the date of enactment of this sec-
2 tion; and

3 “(B) unrecovered remedial investigation
4 and feasibility study costs relating to the reme-
5 dial action referred to in subsection (a)(2) in-
6 curred by the United States before the date of
7 enactment of this section.

8 “(5) OTHER MATTERS.—This section does not
9 limit or affect—

10 “(A) the ability of any person to resolve
11 any liability, with respect to a facility, to the
12 United States or any other person at any time
13 before initiation or completion of the allocation
14 process;

15 “(B) the validity, enforceability, finality, or
16 merits of any judicial or administrative order,
17 judgment, or decree entered, signed, lodged, or
18 issued before the date of enactment of this sec-
19 tion with respect to liability under this Act; or

20 “(C) the validity, enforceability, finality, or
21 merits of any contract or agreement in effect
22 before the date of enactment of this Act relat-
23 ing to any allocation of responsibility or any in-
24 demnity for, or sharing of, any response costs
25 under this Act.

1 “(c) MORATORIUM ON LITIGATION AND ENFORCE-
2 MENT.—

3 “(1) MORATORIUM AND STAY.—No person may
4 commence an action for recovery of a response cost
5 or contribution toward a response cost under this
6 Act in connection with a remedial action subject to
7 a mandatory allocation under this section until 60
8 days after the completion or termination of alloca-
9 tion procedures in accordance with this section (in-
10 cluding post-allocation settlement negotiations). Any
11 such action that is pending as of the date of enact-
12 ment of this section shall be stayed until such time,
13 unless the court determines that such a stay would
14 result in manifest injustice.

15 “(2) TOLLING OF STATUTE OF LIMITATIONS.—
16 Any applicable period of limitation with respect to a
17 claim described in paragraph (1) shall be tolled until
18 120 days after the expiration of the moratorium pro-
19 vided in paragraph (1).

20 “(3) ACTIONS CONTEMPORANEOUS WITH SET-
21 TLEMENT.—Notwithstanding this section, the Attor-
22 ney General may commence a civil action against a
23 potentially responsible party or allocation party at
24 any time if at the same time the Attorney General
25 files a judicial consent decree resolving the liability

1 of the potentially responsible party or allocation
2 party.

3 “(d) IDENTIFICATION OF POTENTIALLY RESPON-
4 SIBLE PARTIES.—

5 “(1) IN GENERAL.—As soon as reasonably
6 practicable, the Administrator shall perform a com-
7 prehensive search to identify all potentially respon-
8 sible parties at a vessel or facility with respect to
9 which a mandatory allocation is initiated, and pro-
10 vide appropriate opportunity for participation by po-
11 tentially responsible parties.

12 “(2) NOMINATION OF ADDITIONAL PARTIES.—

13 “(A) SUBMISSION OF NAMES.—The Ad-
14 ministrator shall allow each potentially respon-
15 sible party identified by the Administrator
16 under paragraph (1) a reasonable period of
17 time in which to submit the names of additional
18 potentially responsible parties.

19 “(B) STATEMENT OF BASIS.—A potentially
20 responsible party nominating another person as
21 a potentially responsible party shall—

22 “(i) include a statement setting forth
23 the basis in law and fact why the nomi-
24 nated party is potentially liable under this
25 Act; and

1 “(ii) submit to the Administrator and
2 the nominated person all available informa-
3 tion that identifies the nature and extent
4 of the nominated person’s involvement at,
5 and contribution of hazardous substances
6 to, the facility.

7 “(C) SUBMISSION BY NOMINATED PER-
8 SONS.—A person nominated as a potentially re-
9 sponsible party may within a reasonable time
10 submit to the Administrator information relat-
11 ing to inclusion of the person as a potentially
12 responsible party at the facility.

13 “(3) INCLUSION OF NOMINATED PERSONS.—
14 The Administrator shall include each person nomi-
15 nated under paragraph (2) on the list of potentially
16 responsible parties, unless the Administrator deter-
17 mines that inclusion of the person as a potentially
18 liable party is not warranted by law or not based on
19 facts that have reasonable evidentiary support under
20 the circumstances.

21 “(4) LIST OF POTENTIALLY RESPONSIBLE PAR-
22 TIES.—On completion of the identification of poten-
23 tially responsible parties and before commencing set-
24 tlement negotiations under subsection (e), the Ad-
25 ministrator shall make available in the Waste Site

1 Information Office a list of potentially responsible
2 parties with respect to the facility.

3 “(5) NOT FINAL AGENCY ACTION.—The identi-
4 fication of potentially responsible parties by the Ad-
5 ministrator under this subsection shall not constitute
6 final agency action for the purposes of chapter 7 of
7 title 5, United States Code and shall not be subject
8 to judicial review.

9 “(e) SETTLEMENT NEGOTIATIONS.—

10 “(1) IN GENERAL.—Unless, consistent with sec-
11 tion 122(a), the Administrator determines not to use
12 the negotiation procedures under this subsection (in
13 which case subsection (f) shall apply), the Adminis-
14 trator shall provide a period of negotiation under
15 section 122(e)(2) for each mandatory allocation be-
16 fore initiating an allocation process under subsection
17 (f).

18 “(2) ORPHAN SHARE.—With respect to a re-
19 sponse action that would otherwise be the subject of
20 a mandatory allocation, if settling potentially respon-
21 sible parties agree to perform the response action
22 and agree to additional terms and conditions of set-
23 tlement that are acceptable to the United States, the
24 United States shall reimburse the settling parties, by
25 payment or otherwise, 100 percent of the orphan

1 share identified by the Administrator, subject to the
2 availability of funds pursuant to subsection (m).

3 “(f) ALLOCATION PROCESS.—

4 “(1) INITIATION.—At the timely request of any
5 potentially responsible party that has not resolved its
6 liability to the United States, and after the conclu-
7 sion of settlement negotiations if undertaken pursu-
8 ant to subsection (e), the Administrator shall initiate
9 an allocation process concerning a mandatory alloca-
10 tion in accordance with this subsection.

11 “(2) EXCEPTION.—

12 “(A) IN GENERAL.—An allocation process
13 under this subsection shall not be required if a
14 settlement is reached under subsection (e) that
15 resolves 70 percent or more of the total costs
16 of the remedial action that would be the subject
17 of the mandatory allocation (including the or-
18 phan share).

19 “(B) NONSETTLING PARTY.—A potentially
20 responsible party that does not agree to a set-
21 tlement described in subparagraph (A) shall be
22 subject to post-settlement litigation under sub-
23 section (n).

24 “(3) ALLOCATION PARTY.—For the purposes of
25 this subsection—

1 “(A) except as provided in subparagraphs
2 (D) and (E), a potentially responsible party
3 that has not resolved its liability to the United
4 States before initiation of the allocation process
5 shall be considered to be an allocation party;

6 “(B) a potentially responsible party that
7 has settled with the Administrator on an abil-
8 ity-to-pay basis shall be considered to be an al-
9 location party to the extent necessary to deter-
10 mine the orphan share;

11 “(C) a person that is exempt from liability
12 under section 107 shall not be considered to be
13 an allocation party, except that a person that is
14 exempt from liability pursuant to the small
15 business exemption in section 107(s)(1) shall be
16 considered to be an allocation party to the ex-
17 tent necessary to determine the orphan share;

18 “(D) a party that has received notification
19 under section 122(g)(6)(A) that it is eligible for
20 an expedited settlement under section 122(g)
21 with respect to all or part of its liability but
22 that has not resolved such liability in an expe-
23 dited settlement before initiation of the alloca-
24 tion process shall not be considered an alloca-
25 tion party with respect to such liability, unless

1 the Administrator determines that such party
2 has declined to accept a settlement with respect
3 to such liability consistent with section 122(g);
4 and

5 “(E) a municipality that is eligible for a
6 settlement under section 107(u) shall not be
7 considered an allocation party with respect to
8 its liability for response costs under paragraph
9 (1) or (2) of section 107(a), unless the Admin-
10 istrator determines that such party has declined
11 to accept a settlement with respect to such li-
12 ability consistent with section 107(u).

13 “(4) SELECTION OF THE ALLOCATOR.—

14 “(A) IN GENERAL.—An allocator shall be
15 selected by the Administrator and the allocation
16 parties.

17 “(B) SELECTION BY THE ADMINIS-
18 TRATOR.—An allocator shall be selected by the
19 Administrator if the parties do not select an al-
20 locator within a reasonable time.

21 “(C) PROCEDURE.—The Administrator is
22 authorized to use the simplified acquisition pro-
23 cedures provided for in section 303(g)(1)(A) of
24 the Federal Property and Administrative Serv-
25 ices Act of 1949 (41 U.S.C. 253(g)(1)(A)) for

1 contracts for the expedited selection and reten-
2 tion of the allocator for services with a value
3 not exceeding \$1,000,000 (including procedures
4 for establishing alternative conflict of interest
5 screening procedures and alternative sole source
6 contracting requirements).

7 “(5) PARTICIPATION BY ADMINISTRATOR AND
8 ATTORNEY GENERAL.—

9 “(A) REPRESENTATIVE OF THE FUND.—
10 The Administrator and the Attorney General
11 shall participate in the allocation process on be-
12 half of the United States and as representative
13 of the fund but shall not be an allocation party
14 except as provided in subparagraph (B).

15 “(B) FEDERAL POTENTIALLY RESPON-
16 SIBLE PARTIES.—Federal departments, agen-
17 cies, or instrumentalities, or their agents, that
18 are identified as potentially responsible parties
19 or allocation parties under this Act shall be
20 subject to, and be entitled to the benefits of, the
21 settlement negotiation and allocation processes
22 provided in this section to the same extent as
23 any other potentially responsible party.

24 “(6) EQUITABLE FACTORS FOR ALLOCATION.—
25 The allocator shall prepare a nonbinding allocation

1 of estimated contribution shares for each allocation
2 party and the orphan share, based on the following
3 factors:

4 “(A) The amount of hazardous substances
5 contributed by each allocation party.

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

8 “(C) The mobility of hazardous substances
9 contributed by each allocation party.

10 “(D) The degree of involvement of each al-
11 location party in the generation, transportation,
12 treatment, storage, or disposal of hazardous
13 substances.

14 “(E) The degree of care exercised by each
15 allocation party with respect to hazardous sub-
16 stances, taking into account the characteristics
17 of the hazardous substances.

18 “(F) The cooperation of each allocation
19 party in contributing to any response action
20 and in providing complete and timely informa-
21 tion to the United States or the allocator dur-
22 ing the allocation process.

23 “(G) Such other equitable factors as the
24 allocator recommends, with the agreement of al-
25 location parties and the United States.

1 “(7) ALLOCATOR’S REPORT.—

2 “(A) ALLOCATION REPORT.—The allocator
3 shall provide a written final allocation report to
4 the Administrator, the Attorney General, and
5 each allocation party that specifies the esti-
6 mated contribution share of each allocation
7 party and of any orphan share.

8 “(B) OPPORTUNITY FOR COMMENT.—Be-
9 fore issuing the final allocation report, the allo-
10 cator shall give each allocation party and the
11 United States a reasonable opportunity to com-
12 ment on a draft allocation report.

13 “(C) ADMISSIBILITY OF ALLOCATION RE-
14 PORT.—

15 “(i) IN GENERAL.—No draft or final
16 allocation report shall be admissible in any
17 court for any purpose except as provided in
18 clause (ii).

19 “(ii) ADMISSION IN SUPPORT OF SET-
20 TLEMENT.—The final allocator’s report,
21 subject to the rules and discretion of the
22 court, may be admitted into evidence solely
23 for the purpose of supporting a settlement
24 between the United States and an alloca-
25 tion party.

1 “(8) COSTS.—The Administrator may require
2 potentially responsible parties that did not enter into
3 a settlement under subsection (e) to pay the costs of
4 the allocation process.

5 “(9) JUDICIAL REVIEW.—A determination, act,
6 or failure to act by the Administrator or the allo-
7 cator for the purposes of this subsection shall not be
8 subject to judicial review, except in an action regard-
9 ing the contract for allocation services.

10 “(10) ADMINISTRATIVE ORDERS.—Neither the
11 conduct nor the results of an allocation shall con-
12 stitute sufficient cause for noncompliance with an
13 order issued under section 106.

14 “(g) USE OF ALLOCATORS.—

15 “(1) ALLOCATION INFORMATION.—

16 “(A) CONFIDENTIALITY.—All documents
17 and materials submitted to the allocator, to-
18 gether with the record of any information gen-
19 erated or obtained during the allocation proc-
20 ess, shall be confidential. The allocator, each al-
21 location party, the Administrator, and the At-
22 torney General shall maintain such documents
23 and materials, together with the record of any
24 information generated or obtained during the
25 allocation process, as confidential and are pro-

1 hibited from using any such material in any
2 other matter or proceeding, and such material
3 shall not be subject to disclosure under section
4 552 of title 5, United States Code. Such mate-
5 rial shall not be discoverable or admissible in
6 any other Federal, State, or local judicial or ad-
7 ministrative proceedings, except—

8 “(i) a new allocation pursuant to sub-
9 section (i) for the same remedial action, or

10 “(ii) an initial allocation for a dif-
11 ferent remedial action at the same facility.

12 “(B) DISCOVERABILITY AND ADMISSIBIL-
13 ITY.—Notwithstanding the foregoing, if the
14 original of any document or material submitted
15 to the allocator or placed in the document re-
16 pository was, in the hands of the party which
17 provided it, otherwise discoverable or admissi-
18 ble, then such original document, if subse-
19 quently sought from such party, shall remain
20 so. If a fact generated or obtained during the
21 allocation was, in the hands of a witness, other-
22 wise discoverable or admissible, then such fact,
23 if subsequently sought from such other party,
24 shall remain so.

1 “(C) PRIVILEGE.—An allocation party
2 shall not assert any privilege as a basis for
3 withholding any information from the allocator.
4 The submission of documents or information
5 pursuant to the allocation process shall not be
6 deemed to be a waiver of any privilege, applica-
7 ble to such documents or information under any
8 Federal or State law or rule of discovery or evi-
9 dence.

10 “(D) PROCEDURE WHEN DISCOVERY IS
11 SOUGHT.—Any person, including the United
12 States and any Federal, State, or local agency,
13 department or instrumentality, receiving any re-
14 quest for a statement, document, or material
15 submitted, or for the record of any allocation
16 proceeding, shall promptly notify the person
17 who originally submitted such item and, except
18 in the case of a request from the Congress act-
19 ing through any duly authorized committee
20 thereof, shall provide such submitting person
21 the opportunity to assert and defend the con-
22 fidentiality of such item. No person shall re-
23 lease or provide a copy of the item to any per-
24 son not a party to such allocation, other than
25 the Congress acting through any duly author-

1 ized committee thereof, except as may be re-
2 quired by court order.

3 “(E) CIVIL PENALTY.—

4 “(i) PENALTY.—Any person that fails
5 to maintain the confidentiality of, or that
6 discloses to anyone other than a partici-
7 pant in the allocation process, a statement,
8 document, or information in violation of
9 this section, shall be subject to a civil pen-
10 alty of up to \$25,000 for each disclosure.

11 “(ii) CIVIL ACTION.—A civil penalty
12 may be sought in a civil action initiated by
13 the Attorney General on behalf of the
14 United States.

15 “(iii) OTHER REMEDIES.—Clause (ii)
16 has no effect on the right of an allocation
17 party to seek relief for a failure to main-
18 tain confidentiality under any other law.

19 “(F) RIGHT OF CONGRESS TO INFORMA-
20 TION.—Nothing in this section shall be con-
21 strued to authorize any person, including the
22 allocator, to withhold any documents or infor-
23 mation from Congress, acting through any duly
24 authorized Committee thereof, or limit in any
25 manner the right of Congress, acting through

1 any duly authorized Committee thereof, to ob-
2 tain such documents or information. Any per-
3 son disclosing such documents or information to
4 Congress shall notify the person who produced
5 such documents or information of the fact of
6 such disclosure pursuant to subparagraph (D).

7 “(2) NO RESTRICTION OF ALLOCATOR’S DIS-
8 CRETION.—The Administrator shall not establish
9 any procedure that restricts the allocator’s discretion
10 in assigning estimated contribution shares and the
11 orphan share under this section.

12 “(3) INFORMATION GATHERING.—

13 “(A) IN GENERAL.—The allocator may
14 gather information in addition to that gathered
15 by the Administrator during the process of
16 identifying potentially responsible parties under
17 subsection (d) as is necessary to conduct a fair
18 and impartial allocation.

19 “(B) AUTHORITIES.—(i) In carrying out
20 subparagraph (A), the allocator may—

21 “(I) exercise the information gather-
22 ing authority of the President under sec-
23 tion 104(e)(2) or 122(e)(3)(B); and

24 “(II) enforce any information request
25 or subpoena issued by the allocator only

1 through a request to the Attorney General
2 to enforce such request or subpoena pursu-
3 ant to subparagraph (A).

4 “(ii) The Attorney General’s authority to
5 seek civil or criminal penalties for failure to
6 comply with information requests or subpoenas
7 issued by the President under the authority re-
8 ferred to in clause (i)(I) shall also apply to in-
9 formation requests or subpoenas issued by the
10 allocator. The Attorney General’s decision not
11 to seek penalties for failure to comply with any
12 information request or subpoena issued by the
13 allocator pursuant to subparagraph (A) shall
14 not be subject to judicial review.

15 “(h) REJECTION OF ALLOCATION REPORT.—The Ad-
16 ministrator and the Attorney General may jointly reject
17 a final allocation report issued by an allocator only if they
18 jointly determine that—

19 “(1) the final allocation report does not provide
20 a basis for a settlement that would be fair, reason-
21 able, and consistent with the objectives of this Act;
22 or

23 “(2) the allocation process was affected by bias,
24 substantial procedural error, fraud, or unlawful con-
25 duct.

1 “(i) SECOND AND SUBSEQUENT ALLOCATION PROC-
2 ESSES.—

3 “(1) SECOND ALLOCATION PROCESS.—If a final
4 allocation report is rejected under subsection (h), a
5 new allocation shall be performed on an expedited
6 basis, with an allocator issuing a second allocation
7 report, based to the extent appropriate on the record
8 created in the first allocation process.

9 “(2) SUBSEQUENT ALLOCATOR PROCESS.—If a
10 second allocation report is rejected under subsection
11 (h), subsequent allocation processes may be provided
12 at the discretion of the Administrator.

13 “(3) NEW ALLOCATOR.—The Administrator
14 and the allocation parties may select a new allocator
15 to conduct a second or subsequent allocation process
16 under this subsection.

17 “(j) SETTLEMENTS BASED ON ALLOCATIONS.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), if—

20 “(A) not later than 30 days after issuance
21 of the final allocation report, an allocation
22 party—

23 “(i) makes a written offer to settle
24 with respect to the response action based

1 on the estimated contribution share speci-
2 fied by the allocator; and

3 “(ii) agrees to additional terms and
4 conditions that are acceptable to the Presi-
5 dent;

6 “(B) the allocation party is not in default
7 on any information request under this Act; and

8 “(C) the Administrator and the Attorney
9 General have not rejected the final allocation
10 report under subsection (h);

11 the Administrator and Attorney General shall offer
12 a settlement to such allocation party consistent with
13 paragraph (2).

14 “(2) PROVISIONS OF SETTLEMENTS.—

15 “(A) IN GENERAL.—A settlement based on
16 an allocation under this section—

17 “(i) shall provide the Administrator
18 with authority to require that any alloca-
19 tion party or group of allocation parties
20 perform a response action; and

21 “(ii) shall include—

22 “(I) a provision under which the
23 United States shall provide, by reim-
24 bursement or otherwise, subject to
25 availability of funds pursuant to sub-

1 section (m), 100 percent of the esti-
2 mated contribution share assigned to
3 the orphan share, as determined by
4 the allocator in the final allocation re-
5 port;

6 “(II) a waiver of claims against
7 the Fund for reimbursement, except
8 as provided in subsection (k);

9 “(III) a waiver of contribution
10 claims against all persons that are
11 parties to the settlement;

12 “(IV) a covenant not to sue that
13 is consistent with section 122(f) and
14 except in the case of a cashout settle-
15 ment, a provision regarding perform-
16 ance or adequate assurance of per-
17 formance of the response action;

18 “(V) in a settlement in which the
19 United States is funding the esti-
20 mated contribution share of nonset-
21 tling parties, a litigation risk premium
22 calculated by the Administrator on a
23 facility-specific basis that reflects the
24 risk to the United States of not col-
25 lecting unrecovered response costs for

1 the response action or a pro rata
2 share of such response costs;

3 “(VI) protection from all claims
4 for contribution regarding the matters
5 addressed in the settlement;

6 “(VII) provisions through which
7 a settling party shall waive the set-
8 tling party’s right to challenge the
9 remedy addressed by the settlement;
10 and

11 “(VIII) provisions through which
12 a settling party shall waive any chal-
13 lenge to any settlement the Adminis-
14 trator or Attorney General enters into
15 with any other potentially responsible
16 party at the facility.

17 “(B) LITIGATION RISK PREMIUM.—The
18 Administrator shall by regulation develop a
19 method for calculating a litigation risk pre-
20 mium. The regulation shall be based on an ad-
21 ministrative record reflecting actual experience
22 regarding the litigation risk faced by the United
23 States in proceeding against nonsettling parties.
24 Any litigation risk premium collected pursuant
25 to subparagraph (A)(ii)(V) shall not reduce the

1 liability of nonsettling parties pursuant to sec-
2 tion 113(f)(2).

3 “(k) REIMBURSEMENT.—

4 “(1) IN GENERAL.—Reimbursement by the
5 United States, by payment or otherwise, to eligible
6 settling parties for expenses that the settling parties
7 incur in connection with a settlement negotiated
8 under subsection (e), or for expenses that the set-
9 tling parties incur in connection with a post-alloca-
10 tion settlement under subsection (f), shall not be
11 contingent on recovery by the United States of a re-
12 sponse cost from any other person but is subject to
13 the availability of funds pursuant to subsection (m).

14 “(2) TIMING.—

15 “(A) IN GENERAL.—To the extent that the
16 United States provides reimbursement by pay-
17 ment, reimbursement under paragraph (1) shall
18 be made during the course of the response ac-
19 tion that is the subject of the allocation, using
20 reasonable progress payments at significant
21 milestones set forth in the settlement agree-
22 ment.

23 “(B) CONSTRUCTION.—Complete reim-
24 bursement for construction—

1 “(i) shall be paid not later than 120
2 days after the date of completion of the
3 construction; or

4 “(ii) if construction takes longer than
5 1 year to complete, shall be made in appro-
6 priate periodic payments.

7 “(3) **EQUITABLE OFFSET.**—A reimbursement to
8 settling parties under paragraph (1) shall be subject
9 to equitable offset or recovery by the Administrator
10 at any time if the settling parties fail to perform the
11 work in a proper and timely manner.

12 “(4) **FINANCIAL CONTROLS ON REIMBURSE-**
13 **MENT.**—The Administrator shall require all claims
14 for reimbursement under paragraph (1) to be sup-
15 ported by—

16 “(A) documentation of actual costs in-
17 curred; and

18 “(B) sufficient information to enable the
19 Administrator to determine whether the costs
20 were reasonable, necessary, and consistent with
21 the National Contingency Plan.

22 “(5) **AUDITS.**—The Administrator may require
23 independent auditing of any claim for reimburse-
24 ment under paragraph (1), and may require other
25 information to support the audit.

1 “(1) REGULATIONS.—The Administrator shall pro-
2 mulgate regulations for the purpose of implementing this
3 section, including regulations regarding—

4 “(1) procedures to minimize the cost of the al-
5 location;

6 “(2) procedures and timeframes for potentially
7 responsible parties to request an allocation pursuant
8 to subsection (f)(1);

9 “(3) the establishment and maintenance of an
10 information repository by the allocator;

11 “(4) simplified acquisition procedures for the
12 expedited selection and retention by contract of the
13 allocator;

14 “(5) procedures for the allocator to request the
15 Attorney General to enforce information requests or
16 subpoenas issued pursuant to paragraph (3) of sub-
17 section (g); and

18 “(6) procedures for independent auditing of
19 claims for reimbursement.

20 “(m) MANDATORY FUNDING.—

21 “(1) AMOUNTS.—Subject to paragraph (5), for
22 the purpose of funding orphan share contributions
23 and other reimbursable amounts, as authorized by
24 this section, there is hereby made available for obli-

1 gation from amounts in the Hazardous Substances
2 Superfund—

3 “(A) for fiscal year 1999, \$200,000,000;

4 “(B) for fiscal year 2000, \$200,000,000;

5 “(C) for fiscal year 2001, \$200,000,000;

6 “(D) for fiscal year 2002, \$200,000,000;

7 and

8 “(E) for fiscal year 2003, \$200,000,000.

9 “(2) AVAILABILITY OF FUNDS.—The amounts
10 in paragraph (1) shall remain available for obliga-
11 tion until expended.

12 “(3) EFFECT ON CERTAIN AUTHORITY.—Noth-
13 ing in this subsection affects the authority of the
14 Administrator to forego recovery of past costs.

15 “(4) UNAVAILABILITY OF FISCAL YEAR
16 FUNDS.—Except in fiscal year 1999, if the amounts
17 in paragraph (1) available in a fiscal year have been
18 obligated, then up to one-half the amounts in para-
19 graph (1) available for the next fiscal year may be
20 obligated.

21 “(5) CONDITION ON AVAILABILITY.—An
22 amount listed in paragraph (1) may be made avail-
23 able for obligation in a fiscal year only if the total
24 amount appropriated for such fiscal year under sec-
25 tion 111(a) equals or exceeds \$1,500,000,000, or, in

1 the case of fiscal year 1999, equals or exceeds
2 \$2,150,000,000.

3 “(n) POST-SETTLEMENT LITIGATION.—

4 “(1) IN GENERAL.—On the expiration of the
5 moratorium period under subsection (c), the Attor-
6 ney General may commence an action against any
7 potentially responsible party that has not resolved its
8 liability to the United States under subsection (e), or
9 any allocation party that has not resolved its liability
10 under subsection (f).

11 “(2) RECOVERY.—In any action under para-
12 graph (1), a nonsettling party shall be subject to
13 strict, joint, and several liability for response costs
14 not recovered through settlements with other per-
15 sons, including the cost of any federally funded or-
16 phan share and any federally funded share of non-
17 settling parties, but not including any estimated con-
18 tribution shares allocated to Federal agencies, de-
19 partments, or instrumentalities.

20 “(3) IMPLADER.—A defendant in an action
21 under paragraph (1) may implead an allocation
22 party only if the allocation party has not resolved its
23 liability to the United States.

24 “(4) RESPONSE COSTS.—The cost of imple-
25 menting the allocation process under this section, in-

1 including fees and expenses of the allocator, shall be
2 considered to be a response cost.

3 “(5) SETTLEMENT OFFERS AFTER COMMENCE-
4 MENT OF LITIGATION.—This section shall not apply
5 to any offer of settlement made after expiration of
6 the moratorium period under subsection (c).

7 “(o) RETAINED AUTHORITY.—

8 “(1) IN GENERAL.—Except as specifically pro-
9 vided in this section, nothing in this section limits
10 the power of the President to exercise the powers
11 conferred by this Act.

12 “(2) SPECIFIC AUTHORITIES.—Notwithstanding
13 the provisions of this section, the President may—

14 “(A) file a proof of claim or take other ac-
15 tion in a proceeding under title 11, United
16 States Code;

17 “(B) require performance of a response ac-
18 tion at a facility subject to a mandatory alloca-
19 tion during the conduct of the allocation proc-
20 ess; or

21 “(C) file any actions necessary to prevent
22 dissipation of the assets of a potentially respon-
23 sible party.

24 “(3) PRINCIPLES OF LIABILITY.—The proce-
25 dures established under this section shall not be con-

1 strued to modify or affect the principles of retro-
2 active, strict, joint, and several liability.

3 “(4) NATURAL RESOURCE DAMAGES.—Nothing
4 in this section applies to or affects claims for dam-
5 ages to natural resources, nor shall costs associated
6 with claims for natural resource damages be subject
7 to allocation under this section.

8 “(p) REPRESENTATION OF THE UNITED STATES.—
9 The Administrator and the Attorney General shall be enti-
10 tled to review all documents related to, and participate in
11 any phase of, the settlement negotiation or allocation proc-
12 ess, consistent with subsection (g)(1).

13 “(q) ANNUAL REPORT.—The Administrator shall re-
14 port annually to Congress on funds obligated or otherwise
15 made available to address orphan shares and shares of
16 nonsettling parties in support of settlement activities
17 under this section.”.

18 **SEC. 209. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

19 Section 122 of the Comprehensive Environmental Re-
20 sponse, Compensation, and Liability Act of 1980 (42
21 U.S.C. 9622) is amended as follows:

22 (1)(A) The section is amended by transferring
23 paragraph (6) of subsection (e) to the end of the
24 section and redesignating such paragraph as sub-
25 section (o).

1 (B) Such subsection (o) (as so transferred and
2 redesignated) is amended—

3 (i) by striking “INCONSISTENT RESPONSE
4 ACTION” and inserting “INCONSISTENT RE-
5 SPONSE ACTION”;

6 (ii) by striking “remedial action” both
7 places it appears and inserting “response ac-
8 tion”; and

9 (iii) by inserting “or the State under appli-
10 cable law” before the period at the end.

11 (2) Such section is amended—

12 (A) in subsection (b), by striking para-
13 graph (3) and redesignating paragraph (4) as
14 paragraph (3); and

15 (B) by adding at the end the following new
16 subsections:

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

24 “(q) UNSUCCESSFUL CHALLENGERS LIABLE FOR
25 ATTORNEY’S FEES.—Any party who challenges any settle-

1 ment entered into between the President and any poten-
2 tially responsible party under this Act, and who is not suc-
3 cessful in overturning or modifying the settlement, shall
4 be liable to the United States and any settling party for
5 all reasonable attorneys' fees and costs incurred in defend-
6 ing the settlement.”.

7 (3) Subsection (g) is amended in the second
8 sentence of paragraph (4) by striking “\$500,000”
9 and inserting “\$2,000,000”.

10 (4) Subsection (h) is amended—

11 (A) by striking the subsection heading and
12 inserting the following: “AUTHORITY TO
13 SETTLE CLAIMS FOR FINES, CIVIL PENALTIES,
14 PUNITIVE DAMAGES, AND COST
15 RECOVERY.—”;

16 (B) in paragraph (1)—

17 (i) in the first sentence, by striking
18 “costs incurred” and inserting “past costs
19 incurred and future costs that may be in-
20 curred”;

21 (ii) by inserting after the first sen-
22 tence the following new sentences: “The
23 head of any department or agency with the
24 authority to seek fines, civil penalties, or
25 punitive damages under this Act may con-

1 sider, compromise, and settle a claim for
2 any such fines, civil penalties, or punitive
3 damages that may otherwise be assessed in
4 civil administrative or judicial proceedings
5 if the claim has not been referred to the
6 Department of Justice for further action.
7 If the total claim for fines, civil penalties,
8 or punitive damages exceeds \$300,000,
9 such claim may be compromised and set-
10 tled only with the prior written approval of
11 the Attorney General.”; and

12 (iii) in the last sentence, by striking
13 “\$500,000 (excluding interest), any claim
14 referred to in the preceding sentence” and
15 inserting “\$2,000,000 (excluding interest),
16 any claim for response costs referred to in
17 this subsection”; and

18 (C) in paragraph (2), by striking
19 “\$500,000 (excluding interest)” and inserting
20 “\$2,000,000 (excluding interest)”.

21 **SEC. 210. RECYCLING TRANSACTIONS.**

22 Title I of the Comprehensive Environmental Re-
23 sponse, Compensation, and Liability Act of 1980 (42
24 U.S.C. 9601 et seq.) is amended by adding after section
25 128 the following new section:

1 **“SEC. 129. RECYCLING TRANSACTIONS.**

2 “(a) LIABILITY CLARIFICATION.—As provided in
3 subsections (b), (c), (d), and (e), a person who arranged
4 for recycling of recyclable material shall not be liable
5 under section 107(a)(3) or 107(a)(4) with respect to the
6 material.

7 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
8 poses of this section, the term ‘recyclable material’ means
9 scrap paper, scrap plastic, scrap glass, scrap textiles,
10 scrap rubber (other than whole tires), scrap metal, or
11 spent lead-acid, spent nickel-cadmium, and other spent
12 batteries, as well as minor amounts of material incident
13 to or adhering to the scrap material as a result of its nor-
14 mal and customary use prior to becoming scrap.

15 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
16 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
17 involving scrap paper, scrap plastic, scrap glass, scrap tex-
18 tiles, or scrap rubber (other than whole tires) shall be
19 deemed to be arranging for recycling if the person who
20 arranged for the transaction (by selling recyclable material
21 or otherwise arranging for the recycling of recyclable ma-
22 terial) can demonstrate by a preponderance of the evi-
23 dence that all of the following criteria were met at the
24 time of the transaction:

25 “(1) The recyclable material met a commercial
26 specification grade.

1 “(2) A market existed for the recyclable mate-
2 rial.

3 “(3) A substantial portion of the recyclable ma-
4 terial was made available for use as a feedstock for
5 the manufacture of a new saleable product.

6 “(4) The recyclable material could have been a
7 replacement or substitute for a virgin raw material,
8 or the product to be made from the recyclable mate-
9 rial could have been a replacement or substitute for
10 a product made, in whole or in part, from a virgin
11 raw material.

12 “(5) For transactions occurring 90 days or
13 more after the date of enactment of this section, the
14 person exercised reasonable care to determine that
15 the facility where the recyclable material was han-
16 dled, processed, reclaimed, or otherwise managed by
17 another person (hereinafter in this section referred
18 to as a ‘consuming facility’) was in compliance with
19 substantive (not procedural or administrative) provi-
20 sions of any Federal, State, or local environmental
21 law or regulation, or compliance order or decree
22 issued pursuant thereto, applicable to the handling,
23 processing, reclamation, storage, or other manage-
24 ment activities associated with recyclable material.

1 “(6) For purposes of this subsection, ‘reason-
2 able care’ shall be determined using criteria that in-
3 clude (but are not limited to)—

4 “(A) the price paid in the recycling trans-
5 action;

6 “(B) the ability of the person to detect the
7 nature of the consuming facility’s operations
8 concerning its handling, processing, reclama-
9 tion, or other management activities associated
10 with recyclable material; and

11 “(C) the result of inquiries made to the ap-
12 propriate Federal, State, or local environmental
13 agency (or agencies) regarding the consuming
14 facility’s past and current compliance with sub-
15 stantive (not procedural or administrative) pro-
16 visions of any Federal, State, or local environ-
17 mental law or regulation, or compliance order
18 or decree issued pursuant thereto, applicable to
19 the handling, processing, reclamation, storage,
20 or other management activities associated with
21 recyclable material. For the purposes of this
22 paragraph, a requirement to obtain a permit
23 applicable to the handling, processing, reclama-
24 tion, or other management activity associated

1 with the recyclable materials shall be deemed to
2 be a substantive provision.

3 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

4 “(1) Transactions involving scrap metal shall be
5 deemed to be arranging for recycling if the person
6 who arranged for the transaction (by selling recycla-
7 ble material or otherwise arranging for the recycling
8 of recyclable material) can demonstrate by a prepon-
9 derance of the evidence that at the time of the
10 transaction—

11 “(A) the person met the criteria set forth
12 in subsection (c) with respect to the scrap
13 metal;

14 “(B) the person was in compliance with
15 any applicable regulations or standards regard-
16 ing the storage, transport, management, or
17 other activities associated with the recycling of
18 scrap metal that the Administrator promulgates
19 under the Solid Waste Disposal Act subsequent
20 to the enactment of this section and with re-
21 gard to transactions occurring after the effec-
22 tive date of such regulations or standards; and

23 “(C) the person did not melt the scrap
24 metal prior to the transaction.

1 “(2) For purposes of paragraph (1)(C), melting
2 of scrap metal does not include the thermal separa-
3 tion of 2 or more materials due to differences in
4 their melting points (referred to as ‘sweating’).

5 “(3) For the purposes of this subsection, the
6 term ‘scrap metal’ means bits and pieces of metal
7 parts (e.g., bars, turnings, rods, sheets, wire) or
8 metal pieces that may be combined with bolts or sol-
9 dering (e.g., radiators, scrap automobiles, railroad
10 box cars), which when worn or superfluous can be
11 recycled, except for scrap metals that the Adminis-
12 trator excludes from this definition by regulation
13 and steel shipping containers of a capacity from 30
14 liters to and including 3,000 liters, whether intact or
15 not, having any hazardous substance (but not metal
16 bits or pieces) contained in or adhering thereto.

17 “(e) TRANSACTIONS INVOLVING BATTERIES.—
18 Transactions involving spent lead-acid batteries, spent
19 nickel-cadmium batteries, or other spent batteries shall be
20 deemed to be arranging for recycling if the person who
21 arranged for the transaction (by selling recyclable material
22 or otherwise arranging for the recycling of recyclable ma-
23 terial) can demonstrate by a preponderance of the evi-
24 dence that at the time of the transaction—

1 “(1) the person met the criteria set forth in
2 subsection (c) with respect to the spent lead-acid
3 batteries, spent nickel-cadmium batteries, or other
4 spent batteries;

5 “(2) the person did not recover the valuable
6 components of such batteries; and

7 “(3)(A) with respect to transactions involving
8 lead-acid batteries, the person was in compliance
9 with applicable Federal environmental regulations or
10 standards, and any amendments thereto, regarding
11 the storage, transport, management, or other activi-
12 ties associated with the recycling of spent lead-acid
13 batteries; and

14 “(B) with respect to transactions involving
15 nickel-cadmium, or other batteries, Federal environ-
16 mental regulations or standards are in effect regard-
17 ing the storage, transport, management, or other ac-
18 tivities associated with the recycling of spent nickel-
19 cadmium or other batteries, and the person was in
20 compliance with applicable regulations or standards
21 or any amendments thereto.

22 “(f) EXCLUSIONS.—

23 “(1) The exemptions set forth in subsections
24 (c), (d), and (e) shall not apply if—

1 “(A) the person had an objectively reason-
2 able basis to believe at the time of the recycling
3 transaction—

4 “(i) that the recyclable material would
5 not be recycled;

6 “(ii) that the recyclable material
7 would be burned as fuel, or for energy re-
8 covery or incineration; or

9 “(iii) for transactions occurring before
10 90 days after the date of the enactment of
11 this section, that the consuming facility
12 was not in compliance with a substantive
13 (not procedural or administrative) provi-
14 sion of any Federal, State, or local envi-
15 ronmental law, or regulation, or compli-
16 ance order or decree issued pursuant
17 thereto, applicable to the handling, proc-
18 essing, reclamation, or other management
19 activities associated with the recyclable
20 material;

21 “(B) the person had reason to believe that
22 hazardous substances had been added to the re-
23 cyclable material for purposes other than proc-
24 essing for recycling; or

1 “(C) the person failed to exercise reason-
2 able care, including adhering to customary in-
3 dustry practices, with respect to the manage-
4 ment and handling of the recyclable material.

5 “(2) For purposes of this subsection, an objec-
6 tively reasonable basis for belief shall be determined
7 using criteria that include (but are not limited to)
8 the size of the person’s business, customary industry
9 practices, the price paid in the recycling transaction,
10 and the ability of the person to detect the nature of
11 the consuming facility’s operations concerning its
12 handling, processing, reclamation, or other manage-
13 ment activities associated with the recyclable mate-
14 rial.

15 “(3) For purposes of this subsection, a require-
16 ment to obtain a permit applicable to the handling,
17 processing, reclamation, or other management activi-
18 ties associated with recyclable material shall be
19 deemed to be a substantive provision.

20 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
21 this section shall be deemed to affect the liability of a per-
22 son under paragraph (1) or (2) of section 107(a). Nothing
23 in this section shall be deemed to affect the liability of
24 a person under paragraph (3) or (4) of section 107(a) with

1 respect to materials that are not recyclable materials as
2 defined in subsection (b) of this section.

3 “(h) EXCLUSIONS.—An exemption under this section
4 does not apply if the recyclable material—

5 “(1) contained polychlorinated biphenyls in ex-
6 cess of 50 parts per million or any new standard
7 promulgated pursuant to applicable Federal laws; or

8 “(2) is an item of scrap paper, and the item ei-
9 ther contained at the time of the recycling trans-
10 action a hazardous substance that has been deter-
11 mined by the Administrator, pursuant to this section
12 and after notice and comment, to present a signifi-
13 cant risk to human health and the environment, or
14 contained hazardous substances at a concentration
15 at or higher than that determined by the Adminis-
16 trator to present such a significant risk.

17 “(i) REGULATIONS.—The Administrator has the au-
18 thority, under section 115, to promulgate regulations con-
19 cerning this section.

20 “(j) EFFECT ON PENDING OR CONCLUDED AC-
21 TIONS.—The exemptions provided in this section shall not
22 affect any concluded judicial or administrative action or
23 any pending judicial action initiated by the United States
24 prior to enactment of this section.

1 “(k) LIABILITY FOR ATTORNEY’S FEES FOR CER-
2 TAIN ACTIONS.—Any person who commences an action in
3 contribution against a person who is not liable by oper-
4 ation of this section shall be liable to that person for all
5 reasonable costs of defending that action, including all
6 reasonable attorney’s and expert witness fees.

7 “(l) RELATIONSHIP TO LIABILITY UNDER OTHER
8 LAWS.—Nothing in this section shall affect—

9 “(1) a person’s liability under any other Fed-
10 eral, State, or local statute or regulation promul-
11 gated pursuant to any such statute, including any
12 requirements promulgated by the Administrator
13 under the Solid Waste Disposal Act; or

14 “(2) the ability of the Administrator to promul-
15 gate regulations under any other statute, including
16 the Solid Waste Disposal Act.”.

17 **SEC. 211. DEFINITIONS.**

18 (a) RELIGIOUS, CHARITABLE, SCIENTIFIC, OR EDU-
19 CATIONAL ORGANIZATION.—Section 101(20) of the Com-
20 prehensive Environmental Response, Compensation, and
21 Liability Act of 1980 (42 U.S.C. 9601(20)) is amended
22 by adding at the end the following new subparagraph:

23 “(H) RELIGIOUS, CHARITABLE, SCIENTIFIC, OR
24 EDUCATIONAL ORGANIZATION.—Subject to section
25 107(t), the term ‘owner or operator’ includes an or-

1 organization described in section 501(c)(3) of the In-
2 ternal Revenue Code of 1986, that is organized and
3 operated exclusively for religious, charitable, sci-
4 entific, or education purposes, and that holds title to
5 a vessel or facility.”.

6 (b) ADDITIONAL DEFINITIONS.—Section 101 of such
7 Act (42 U.S.C. 9601) is further amended by adding at
8 the end the following new paragraphs:

9 “(39) MUNICIPAL SOLID WASTE.—(A) The
10 term ‘municipal solid waste’ means all waste mate-
11 rials generated by households, including single and
12 multifamily residences, and hotels and motels. The
13 term also includes waste materials generated by
14 commercial, institutional, or industrial sources, to
15 the extent such wastes—

16 “(i) are essentially the same as waste nor-
17 mally generated by households; or

18 “(ii) are collected and disposed of with
19 other municipal solid waste or sewage sludge as
20 part of normal municipal solid waste collection
21 services, and, with respect to each source from
22 which the waste materials were collected, quali-
23 fies for the de micromis exemption set forth in
24 section 107(s)(2).

1 “(B) Examples of municipal solid waste include
2 food and yard waste, paper, clothing, appliances,
3 consumer product packaging, disposable diapers, of-
4 fice supplies, cosmetics, glass and metal food con-
5 tainers, elementary or secondary school science lab-
6 oratory waste, and household hazardous waste. The
7 term does not include combustion ash generated by
8 resource recovery facilities or municipal incinerators,
9 or waste from manufacturing or processing (includ-
10 ing pollution control) operations not essentially the
11 same as waste normally generated by households.

12 “(40) MUNICIPALITY.—The term ‘municipality’
13 means a political subdivision of a State, including a
14 city, county, village, town, township, borough, par-
15 ish, school, school district, sanitation district, water
16 district, or other public entity performing local gov-
17 ernmental functions. The term also includes a natu-
18 ral person acting in the capacity of an official, em-
19 ployee, or agent of any entity referred to in the pre-
20 ceding sentence in the performance of governmental
21 functions.

22 “(41) OWNER, OPERATOR, OR LESSEE OF RESI-
23 DENTIAL PROPERTY.—The term ‘owner, operator, or
24 lessee of residential property’ means a person who
25 owns, operates, manages, or leases residential prop-

1 erty and who uses or allows the use of the residen-
2 tial property exclusively for residential purposes. The
3 term ‘residential property’ means single or multifam-
4 ily residences, including accessory land, buildings, or
5 improvements incidental to such dwellings, that are
6 exclusively for residential use.

7 “(42) QUALIFIED HOUSEHOLD HAZARDOUS
8 WASTE COLLECTION PROGRAM.—The term ‘qualified
9 household hazardous waste collection program’
10 means a program established by an entity of the
11 Federal Government, a State, a municipality, or an
12 Indian tribe that provides, at a minimum, for annual
13 collection of household hazardous wastes at acces-
14 sible, well-publicized collection points.

15 “(43) SMALL NONPROFIT ORGANIZATION.—The
16 term ‘small nonprofit organization’ means any orga-
17 nization that, at the time of disposal, did not distrib-
18 ute any part of its income or profit to its members,
19 directors, or officers, employed no more than 40
20 paid individuals at the chapter, office, or depart-
21 ment, and was an organization described in section
22 501(c) of the Internal Revenue Code of 1986 and
23 exempt from taxation under section 501(a) of such
24 Code.

1 “(44) SEWAGE SLUDGE.—The term ‘sewage
2 sludge’ means solid, semisolid, or liquid residue re-
3 moved during the treatment of municipal waste
4 water, domestic sewage, or other waste water at or
5 by publicly owned or federally owned treatment
6 works.”.

7 (c) MISCELLANEOUS AMENDMENTS TO DEFINI-
8 TIONS.—Section 101 of such Act (42 U.S.C. 9601) is fur-
9 ther amended as follows:

10 (1) Section 101(10)(H) is amended by striking
11 “subject to” and inserting “in compliance with”.

12 (2) Section 101(23) is amended—

13 (A) in the first sentence—

14 (i) by striking “terms” and inserting
15 “term”;

16 (ii) by striking “necessary taken” and
17 inserting “necessary to take”; and

18 (iii) by inserting after “environment,
19 such actions” the following: “environment,
20 such actions or combination of such ac-
21 tions”; and

22 (B) in the second sentence—

23 (i) by striking “section 104(b) of this
24 Act, and” and inserting the following:

25 “section 104(b) of this Act (including re-

1 medial investigations, feasibility studies,
2 and remedial design work),”; and

3 (ii) by inserting before the period at
4 the end the following: “, or any combina-
5 tion of the activities described in this sen-
6 tence”.

7 (3) Section 101(25) is amended—

8 (A) by striking “terms” and inserting
9 “term”;

10 (B) by striking “remedial action;, all” and
11 inserting “remedial action. All”; and

12 (C) by striking “related thereto.” and in-
13 serting “(including attorneys’ fees and expert
14 witness fees) and oversight activities related
15 thereto when such activities are undertaken by
16 the President, a State, or an Indian tribe.”.

17 (4) Section 101(29) is amended by striking the
18 period and inserting the following: “, except that the
19 term ‘hazardous substances’ shall be substituted for
20 the term ‘hazardous waste’ in the definitions of ‘dis-
21 posal’ and ‘treatment’.”.

TITLE III—REMEDY**SEC. 301. AMENDMENTS RELATING TO SELECTION OF REMEDIAL ACTION.**

(a) AMENDMENTS TO GENERAL RULES.—(1) Section 121(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(b)) is amended in paragraph (1)—

(A) by adding after the first sentence the following: “The preference shall be implemented in accordance with guidance published by the Administrator pertaining to principal threat and low level threat wastes.”;

(B) by striking “The President shall conduct an assessment” and all that follows through “resource recovery technologies to the maximum extent practicable.” and inserting the following: “The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that assures long-term reliability of protection of human health and the environment. To the maximum extent practicable, a remedial action selected by the President shall make contaminated land available for beneficial use, and return contaminated ground water and surface water to beneficial use in a period of time that is reasonable under the

1 circumstances of the release. A remedial action shall
2 protect uncontaminated ground water and surface
3 water unless (A) technically infeasible, or (B) limited
4 migration of contamination is necessary to facilitate
5 restoration of ground water to beneficial use.”.

6 (2) Section 121(b) of such Act is further amended—

7 (A) by redesignating paragraph (2) as para-
8 graph (3); and

9 (B) by inserting after paragraph (1) the follow-
10 ing:

11 “(2) In assessing alternative remedial actions and in
12 selecting a remedial action, the President shall comply
13 with paragraph (1) and, at a minimum, take into account
14 each of the following factors:

15 “(A) The effectiveness of the remedy in protect-
16 ing human health and the environment, including
17 consideration of children and other highly exposed or
18 highly susceptible subpopulations.

19 “(B) The reliability of the remedy in maintain-
20 ing protection of human health and the environment
21 over the long term, considering the preference for
22 treatment set forth in the first sentence of para-
23 graph (1).

24 “(C) Any short-term risk posed by the imple-
25 mentation of the remedy to the community, to those

1 engaged in the cleanup effort, and to the environ-
2 ment.

3 “(D) The implementability of the remedy.

4 “(E) The acceptability of the remedy to the
5 community.

6 “(F) The cost of the remedy, including the total
7 short-term and long-term costs and the costs of op-
8 eration and maintenance for the entire period during
9 which operation and maintenance will be required.

10 “(G) The potential for future remedial action
11 costs if the alternative remedial action in question
12 were to fail.

13 “(H) The acceptability of the remedy to the
14 State in which the facility is located or to the Indian
15 Tribe if the facility is located in Indian country (as
16 defined in 18 U.S.C. 1151).”.

17 (b) AMENDMENT OF SITE REVIEW REQUIREMENT.—
18 Section 121(c) of such Act is amended by striking in the
19 first sentence “the initiation of” and inserting “construc-
20 tion and installation of equipment and structures to be
21 used for” and by adding the following after the first sen-
22 tence: “The President shall review the effectiveness of and
23 compliance with any institutional controls related to the
24 remedial action during the review. Such review shall in-

1 clude, at a minimum, an evaluation of the technical suffi-
2 ciency and legal efficacy of such controls.”.

3 (c) AMENDMENTS RELATING TO DEGREE OF CLEAN-
4 UP.—Section 121 of such Act is amended as follows:

5 (1) Subsection (d)(1) is amended by striking
6 the last sentence.

7 (2) Subsection (d)(2)(A) is amended as follows:

8 (A) By striking “or is relevant and appro-
9 priate under the circumstances of the release or
10 threatened release of such hazardous substance
11 or pollutant or contaminant”.

12 (B) By inserting after “is legally applica-
13 ble” the following: “to the conduct or operation
14 of the remedial action or”.

15 (C) By striking “or relevant and appro-
16 priate”.

17 (D) By inserting the following before the
18 last sentence: “In the case of contaminated
19 ground water or surface water which may be
20 used for drinking water, such remedial action
21 shall require a level or standard of control
22 which at least attains the maximum contami-
23 nant levels or non-zero maximum contaminant
24 level goals established under the Safe Drinking

1 Water Act for the hazardous substances or pol-
2 lutants or contaminants concerned.”.

3 (E) In the last sentence—

4 (i) by inserting “also” after “shall”;

5 (ii) by striking “Maximum Contami-
6 nant Level Goals established under the
7 Safe Drinking Water Act and”; and

8 (iii) by striking “goals or”.

9 (F) By inserting “or Tribal” after “a
10 State” and after “such State” and by inserting
11 “or Tribe” after “the State”.

12 (3) Subsection (d)(2) is amended—

13 (A) by redesignating subparagraphs (B)
14 and (C) as subparagraphs (C) and (D), respec-
15 tively; and

16 (B) by inserting after subparagraph (A)
17 the following new subparagraph:

18 “(B)(i) In the case of a remedial action for which
19 the President makes a determination described in clause
20 (ii), the President shall ensure that the remedial action
21 attains levels or standards of control that are protective
22 of human health and the environment.

23 “(ii) The determination referred to in clause (i) is a
24 determination by the President with respect to a remedial
25 action that—

1 “(I) no applicable Federal, State, or Tribal
2 standard, requirement, criteria, or limitation has
3 been established for a specific hazardous substance,
4 pollutant, or contaminant present at the facility at
5 which the remedial action is being undertaken; or

6 “(II) in the case of a remedial action at a facil-
7 ity where there are multiple hazardous substances,
8 pollutants, or contaminants, the remedial action is
9 not protective of human health and the environment
10 even though applicable standards, requirements, cri-
11 teria, or limitations are attained.

12 “(iii) In the case of a remedial action for a release
13 or threatened release of a hazardous substance, pollutant,
14 or contaminant into a source of drinking water, if the
15 President makes a determination described in clause
16 (ii)(I), the President shall consider proposed maximum
17 contaminant levels or non-zero maximum contaminant
18 level goals under the Safe Drinking Water Act, health
19 advisories, and other relevant information in ensuring that
20 the remedial action attains levels or standards of control
21 that are protective of human health and the environ-
22 ment.”.

23 (4) Subsection (d)(2)(D) (as redesignated by
24 paragraph (3)) is amended by striking clause (iv).

25 (5) Subsection (d)(4) is amended—

1 (A) by redesignating subparagraphs (A),
2 (B), (C), (D), (E), and (F) as clauses (i), (ii),
3 (iii), (iv), (v), and (vi), respectively;

4 (B) by capitalizing the first word in each
5 of those clauses (as so redesignated);

6 (C) by striking the semicolon and inserting
7 a period at the end of each of clauses (i), (ii),
8 (iii), and (iv) (as so redesignated);

9 (D) by striking “; or” at the end of clause
10 (v) (as so redesignated) and inserting a period;

11 (E) by striking “President finds that—”
12 and inserting “President finds any of the fol-
13 lowing:”;

14 (F) in clause (iii) (as so redesignated) by
15 adding at the end the following: “Findings of
16 technical impracticability from an engineering
17 perspective may be based on engineering fea-
18 sibility and reliability or inordinate costs and
19 may be made as soon as adequate and reliable
20 information is available to make the finding.”;

21 (G) by inserting “(A)” before “The Presi-
22 dent may select”;

23 (H) by designating the text following
24 clause (vi) as subparagraph (B); and

1 (I) by adding at the end the following new
2 subparagraph:

3 “(C) In any case where the President, in making a
4 finding of technical impracticability pursuant to clause
5 (iii) of subparagraph (A), waives any requirement, stand-
6 ard, criteria, or limitation specified under paragraph
7 (2)(A) relating to contaminated ground water or surface
8 water, the President shall select an appropriate remedy
9 for contaminated ground water or surface water which
10 meets, at a minimum, the following requirements:

11 “(i) Prevention or elimination of any human in-
12 gestion of or exposure to water containing any haz-
13 ardous substance, pollutant, or contaminant at levels
14 in excess of the levels specified under paragraph
15 (2)(A) including, as appropriate, the provision of an
16 alternate water supply.

17 “(ii) Assurance that source areas that may con-
18 tinue to release hazardous substances, pollutants, or
19 contaminants to ground or surface waters shall be
20 contained to the extent technically feasible. Treat-
21 ment shall be required to reduce the mass or hazard
22 of residual contamination unless technically imprac-
23 ticable from an engineering perspective.

24 “(iii) Unless technically impracticable from an
25 engineering perspective—

1 “(I) prevention of impairment of any sur-
2 face water designated use established under sec-
3 tion 303 of the Federal Water Pollution Control
4 Act caused by such hazardous substance, pollut-
5 ant, or contaminant in any surface water body
6 into which such contaminated ground water is
7 known or expected to enter; and

8 “(II) prevention of any further impairment
9 of an already-impaired surface water designated
10 use.

11 “(iv) Assurance that, unless technically infeasible,
12 ground water contamination shall be contained,
13 except where limited migration of contamination is
14 necessary to facilitate restoration of ground water to
15 beneficial use.

16 “(v) Provision for long-term monitoring of such
17 ground water (including any information needed for
18 the purposes of review under section 121(c)).

19 “(vi) Assurance that, if the President has se-
20 lected alternative sources of water supply or methods
21 of treating contaminated water, including point-of-
22 entry and point-of-use treatment, the party or par-
23 ties otherwise responsible for remediation shall as-
24 sume responsibility and liability for providing drink-
25 ing water meeting the requirements of levels speci-

1 fied in paragraph (2)(A), including all associated in-
2 cremental costs for operation, maintenance, and de-
3 livery of drinking water for present and anticipated
4 future uses until such time as the level of contami-
5 nation is reliably and consistently below the levels
6 specified by paragraph (2)(A).”.

7 (d) PROCEDURAL REQUIREMENTS; ENFORCE-
8 MENT.—(1) Section 121(e)(1) is amended by adding the
9 following at the end thereof: “Except for recordkeeping
10 and reporting, procedural requirements of State laws shall
11 not apply to the portion of any removal or remedial action
12 conducted entirely onsite.”.

13 (2) Section 121(e)(2) is amended by adding the fol-
14 lowing after the first sentence: “States may enforce such
15 standards, requirements, criteria, or limitations regardless
16 of whether the remedial action plan is selected by the En-
17 vironmental Protection Agency or by a State pursuant to
18 a cooperative agreement with the Environmental Protec-
19 tion Agency, and regardless of whether it is implemented
20 pursuant to a consent decree, a unilateral or consent
21 order, or an interagency agreement under section 120.”.

22 (e) RISK ASSESSMENTS.—Section 104(b)(1) of such
23 Act is amended by adding at the end the following: “The
24 goal of any risk assessment performed under this Act is
25 to provide informative and understandable estimates that

1 neither minimize nor exaggerate the current or potential
2 risks posed by a facility, to provide information about the
3 nature, likelihood, and severity of risks, including quali-
4 tative descriptions of hazards and means of exposure, and
5 to disclose any significant uncertainties and gaps in
6 data.”.

7 (f) LAND USES.—Section 121 of such Act is further
8 amended by adding at the end the following new sub-
9 section:

10 “(g) LAND USES.—

11 “(1) FACTORS.—In selecting a remedy, the Ad-
12 ministrator shall take into account the reasonably
13 anticipated future uses of land at a facility and, to
14 the extent appropriate, of nearby property. In devel-
15 oping reasonable assumptions regarding anticipated
16 future land uses to be used in the development and
17 evaluation of remedial alternatives, the Adminis-
18 trator shall consider the following factors, as appro-
19 priate:

20 “(A) The views of elected local government
21 officials.

22 “(B) The current land use zoning, future
23 land use plans of the local government with
24 land use regulatory authority, and water man-
25 agement plans.

1 “(C) Views of the affected community, giv-
2 ing substantial weight to recommendations of
3 any Community Advisory Group as provided
4 under section 117(g) or, as appropriate, a res-
5 toration or site-specific advisory board.

6 “(D) The land use history of the facility
7 and surrounding properties, the current land
8 uses of the facility and surrounding properties,
9 recent development patterns in the area where
10 the facility is located, and population projec-
11 tions for that area.

12 “(E) Federal or State land use designa-
13 tions, including national park designations,
14 State ground water or surface water recharge
15 area designations established under a State’s
16 comprehensive protection plan for ground water
17 or surface water or other State or Federal de-
18 lineations of underground sources of drinking
19 water, and recreational area designations.

20 “(F) The potential for beneficial use.

21 “(G) Beneficial uses of underlying ground
22 water, as determined under subsection (h).

23 “(H) The proximity of the contamination
24 to residences, sensitive populations or eco-

1 systems, natural resources, or areas of unique
2 historic or cultural significance.

3 “(I) Current plans for the future use of
4 the facility by the property owner or owners,
5 not including potential remedial measures.

6 “(J) Navigational and transportation uses
7 that may be affected by the facility.

8 “(K) Reasonably anticipated ecological
9 services provided by the resource.

10 “(L) Tribal land use designations for a fa-
11 cility in Indian country (as defined in 18 U.S.C.
12 1151)

13 “(M) Any additional factors the Adminis-
14 trator considers appropriate.

15 Restrictive future land use assumptions can be used
16 in evaluating remedial alternatives only to the extent
17 that institutional controls meeting the criteria of
18 subsection (i) and section 104 have been or will be
19 adopted as part of a remedial action.

20 “(2) ADMINISTRATIVE RECORD.—All informa-
21 tion considered by the President in evaluating rea-
22 sonably anticipated future land uses under this sub-
23 section shall be included in the administrative record
24 under section 113(k).”.

1 (g) GROUND WATER USES.—Section 121 of such Act
2 is further amended by adding at the end the following new
3 subsection:

4 “(h) GROUND WATER USES.—

5 “(1) DETERMINATION OF WATER USES.—

6 “(A) In selecting a remedial action to re-
7 store ground water to drinking water or other
8 beneficial use, the President shall defer to a
9 State’s classifications and designations relating
10 to ground water if the President finds that they
11 were developed—

12 “(i) based on an aquifer or watershed
13 analysis or relevant hydrogeological infor-
14 mation;

15 “(ii) with participation of the public;

16 “(iii) in consultation with water sup-
17 pliers; and

18 “(iv) using methodology that is con-
19 sistently applied throughout the State.

20 “(B) In a case in which there is no def-
21 erence under subparagraph (A) to State classi-
22 fications and designations, or if interstate
23 ground water resources may be affected by the
24 release or threatened release and the affected
25 States do not agree on the reasonably antici-

1 pated beneficial uses of the interstate ground
2 water, the Administrator shall determine the
3 reasonably anticipated beneficial uses of ground
4 water potentially impacted by releases from the
5 facility following consultation with the affected
6 States and consideration of relevant factors, in-
7 cluding, as appropriate, the current and antici-
8 pated uses planned by local water suppliers.

9 “(C) In a case in which there is no def-
10 erence under subparagraph (A) to State classi-
11 fications and designations, the Administrator
12 shall begin the determination of the reasonably
13 anticipated beneficial use of ground water with
14 the presumption that ground water is reason-
15 ably anticipated to be used as drinking water.
16 Such presumption may be overcome through
17 site-specific information identified during the
18 analysis of relevant factors under subparagraph
19 (B).

20 “(2) EXCLUSION OF CERTAIN GROUND WA-
21 TERS.—(A) For purposes of this section, ground
22 water in the State that may be used for drinking
23 water does not include any of the following:

1 “(i) Ground water containing more than
2 10,000 milligrams per liter total dissolved solids
3 from naturally occurring sources.

4 “(ii) Ground water that is so contaminated
5 by naturally occurring conditions or by the ef-
6 fects of broad-scale human activity unrelated to
7 a specific activity that restoration of drinking
8 water quality is impracticable.

9 “(iii) Ground water from which the poten-
10 tial source of drinking water is physically in-
11 capable of yielding a quantity of 150 gallons
12 per day of water to a well or spring, unless
13 available information indicates that such source
14 is or has been used as a source of drinking
15 water.

16 “(B) Notwithstanding subparagraph (A),
17 ground water described in clause (i), (ii), or (iii) of
18 that subparagraph may be used for drinking water
19 in a State if the State has made a specific classifica-
20 tion or designation that the ground water described
21 in such clause may be used for drinking water and
22 the President finds such classification or designation
23 was developed as described in paragraph (1)(A).”.

1 (h) INSTITUTIONAL CONTROLS.—Section 121 of such
2 Act is further amended by adding at the end the following
3 new subsection:

4 “(i) INSTITUTIONAL CONTROLS.—

5 “(1) IN GENERAL.—The President may not se-
6 lect a remedial action that allows hazardous sub-
7 stances, pollutants, or contaminants to remain onsite
8 at a facility above levels that would be protective for
9 unrestricted use unless institutional controls are in-
10 corporated into the remedial action to achieve pro-
11 tection of human health and the environment during
12 and after completion of the remedial action. The
13 President may use institutional controls as a supple-
14 ment to, but not as a substitute for, other response
15 measures, except in extraordinary circumstances.

16 “(2) ASSURANCES.—In any case in which the
17 President selects a response action that relies on re-
18 strictions on land use or other activities to provide
19 protection, the President shall—

20 “(A) ensure that such controls are ade-
21 quate to protect human health and the environ-
22 ment over the long term;

23 “(B) require measures to ensure that such
24 controls will be appropriately implemented,
25 monitored, and enforced;

1 “(C) ensure that such controls have been
2 developed with opportunity for public participa-
3 tion in accordance with section 117, identified
4 in the register established under section
5 104(k)(12), and incorporated in the recordation
6 systems of the appropriate jurisdiction in which
7 the property is located; and

8 “(D) ensure that such controls shall re-
9 main in effect until the President determines
10 they are no longer necessary to protect human
11 health and the environment.

12 “(3) USE OF INSTITUTIONAL CONTROLS.—

13 Whenever institutional controls are selected as a
14 component of a response action, the President shall
15 ensure that the terms of the controls are specified
16 in all appropriate decision documents, enforcement
17 orders, and public information regarding the site. At
18 a minimum, the President shall specify the govern-
19 ment official who is primarily responsible for mon-
20 itoring and enforcing the institutional controls. Each
21 record of decision with respect to a facility shall
22 clearly identify any institutional controls that re-
23 strict uses of land or other resources or other activi-
24 ties at the facility. If, after the record of decision is
25 signed, the President determines that there must be

1 a change in the nature or form of institutional con-
2 trols at the facility, such change shall be undertaken
3 consistent with section 117 and notice shall be given
4 pursuant to the requirements of section 104.

5 “(4) FACILITY FUND.—In the case of a facility
6 for which the selected remedial action is containment
7 or which otherwise results in hazardous substances,
8 pollutants, or contaminants remaining on site above
9 levels that would allow for unrestricted use of the fa-
10 cility a fund may be established specifically for that
11 facility in an amount sufficient to guarantee success-
12 ful performance of a remedy at the facility. The
13 fund shall consist of amounts deposited into it by
14 potentially responsible parties. The amounts in the
15 fund shall be held in escrow by a non-Federal entity
16 (other than a potentially responsible party) for use
17 at the specific facility for any response necessary in
18 the event that the remedial action is not protective
19 of human health and the environment. Such costs
20 shall be response costs under section 107(a). The
21 President may, in his discretion, require a fund to
22 be established as a condition of settlement under
23 section 122.

24 “(5) REPORT TO CONGRESS.—The Adminis-
25 trator shall on March 1, 1999, and annually there-

1 after, report to Congress for each record of decision
2 signed during the previous fiscal year, the type of in-
3 stitutional controls and media affected, and the in-
4 stitution designated to monitor, enforce, and ensure
5 compliance with the institutional controls.”.

6 (i) CONTAMINATED MEDIA.—Section 121 of such Act
7 is further amended by adding at the end the following new
8 subsection:

9 “(j) CONTAMINATED MEDIA.—

10 “(1) COMPLIANCE WITH STANDARDS FOR
11 WASTES SUBJECT TO LAND DISPOSAL PROHIBI-
12 TION.—Compliance at a facility with standards pro-
13 mulgated under section 3004(m) of the Solid Waste
14 Disposal Act (42 U.S.C. 6924(m)) before January
15 1, 1998, shall not be required with respect to return,
16 replacement, or disposal of contaminated media and
17 residuals of such media into the same medium in
18 or very near existing areas of contamination on-site,
19 upon the effective date of standards promulgated by
20 the Administrator specifically for contaminated
21 media.

22 “(2) COMPLIANCE WITH MINIMUM TECHNO-
23 LOGICAL REQUIREMENTS.—Compliance at a facility
24 with standards promulgated under section 3004(o)
25 of the Solid Waste Disposal Act (42 U.S.C. 6924(o))

1 before January 1, 1998, shall not be required with
2 respect to temporary placement of contaminated
3 media or residuals of such media into the same me-
4 dium in or very near existing areas of contamination
5 on-site, upon the effective date of standards promul-
6 gated by the Administrator specifically applicable to
7 units for such temporary placement.”.

8 (j) TRANSITION.—

9 (1) EFFECTIVE DATE.—This section, and the
10 amendments made by this section, shall become ef-
11 fective 180 days after the date of enactment of this
12 Act. Remedies selected under the Comprehensive
13 Environmental Response, Compensation, and Liabil-
14 ity Act of 1980 following that effective date shall be
15 selected as provided in section 121(b) of that Act (as
16 amended by this Act) and subject to the Federal and
17 State requirements specified in section 121(d)(2) of
18 that Act (as amended by this Act).

19 (2) PRIOR RODS.—(A) Nothing in this Act shall
20 place upon the Administrator an obligation to reopen
21 a record of decision signed prior to the effective date
22 of this section.

23 (B) If, pursuant to section 117 of the Com-
24 prehensive Environmental Response, Compensation,
25 and Liability Act of 1980, the Administrator deter-

1 mines that a change to a record of decision signed
2 prior to the effective date of this section is nec-
3 essary, the Administrator may apply the rules in ef-
4 fect at the time the original record of decision was
5 signed.

6 **SEC. 302. AUTHORITIES FOR INSTITUTIONAL CONTROLS.**

7 Section 104 of the Comprehensive Environmental Re-
8 sponse, Compensation, and Liability Act of 1980 (42
9 U.S.C. 9604) is amended by adding at the end the follow-
10 ing:

11 “(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

12 “(1) AUTHORITY OF PRESIDENT TO ACQUIRE
13 EASEMENTS.—In connection with any response ac-
14 tion under this Act, in order to prevent exposure to,
15 reduce the likelihood of, or otherwise respond to a
16 release or threatened release of a hazardous sub-
17 stance, pollutant, or contaminant, the President may
18 acquire a hazardous substance easement by purchase
19 or other agreement, by condemnation, or by any
20 other means permitted by law, at fair market value,
21 or for other consideration as agreed to by the par-
22 ties, a hazardous substance easement which re-
23 stricts, limits, or controls the use of land or other
24 natural resources, including specifying permissible or
25 impermissible uses of land, prohibiting specified ac-

1 activities upon property, prohibiting the drilling of
2 wells or use of ground water, or restricting the use
3 of surface water.

4 “(2) USE OF EASEMENTS.—A hazardous sub-
5 stance easement under this subsection may be used
6 wherever institutional controls have been selected as
7 a component of a response action in accordance with
8 this Act and the National Contingency Plan.

9 “(3) PERSONS SUBJECT TO EASEMENTS.—A
10 hazardous substance easement shall be enforceable
11 in perpetuity (unless terminated and released as pro-
12 vided for in this section) against any owner of the
13 affected property and all persons who subsequently
14 acquire an interest in the property or rights to use
15 the property, including lessees, licensees, and any
16 other person with an interest in the property, with-
17 out respect to privity or lack of privity of estate or
18 contract, lack of benefit running to any other prop-
19 erty, assignment of the easement to another party or
20 sale or other transfer of the burdened property, or
21 any other circumstance which might otherwise affect
22 the enforceability of easements or similar deed re-
23 strictions under the laws of the State. The easement
24 shall be binding upon holders of any other interests
25 in the property regardless of whether such interests

1 are recorded or whether they were recorded prior or
2 subsequent to the easement, and shall remain in ef-
3 fect notwithstanding any foreclosure or other asser-
4 tion of such interests.

5 “(4) CONTENTS OF EASEMENTS.—A hazardous
6 substance easement shall contain, at a minimum—

7 “(A) a legal description of the property af-
8 fected;

9 “(B) the name or names of any current
10 owner or owners of the property as reflected in
11 public land records;

12 “(C) a description of the release or threat-
13 ened release; and

14 “(D) a statement as to the nature of the
15 restriction, limitation, or control created by the
16 easement.

17 “(5) RECORDING AND FILING OF EASEMENT.—

18 Whenever the President acquires a hazardous sub-
19 stance easement or assigns a hazardous substance
20 easement to another party, the President shall
21 record the easement in the public land records for
22 the jurisdiction in which the affected property is lo-
23 cated. If the State has not by law designated one of-
24 fice for the recording of interests in real property or
25 claims or rights burdening real property, the ease-

1 ment shall be filed in the office of the clerk of the
2 United States district court for the district in which
3 the affected property is located and the registry.

4 “(6) COSTS OF OBTAINING EASEMENTS.—The
5 costs of obtaining, ensuring adequate public notice
6 of, and otherwise tracking and maintaining the pro-
7 tections afforded by the easements or other institu-
8 tional controls shall be considered response costs
9 which are recoverable under this Act.

10 “(7) ASSIGNMENT OF EASEMENTS TO PARTIES
11 OTHER THAN THE PRESIDENT.—

12 “(A) AUTHORITY TO ASSIGN.—The Presi-
13 dent may, where appropriate and with the con-
14 sent of the State, assign an easement acquired
15 under this subsection to a State or political sub-
16 division of a State that has the capability of ef-
17 fectively enforcing the easement over the period
18 of time necessary to achieve the purposes of the
19 easement. In the case of any assignment, the
20 easement shall also be fully enforceable by the
21 assignee. Any assignment of such an easement
22 by the President may be made by following the
23 same procedures as are used for the transfer of
24 an interest in real property to a State under
25 section 104(j).

1 “(B) EASEMENTS HELD BY OTHER PER-
2 SONS.—Any interest in property granted to a
3 State, an Indian Tribe, or another govern-
4 mental entity or other person which restricts,
5 limits, or controls the use of land or other natu-
6 ral resources in order to prevent exposure to,
7 reduce the likelihood of, or otherwise respond
8 to, a release or threatened release of a hazard-
9 ous substance, pollutant, or contaminant, and
10 which is expressly designated in writing as a
11 hazardous substance easement within the mean-
12 ing of this paragraph, shall create the same
13 rights, have the same legal effect, and be en-
14 forceable in the same manner as a hazardous
15 substance easement acquired by the President
16 regardless of whether the interest in property is
17 otherwise denominated as an easement, cov-
18 enant, or any other form of property right.

19 “(8) PUBLIC NOTICE.—Not later than 180 days
20 after the date of the enactment of this subsection,
21 the President shall issue regulations regarding the
22 procedures to be used for public notice of proposed
23 property use restrictions. Such regulations shall en-
24 sure that before acquiring a hazardous substance
25 easement, and before recording any notice of such

1 easement, the President will give notice and an op-
2 portunity to comment to the owner of the affected
3 property, all other persons with recorded interests in
4 the property, any lessees or other authorized occu-
5 pants of the property known to the President, the
6 State and any municipalities in which the property
7 is located, any relevant community work group es-
8 tablished under section 117, the affected community
9 and the general public.

10 “(9) TERMINATION OR MODIFICATION OF EASE-
11 MENTS.—An easement acquired under this sub-
12 section shall remain in force until the holder of the
13 easement executes and records a modification or ter-
14 mination and release in accordance with the terms
15 of the easement and approved by the Administrator.
16 Such modification or termination shall be recorded
17 in the same manner as the easement.

18 “(10) ENFORCEMENT.—

19 “(A) EFFECT OF VIOLATIONS.—Violation
20 of any restriction, limitation, or control imposed
21 under a hazardous substance easement shall
22 have the same effect as failure to comply with
23 an order issued under section 106 and relief
24 may be sought either in enforcement actions
25 under section 106(b)(1), section 120(g), or sec-

1 tion 130(e), by States under section 121(e)(2),
2 or in citizens suits under section 310. No citi-
3 zens suit under section 310 to enforce such a
4 notice may be commenced if the holder of the
5 easement has commenced and is diligently pros-
6 ecuting an action in court to enforce the ease-
7 ment.

8 “(B) ENFORCEMENT ACTIONS.—The
9 President may take appropriate enforcement ac-
10 tions to ensure compliance with the terms of
11 the easement whenever the Administrator of the
12 Environmental Protection Agency determines
13 that the terms set forth in the easement are
14 being violated. If the easement is held by a
15 party other than the President and that party
16 has not taken appropriate enforcement actions,
17 the President may notify the party of the viola-
18 tion. If the party does not take appropriate en-
19 forcement actions within 30 days of such notifi-
20 cation, or sooner in the case of an imminent
21 hazard, the President may initiate such enforce-
22 ment actions.

23 “(C) SAVINGS CLAUSE.—Nothing in this
24 section shall limit rights or remedies available
25 under other laws.

1 “(11) APPLICABILITY OF OTHER PROVISIONS.—
2 Holding a hazardous substance easement shall not
3 in itself subject either the holder thereof or the
4 owner of the affected property to liability under sec-
5 tion 107. Any such easement acquired by the Presi-
6 dent shall not be subject to the requirements of sec-
7 tion 104(j)(2) or 120(h). Nothing in this subsection
8 limits or modifies the authority of the President pur-
9 suant to section 104(j)(1).

10 “(12) REGISTRY OF INSTITUTIONAL CON-
11 TROLS.—The President shall maintain a registry of
12 all property at which institutional controls have been
13 established in connection with any response action
14 under this Act. The registry shall identify the prop-
15 erty and the nature or form of the institutional con-
16 trols, including any subsequent changes in the na-
17 ture or form of such controls. Where this section re-
18 fers to the filing of any document in the local land
19 records, if the State has not by law designated one
20 office for the recording of interests in real property
21 or claims or rights burdening real property, or, if
22 the procedures maintained by the designated office
23 do not allow for the filing of such a document, the
24 document shall be filed in this registry.”.

1 **SEC. 303. REMOVAL ACTIONS.**

2 Section 104(c)(1) of the Comprehensive Environ-
3 mental Response, Compensation, and Liability Act of
4 1980 (42 U.S.C. 9604(c)(1)) is amended—

5 (1) by striking “consistent with the remedial
6 action to be taken” and inserting “not inconsistent
7 with any remedial action that has been selected or
8 is anticipated at the time of the removal action,”;

9 (2) by striking “\$2,000,000” and inserting
10 “\$4,000,000”; and

11 (3) by striking “12 months” and inserting “two
12 years”.

13 **TITLE IV—COMMUNITY PARTICI-**
14 **PATION AND HUMAN HEALTH**

15 **Subtitle A—Community**
16 **Participation**

17 **SEC. 401. DEFINITIONS.**

18 Section 117 of the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9617) is amended by adding at the end the follow-
21 ing:

22 “(j) DEFINITIONS.—

23 “(1) COVERED FACILITY.—The term ‘covered
24 facility’ means a facility—

25 “(A) that has been listed or proposed for
26 listing on the National Priorities List;

1 “(B) at which the Administrator is under-
2 taking an action anticipated to exceed 1 year or
3 the funding limit under section 104 of this Act
4 is anticipated to be reached; or

5 “(C) with respect to which the Adminis-
6 trator of ATSDR has accepted a petition re-
7 questing a health assessment or related health
8 activity under section 104(i)(6)(B).

9 “(2) AFFECTED COMMUNITY.—The term ‘af-
10 fected community’ means any group of 2 or more in-
11 dividuals (including representatives of Indian tribes)
12 which may be affected by the release or threatened
13 release of hazardous substances, pollutants, or con-
14 taminants at a covered facility.”.

15 **SEC. 402. PUBLIC PARTICIPATION.**

16 (a) TAG GRANTS.—Section 117(e) of the Com-
17 prehensive Environmental Response, Compensation, and
18 Liability Act of 1980 (42 U.S.C. 9617(e)) is amended to
19 read as follows:

20 “(e) GRANTS FOR TECHNICAL ASSISTANCE.—

21 “(1) AUTHORITY.—In accordance with the rules
22 promulgated by the Administrator, the Adminis-
23 trator may make grants available to any Community
24 Advisory Group or affected community. Such grants

1 shall be known as Technical Assistance Grants
2 ('TAGs').

3 “(2) SPECIAL RULES.—No matching contribu-
4 tion shall be required for a Technical Assistance
5 Grant. The Administrator may make the lesser of
6 \$5,000 or 10 percent of the total grant amount
7 available to the grant recipient, in advance of the ex-
8 penditures to be covered by the grant.

9 “(3) GRANT AVAILABILITY.—The Administrator
10 shall promptly notify residents and Indian tribes liv-
11 ing near a covered facility that a technical assistance
12 grant is available under this section.

13 “(4) NUMBER OF TAGS PER FACILITY.—Except
14 as provided in this paragraph, not more than one
15 grant may be made at a time under this subsection
16 with respect to a single covered facility, but the
17 grant may be renewed to facilitate public participa-
18 tion at all stages of response action. Limits shall be
19 established with respect to the number of years for
20 which grants may be available based on the dura-
21 tion, type, and extent of response activity at a facil-
22 ity. The Administrator may provide more than one
23 grant under this subsection with respect to a single
24 covered facility, considering such factors as the area

1 affected by the facility and the distances between af-
2 fected communities.

3 “(5) FUNDING AMOUNT.—The initial amount of
4 any grant under this subsection may not exceed
5 \$50,000 for a single grant recipient. Except that,
6 the Administrator may increase the amount of the
7 grant if the grant recipient demonstrates that the
8 covered facility’s characteristics indicate additional
9 funds are necessary due to the complexity of the re-
10 sponse action, including the size and complexity of
11 the facility, or nature or volume of site-related infor-
12 mation. In addition, the Administrator must find
13 that the grant recipient’s management of a previous
14 grant award, if any, was satisfactory, and the costs
15 incurred under the award are allowable and reason-
16 able.

17 “(6) SIMPLIFICATION.—To ensure that the ap-
18 plication process is accessible to all affected citizens,
19 the Administrator shall review the existing guide-
20 lines and application procedures for the TAG grants
21 and, within 180 days after the enactment of this
22 section, revise, as appropriate, such guidelines and
23 procedures to simplify the process of obtaining such
24 grants.

25 “(7) AUTHORIZED GRANT ACTIVITIES.—

1 “(A) INTERPRETATION OF INFORMA-
2 TION.—Grants awarded under this subsection
3 may be used to obtain technical assistance in
4 interpreting information and providing input
5 with regard to (i) the nature of the hazard at
6 a facility; (ii) sampling and monitoring plans;
7 (iii) the remedial investigation and feasibility
8 study; (iv) the record of decision; (v) the selec-
9 tion, design, and construction of the remedial
10 action; (vi) operation and maintenance; (vii) re-
11 moval activities at such facility; or (viii) health
12 assessment or related health activity.

13 “(B) ADDITIONAL ACTIVITIES.—Grants
14 awarded under this section also may be used (i)
15 to obtain technical assistance in interpreting in-
16 formation used to rank facilities according to
17 the Hazard Ranking System, (ii) to hire health
18 experts to advise affected residents on health
19 assessment and data gathering efforts and re-
20 sponse activities, and on the design of any
21 health studies that a government agency per-
22 forms, (iii) to hire technical experts to file com-
23 ments with governmental agencies and generate
24 other documents as necessary to ensure full
25 participation by the grant recipient, (iv) to pub-

1 lish newsletters or otherwise finance the dis-
2 semination of information to other members of
3 the community, and (v) to evaluate the reliabil-
4 ity of long-term operation and maintenance and
5 institutional controls. In addition, not more
6 than 10 percent of the amount of a technical
7 assistance grant under this section may be used
8 for training, hiring of neutral professionals to
9 facilitate deliberations and consensus efforts or
10 hiring community liaisons to potentially respon-
11 sible parties and government agencies.

12 “(C) AVAILABILITY OF INFORMATION.—In-
13 formation generated by the recipients of grants
14 under this section shall be made available, as
15 appropriate, to the appropriate Waste Site In-
16 formation Office.

17 “(8) NON-SITE-SPECIFIC GRANTS.—In accord-
18 ance with the rules promulgated by the Adminis-
19 trator, the Administrator may make Technical As-
20 sistance Grant funds available to Indian tribes, non-
21 profit organizations, and citizens groups to enhance
22 their participation in rulemaking processes carried
23 out in accordance with this Act. Total funding for
24 all such grants shall not exceed \$100,000.”.

1 (b) IMPROVING CITIZEN AND COMMUNITY PARTICI-
2 PATION.—(1) Such section 117 is amended by redesignat-
3 ing paragraphs (1) and (2) of subsection (a) as subpara-
4 graphs (A) and (B), by striking “under paragraph (1)”
5 in such subsection (a) and inserting “under subparagraph
6 (A)”, by redesignating such subsection (a) as paragraph
7 (4), by redesignating subsections (b) and (c) as para-
8 graphs (6) and (7) of subsection (a), and by inserting the
9 following immediately after the section heading:

10 “(a) IMPROVING CITIZEN AND COMMUNITY PARTICI-
11 PATION IN DECISIONMAKING.—

12 “(1) IN GENERAL.—In order to provide an op-
13 portunity for meaningful public participation in
14 every significant phase of response activities under
15 this Act, the President shall take the actions speci-
16 fied in this subsection. Public meetings required
17 under this subsection shall be designed to obtain in-
18 formation from the community and disseminate in-
19 formation to the community concerning the Presi-
20 dent’s facility activities and pending decisions.

21 “(2) HEALTH ASSESSMENT AND PRELIMINARY
22 ASSESSMENT AND SITE INSPECTION.—The President
23 shall provide the opportunity for public meetings and
24 publish a notice of such meetings before or during
25 performance of the health assessment or related

1 health activity and the preliminary assessment and
2 site inspection, as appropriate. Where the President
3 determines a meeting is not appropriate at the pre-
4 liminary assessment and site inspection stage, the
5 President shall provide adequate public notice of
6 that decision. To the extent practicable, before or
7 during the health assessment or related health activ-
8 ity and site inspection, the President shall solicit and
9 evaluate concerns, interests, and information from
10 the Community Advisory Group, if any, affected In-
11 dian Tribes, the affected community, local govern-
12 ment officials and local health officials. The evalua-
13 tion shall include, as appropriate, face-to-face com-
14 munity surveys to identify the location of private
15 drinking water wells, potential exposure pathways,
16 including historic and current or potential use of
17 water, and other environmental resources in the
18 community; a public meeting; written responses to
19 significant concerns; and other appropriate
20 participatory activities.

21 “(3) REMEDIAL INVESTIGATION AND FEASIBIL-
22 ITY STUDY.—The President shall provide the oppor-
23 tunity for public meetings and publish a notice of
24 such meetings before or during the Remedial Inves-
25 tigation and Feasibility Study (RI/FS). During the

1 remedial investigation and feasibility study, the
2 President shall solicit the views and preferences of
3 the Community Advisory Group, if any, affected In-
4 dian Tribes, the affected community, local govern-
5 ment officials and local health officials on the reme-
6 diation and disposition of hazardous substances, pol-
7 lutants, or contaminants at the facility. Such views
8 and preferences shall be described in the remedial
9 investigation and feasibility study and considered in
10 the screening of remedial alternatives for the facil-
11 ity.”.

12 (2) Such section 117, as amended by this subsection,
13 is amended by adding the following new paragraph after
14 paragraph (4) of subsection (a):

15 “(5) COMPLETION OF WORK PLAN.—The Presi-
16 dent shall provide the opportunity for public meet-
17 ings and publish a notice of such meetings before or
18 during the completion of the work plan for the Re-
19 medial Design and Remedial Action.”.

20 (3) Such section 117, as amended by this subsection,
21 is amended by adding the following new paragraphs after
22 paragraphs (6) and (7).

23 “(8) ALTERNATIVES.—Pursuant to paragraph
24 (4), members of the Community Advisory Group, if
25 any, affected Indian Tribes, the affected community,

1 local government officials and local health officials
2 may propose remedial alternatives to the President,
3 and the President shall consider such alternatives in
4 the same manner as the President considers alter-
5 natives proposed by other parties.

6 “(9) SELECTING APPROPRIATE PROCEDURES.—
7 In determining which of the procedures set forth in
8 paragraph (2) may be appropriate, the Adminis-
9 trator may consult with the Community Advisory
10 Group, if any, affected Indian Tribe, the affected
11 community, local government officials and local
12 health officials.

13 “(10) PROVIDING INFORMATION.—The Presi-
14 dent, with the assistance of the Waste Site Informa-
15 tion Offices (as provided for in subsection (c)), shall
16 provide information to the Community Advisory
17 Group, if any, affected Indian Tribes, the affected
18 community, local government officials and local
19 health officials throughout all significant phases of
20 the response action at the facility. The President, on
21 a regular basis, shall inform such entities of the
22 progress and substance of technical meetings be-
23 tween the lead agency and potentially responsible
24 parties regarding a covered facility. The President
25 shall notify the Community Advisory Group, if any,

1 affected Indian Tribes, the affected community, local
2 government officials and local health officials con-
3 cerning—

4 “(A) the schedule for commencement of
5 construction activities at the covered facility
6 and the location and availability of construction
7 plans;

8 “(B) the results of any review under sec-
9 tion 121(c) and any modifications to the cov-
10 ered facility made as a result of the review; and

11 “(C) the execution of and any revisions to
12 institutional controls being used as part of a re-
13 medial action.”.

14 (4) Such section 117 is amended by striking “major”
15 in subsection (d).

16 (5) Such section 117 is amended by adding the fol-
17 lowing new subsection after subsection (a), as amended
18 by this section:

19 “(b) **ADDITIONAL PUBLIC INVOLVEMENT REQUIRE-**
20 **MENTS.—**(1) The President shall make records relating to
21 the facility available to the public throughout all phases
22 of response action at the facility. Such information shall
23 be made available to the public for inspection and copying
24 without the need to file a formal request subject to reason-
25 able service charges as appropriate. This paragraph shall

1 not apply to a record that is exempt from disclosure under
2 section 552 of title 5, United States Code, or to any record
3 that is exchanged between parties to a dispute under this
4 Act for the purposes of settling the dispute.

5 “(2) The President, in carrying out responsibilities
6 under this Act, shall ensure that the presentation of infor-
7 mation on risk is unbiased and informative and clearly dis-
8 closes any uncertainties and data gaps.

9 “(3) Notwithstanding any other provision of this sub-
10 section, in the case of a removal action taken in accord-
11 ance with section 104 which is expected to extend beyond
12 180 days, the President shall comply with the require-
13 ments of this section unless the President determines that
14 such compliance presents an imminent and substantial
15 endangerment to human health or the environment.
16 Whenever the planning period for a removal action is ex-
17 pected to be greater than 180 days, the Administrator
18 shall provide the Community Advisory Group, if any, af-
19 fected Indian Tribes, the affected community, local gov-
20 ernment officials and local health officials with notice of
21 the anticipated removal action and a public comment pe-
22 riod of no less than 30 days.”.

23 (6) Such section 117 is amended by adding the fol-
24 lowing new subsection after subsection (e):

1 “(f) UNDERSTANDABLE PRESENTATION OF MATE-
2 RIALS.—The President shall ensure that information pre-
3 pared for distribution to the public under this section shall
4 be provided or summarized in a manner that may be easily
5 understood by the community, considering any unique cul-
6 tural needs of the community, including presentation of
7 information orally and distribution of information in lan-
8 guages other than English, as appropriate.”.

9 **SEC. 403. WASTE SITE INFORMATION OFFICES.**

10 Section 117 of the Comprehensive Environmental Re-
11 sponse, Compensation, and Liability Act of 1980 (42
12 U.S.C. 9617) is amended by adding the following after
13 subsection (b), as added by section 402:

14 “(c) WASTE SITE INFORMATION OFFICES.—

15 “(1) ESTABLISHMENT.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), not later than 18 months after the
18 date of enactment of this subsection, a State
19 with a site on the National Priorities List, or
20 an Indian Tribe in the case of such a site in In-
21 dian country (as defined in 18 U.S.C. 1151),
22 shall establish a Waste Site Information Office
23 to perform the functions set forth in paragraph
24 (3).

1 “(B) EXISTING OFFICES.—The Adminis-
2 trator may determine that a State or tribal of-
3 fice in existence before the date of enactment of
4 this subsection can or does already perform the
5 functions of a Waste Site Information Office
6 and is eligible for funding under paragraph (2).

7 “(C) PROCESS.—Each State or tribe shall
8 decide the process for establishing a Waste Site
9 Information Office.

10 “(D) EPA ROLE.—The Administrator
11 shall approve the Office if it meets the require-
12 ments of this subsection. If the Administrator
13 determines that the State or tribe has not es-
14 tablished an office that can perform the func-
15 tions of a Waste Site Information Office, the
16 Administrator shall establish an office within
17 the Environmental Protection Agency to per-
18 form the functions.

19 “(2) FUNDING.—

20 “(A) IN GENERAL.—Funding for the oper-
21 ation of Waste Site Information Offices, or
22 State, tribal, or Environmental Protection
23 Agency offices that perform similar functions,
24 collectively, shall not exceed \$25,000,000 for a
25 fiscal year.

1 “(B) STATE OR TRIBE GRANTS.—Each
2 State or Indian tribe that has a Waste Site In-
3 formation Office, or each State, Indian tribe, or
4 Environmental Protection Agency office per-
5 forming the functions of a Waste Site Informa-
6 tion Office, shall receive not less than
7 \$100,000, and not more than \$500,000, for a
8 fiscal year.

9 “(C) FORMULA.—

10 “(i) IN GENERAL.—The Administrator
11 shall publish guidelines establishing a for-
12 mula for determining the actual amount of
13 funding for each Waste Site Information
14 Office.

15 “(ii) FACTORS.—The formula shall in-
16 clude factors such as the number of facili-
17 ties potentially eligible for or on the Na-
18 tional Priorities List that would be covered
19 by the Waste Site Information Office.

20 “(3) FUNCTIONS.—

21 “(A) IN GENERAL.—A Waste Site Infor-
22 mation Office for a State or Indian tribe
23 shall—

24 “(i) assist the Administrator in dis-
25 seminating information regarding covered

1 facilities, information regarding the exist-
2 ence of the Office and its services, infor-
3 mation regarding opportunities to partici-
4 pate under this Act, and in notifying citi-
5 zens of public meetings, notifying the com-
6 munity living or working near a facility of
7 the opportunity to establish a community
8 advisory group, availability of TAGs, in-
9 forming citizens of their rights under this
10 Act, and providing citizens with informa-
11 tion relating to the operation of Federal,
12 State, and tribal hazardous substance and
13 waste laws with respect to facilities within
14 the State or reservation; and

15 “(ii) serve as a clearinghouse, main-
16 tain records, and provide electronic access
17 as appropriate, for waste site information,
18 including a description of the Administra-
19 tor’s process for identifying covered facili-
20 ties and undertaking response actions
21 under this Act and a list of covered facili-
22 ties located in the State or in Indian coun-
23 try (as defined in 18 U.S.C. 1151) and,
24 with respect to each such covered facility

1 to the extent information becomes avail-
2 able—

3 “(I) the location, name of owner
4 or operator, and characteristics of the
5 covered facility;

6 “(II) the hazardous substances,
7 pollutants, and contaminants present,
8 including the quantities and relative
9 toxicities of the substances, pollutants,
10 and contaminants;

11 “(III) the response actions being
12 taken, including records of any insti-
13 tutional controls that are included in
14 the response actions;

15 “(IV) any health data generated
16 in connection with the covered facility;

17 “(V) the status of the response
18 actions at the covered facility;

19 “(VI) any report generated as a
20 result of a review under section
21 121(c);

22 “(VII) the location of the Admin-
23 istrative Record created for the facil-
24 ity, if any, under section 113(k); and

1 “(VIII) any ongoing operation
2 and maintenance requirements or in-
3 stitutional controls in place.

4 “(B) REPORT.—

5 “(i) IN GENERAL.—Each Waste Site
6 Information Office shall annually submit a
7 report to the Administrator regarding per-
8 formance of its duties and shall certify in
9 the report that any funds used under para-
10 graph (2) by the Waste Site Information
11 Office have been used in compliance with
12 the requirements of this subsection.

13 “(ii) VERIFICATION BY INSPECTOR
14 GENERAL.—The Inspector General of the
15 Environmental Protection Agency shall pe-
16 riodically review the programs carried out
17 under this subsection and reports made
18 under this subparagraph and shall verify
19 the accuracy of the certifications contained
20 in the reports.

21 “(iii) TERMINATION OF GRANT.—If
22 the Administrator of the Environmental
23 Protection Agency is unable to verify the
24 information provided in the report, or if
25 the Administrator determines that the

1 grant is not being used in a manner con-
2 sistent with the functions under subpara-
3 graph (A), the Administrator may termi-
4 nate the grant.”.

5 **SEC. 404. COMMUNITY ADVISORY GROUPS.**

6 Section 117 of the Comprehensive Environmental Re-
7 sponse, Compensation, and Liability Act of 1980 (42
8 U.S.C. 9617) is further amended by adding after sub-
9 section (f) the following:

10 “(g) COMMUNITY ADVISORY GROUPS.—

11 “(1) CREATION AND RESPONSIBILITIES.—The
12 President shall provide the opportunity for the es-
13 tablishment of a representative public forum, known
14 as a Community Advisory Group (CAG), to achieve
15 direct, regular, and meaningful consultation with all
16 interested parties throughout all stages of a response
17 action whenever—

18 “(A) the President determines such a
19 group will be helpful; or

20 “(B) 10 individuals residing in or at the
21 area in which the facility is located, or 10 per-
22 cent of the population of a locality in which the
23 National Priorities List facility is located,
24 whichever is less, petition for a Community Ad-
25 visory Group to be established.

1 “(2) DUTIES.—Each Community Advisory
2 Group shall provide information and views to the
3 President, and, as appropriate, any or all of the fol-
4 lowing: the Agency for Toxic Substances and Dis-
5 ease Registry, State regulatory agencies, Federal
6 agencies, Federal, State, and tribal natural resource
7 trustees, and potentially responsible parties conduct-
8 ing response actions. The information and views re-
9 ported shall include the various subjects related to
10 facility remediation, including facility health studies,
11 potential remedial alternatives, and selection and im-
12 plementation of remedial and removal actions. The
13 Community Advisory Group shall attempt to achieve
14 consensus among its members before reporting posi-
15 tions to agencies or potentially responsible parties.
16 In cases in which consensus cannot be reached, the
17 Community Advisory Group shall allow the presen-
18 tation of divergent views.

19 “(3) LAND USE RECOMMENDATIONS.—To ob-
20 tain greater community input into and support for
21 remedial decisions affecting future land use, the Ad-
22 ministrator shall consult with the Community Advi-
23 sory Group, if any, affected Indian Tribes, the af-
24 fected community, local government officials and
25 local health officials on a regular basis throughout

1 the remedy selection process regarding the reason-
2 ably anticipated future use of land at the facility
3 and any institutional controls required to assure that
4 land use restrictions remain in effect. The Commu-
5 nity Advisory Group may offer recommendations on
6 the reasonably anticipated future use of land at the
7 facility to the Administrator at any time prior to the
8 selection of a remedy at the facility. The land use
9 recommendation shall consider at a minimum, appli-
10 cable comprehensive land use plans and the other
11 criteria for determining future land use set forth in
12 section 121(g)(1). The Administrator shall not be
13 bound by any recommendation of the Community
14 Advisory Group. In considering the views of the af-
15 fected community, the Administrator shall give sub-
16 stantial weight to a consensus recommendation of
17 the Community Advisory Group regarding the rea-
18 sonably anticipated future use of land at the facility.
19 In cases in which there is substantive disagreement
20 within the Community Advisory Group over a rec-
21 ommendation regarding the reasonably anticipated
22 future use of land at the facility, the Administrator
23 shall make reasonable efforts to reconcile the dif-
24 ferences. In the event of continued substantive dis-
25 agreement, substantial weight shall be given to the

1 views of the residents in the affected community.
2 Should the Administrator make a determination that
3 is inconsistent with a consensus Community Advi-
4 sory Group recommendation on the reasonably ex-
5 pected future use of land at the facility, the Admin-
6 istrator shall issue a written explanation for the in-
7 consistency.

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

15 “(5) COMMUNITY ADVISORY GROUP MEM-
16 BERS.—Members shall serve on the Community Ad-
17 visory Group without pay. The President shall pro-
18 vide notice and opportunity to participate on a Com-
19 munity Advisory Group to the affected community,
20 including to persons who are or historically have
21 been disproportionately affected by facility contami-
22 nation in their community. The President shall en-
23 sure that each Community Advisory Group, to the
24 extent practicable, reflects the composition of the
25 community near the facility and the diversity of in-

1 terests. Local residents shall comprise a majority of
2 the total membership of the CAG. At least one per-
3 son in this group shall represent the Technical As-
4 sistance Grant recipient if such a grant has been
5 awarded under subsection (e). To the extent pos-
6 sible, the President shall ensure that members of the
7 following groups are represented on a CAG:

8 “(A) Persons residing or owning residen-
9 tial property near the facility or persons who
10 may be directly affected by the releases from
11 the facility.

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

15 “(C) Local medical community practicing
16 in the community.

17 “(D) Members of local Indian tribes or In-
18 dian communities.

19 “(E) Local citizen, civic, environmental, or
20 public interest groups with members residing in
21 the community.

22 “(F) Current and former employees of the
23 facility during facility operation.

24 “(G) Local business community.

1 “(6) FACA.—The Federal Advisory Committee
2 Act shall not apply to a CAG established under this
3 Act or ATSDR Community Advisory Panels.

4 “(7) TECHNICAL AND ADMINISTRATIVE SUP-
5 PORT FOR COMMUNITY ADVISORY GROUPS.—The
6 President may provide administrative support for
7 Community Advisory Groups.

8 “(8) ADDITIONAL PARTICIPANTS.—The Admin-
9 istrator of the Environmental Protection Agency, the
10 Administrator of the Agency for Toxic Substances
11 and Disease Registry and the State, representatives
12 chosen by the governing body of local Indian tribes
13 or Indian community local governments (which may
14 include pertinent city or county governments, or
15 both), and any other governmental unit which regu-
16 lates land use in the vicinity of the facility, as appro-
17 priate; and nonresidential owners, operators, and
18 local representatives of the Potentially Responsible
19 Parties (PRPs), who represent, wherever practicable,
20 a balance of PRP interests, may participate in Com-
21 munity Advisory Group meetings to provide informa-
22 tion and technical expertise, but shall not be mem-
23 bers of the Community Advisory Group.

24 “(9) OTHER PUBLIC INVOLVEMENT.—The ex-
25 istence of a Community Advisory Group shall not di-

1 minish any other obligation of the President to con-
2 sider the views of any person in selecting response
3 actions under this Act. Nothing in this section shall
4 affect the status of any Citizen Advisory Group
5 formed before the enactment of this subsection.
6 Nothing in this section shall affect the status, deci-
7 sions, or future formation of any Department of De-
8 fense Restoration Advisory Board, Department of
9 Energy Site Specific Advisory Board, and no Citizen
10 Advisory Group must be established for a facility if
11 any such Board has been established for the facility.

12 “(h) COMMUNITY STUDY.—

13 “(1) REPORT BY THE ADMINISTRATOR.—The
14 Administrator shall prepare and submit to Congress
15 a Community Study two years after the date of en-
16 actment of this Act, shall periodically update the
17 study, and shall also provide such study to the
18 Waste Site Information Offices. The Administrator
19 and Waste Site Information Offices shall ensure that
20 copies of such studies are made available to the pub-
21 lic.

22 “(2) CONTENT OF THE REPORT.—The Admin-
23 istrator’s report shall include an analysis of the
24 speed of listing; the speed and nature of response
25 action; the degree to which public views are reflected

1 in response actions; future land use determinations
2 and use of institutional controls; and the population,
3 race, ethnicity, and income characteristics of each
4 community affected by each facility listed or pro-
5 posed for listing on the National Priorities List.

6 “(3) EVALUATION.—The Administrator shall
7 evaluate the information in the study to determine
8 whether priority setting, response actions, and public
9 participation requirements were conducted in a fair
10 and equitable manner and identify program areas
11 that require improvements or modification.

12 “(4) ACTIONS BASED ON EVALUATION.—The
13 Administrator shall institute the necessary improve-
14 ments or modifications to address any deficiencies
15 identified by the study prepared under this section.”.

16 **SEC. 405. TECHNICAL OUTREACH SERVICES FOR COMMU-**
17 **NITIES.**

18 Section 311(d)(2) of the Comprehensive Environ-
19 mental Response, Compensation, and Liability Act of
20 1980 (42 U.S.C. 9660(d)(2)) is amended to read as fol-
21 lows:

22 “(2) RESPONSIBILITIES OF CENTERS.—The re-
23 sponsibilities of a hazardous substance research cen-
24 ter under this subsection shall include—

1 “(A) the conduct of research and training
2 relating to the manufacture, use, transpor-
3 tation, disposal, and management of hazardous
4 substances and publication and dissemination of
5 the results of the research; and

6 “(B) the conduct of a program to provide
7 educational and technical assistance to commu-
8 nities affected by contamination.”.

9 **SEC. 406. RECRUITMENT AND TRAINING PROGRAM.**

10 Section 117 of the Comprehensive Environmental Re-
11 sponse, Compensation, and Liability Act of 1980 (42
12 U.S.C. 9617) is further amended by adding after sub-
13 section (h) the following:

14 “(i) RECRUITMENT AND TRAINING PROGRAM.—

15 “(1) IN GENERAL.—The Administrator, in con-
16 sultation with the National Institute of Environ-
17 mental Health Studies, shall conduct a program to
18 assist in the recruitment and training of individuals
19 in an affected community for employment in re-
20 sponse activities conducted at the facility concerned.

21 “(2) RECRUITMENT, TRAINING, AND EMPLOY-
22 MENT.—The Administrator shall encourage a person
23 conducting a response action under this Act to train
24 and employ persons from the affected community in
25 remediation skills.”.

1 **SEC. 407. FACILITY SCORING.**

2 Section 105 of the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9605) is amended by adding the following at the
5 end thereof:

6 “(h) FACILITY SCORING.—The Administrator shall
7 evaluate areas, such as Indian country or poor rural com-
8 munities that warrant special attention and identify up to
9 5 facilities in each region of the Environmental Protection
10 Agency that are likely to warrant inclusion on the Na-
11 tional Priorities List. These facilities shall be accorded a
12 priority in evaluation for NPL listing and scoring, and
13 shall be evaluated for listing within 2 years after the date
14 of enactment of this subsection.”.

15 **Subtitle B—Human Health**

16 **SEC. 411. DISEASE REGISTRY AND HEALTH CARE PROVID-**
17 **ERS.**

18 Section 104 of the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9604) is amended as follows:

21 (1) In subsection (b), by adding the following
22 new paragraph at the end thereof:

23 “(3) NOTICE TO HEALTH AUTHORITIES.—The Presi-
24 dent shall notify State and local public health authorities
25 and Tribal health officials whenever the President has rea-
26 son to believe that a release of a hazardous substance, pol-

1 lutant, or contaminant has occurred, is occurring, or is
2 about to occur or that there is a threat of such a release.”.

3 (2) In subparagraph (E) of paragraph (1) of
4 subsection (i), by striking “admission to hospitals
5 and other facilities and services operated or provided
6 by the Public Health Service” and inserting “refer-
7 ral to health care providers”.

8 (3) Paragraph (6)(A) of subsection (i) is
9 amended to read as follows:

10 “(A)(i) The Administrator of ATSDR shall perform
11 a health assessment or related health activity (including
12 biomedical testing, clinical evaluations, medical monitor-
13 ing, and referral to accredited health care providers) at
14 a minimum, for each facility listed or proposed for listing
15 on the National Priorities List established under section
16 105, including a facility owned or operated by a depart-
17 ment, agency, or instrumentality of the United States.
18 Such health assessment or related health activity shall be
19 completed for each facility listed or proposed for listing
20 on the National Priorities List not later than 1 year after
21 the date of proposal for inclusion on such list for each
22 facility.

23 “(ii) The Administrator of the Environmental Protec-
24 tion Agency and the Administrator of ATSDR shall de-
25 velop strategies, in consultation with State, Tribal, and

1 local health officials, to obtain relevant on-site and off-
2 site characterization data, taking into account the needs
3 and conditions of the affected community.

4 “(iii) The Administrator of the Environmental Pro-
5 tection Agency shall, to the maximum extent practicable,
6 provide the Administrator of ATSDR with the data and
7 information necessary to make a public health determina-
8 tion in a timely manner to allow the Administrator of
9 ATSDR to complete the assessment.

10 “(iv)(I) If appropriate, the Administrator of ATSDR
11 shall provide recommendations for sampling environ-
12 mental media to the Administrator of the Environmental
13 Protection Agency as soon as practicable after discovering
14 a release or threat of release of a hazardous substance
15 or pollutant or contaminant at a facility.

16 “(II) To the maximum extent practicable, the Admin-
17 istrator of the Environmental Protection Agency shall in-
18 corporate the recommendations into the facility investiga-
19 tion activities.”.

20 (4) Subparagraph (F) of paragraph (6) of sub-
21 section (i) is amended to read as follows:

22 “(F) For the purposes of this subsection and section
23 111(c)(4), the term ‘health assessments’ shall include pre-
24 liminary assessments of the potential risk to human
25 health, including children and other highly susceptible

1 populations, posed by individual sites and facilities, based
2 on such factors as the nature and extent of contamination,
3 the past, present, or future existence of potential pathways
4 of human exposure and the community's historic exposure
5 to site-related and non-site-related sources (including
6 ground or surface water contamination, air emissions, and
7 food chain contamination), the size and potential suscepti-
8 bility of the community within the likely pathways of expo-
9 sure, the comparison of expected human exposure levels
10 to the short-term and long-term health effects associated
11 with identified hazardous substances and any available
12 recommended exposure or tolerance limits for such haz-
13 ardous substances, and the comparison of existing morbid-
14 ity and mortality data on diseases that may be associated
15 with the observed levels of exposure.”.

16 (5) In paragraph (14) of subsection (i), by
17 striking “distribute to the States, and upon request
18 to medical colleges, physicians, and” and inserting
19 the following: “distribute to the States, including
20 State health departments, Tribal health officials,
21 and upon request to medical colleges, local health
22 departments, medical centers, physicians, nursing in-
23 stitutions, nurses, and”, by inserting “(A)” after
24 “(14)”, and by adding the following at the end
25 thereof:

1 “(B) The Administrator of ATSDR shall also assem-
2 ble, develop, as necessary, and distribute to the general
3 public and to at-risk populations appropriate educational
4 materials and other information on human health effects
5 of hazardous substances.”.

6 **SEC. 412. SUBSTANCE PROFILES.**

7 Section 104(i)(3) of the Comprehensive Environ-
8 mental Response, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9604(i)(3)) is amended as follows:

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

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

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

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

1 been determined by ATSDR to be of health concern. Pro-
2 files required under this paragraph shall be revised and
3 republished as appropriate, based on scientific develop-
4 ment. Such profiles shall be provided to the States, includ-
5 ing State health departments, Tribal health officials, and
6 local health departments, and made available to other in-
7 terested parties.”.

8 **SEC. 413. HEALTH STUDIES.**

9 (a) HUMAN HEALTH STUDY.—Subparagraph (A) of
10 section 104(i)(7) of the Comprehensive Environmental Re-
11 sponse, Compensation, and Liability Act of 1980 (42
12 U.S.C. 9604(i)(7)) is amended to read as follows: “(A)
13 Whenever in the judgment of the Administrator of
14 ATSDR it is appropriate on the basis of the results of
15 a health assessment or related health activity or on the
16 basis of other appropriate information, the Administrator
17 of ATSDR shall conduct a human health study of expo-
18 sure or other health effects for selected groups or individ-
19 uals in order to determine the desirability of conducting
20 full scale epidemiologic or other health studies of the en-
21 tire exposed population.”.

22 (b) RESEARCH PROGRAM.—Section 104(i)(5)(A) of
23 such Act (42 U.S.C. 9604(i)(5)(A)) is amended as follows:

24 (1) By inserting after “program of research”
25 the following: “conducted directly or by such means

1 as cooperative agreements and grants with appro-
2 priate public and nonprofit institutions. The pro-
3 gram shall be”.

4 (2) In the last sentence—

5 (A) in clause (iii), by striking “and” at the
6 end;

7 (B) by redesignating clause (iv) as clause
8 (v); and

9 (C) by inserting after clause (iii) the fol-
10 lowing:

11 “(iv) laboratory and other studies that
12 can lead to the development of innovative
13 techniques for predicting organ-specific,
14 tissue-specific, and system-specific acute
15 and chronic toxicity; and”.

16 **SEC. 414. GRANT AWARDS, CONTRACTS, AND COMMUNITY**
17 **ASSISTANCE ACTIVITIES.**

18 Section 104(i)(15) of the Comprehensive Environ-
19 mental Response, Compensation, and Liability Act of
20 1980 (42 U.S.C. 6904(i)(15)) is amended as follows:

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

22 (2) In the first sentence, by striking “coopera-
23 tive agreements with States (or political subdivisions
24 thereof)” and inserting “grants, cooperative agree-
25 ments, or contracts with States (or political subdivi-

1 sions thereof), Indian Tribes, other appropriate pub-
2 lic authorities, public or private institutions, colleges,
3 universities (including historically black colleges and
4 universities)”.

5 (3) By adding at the end the following new sub-
6 paragraph:

7 “(B) The Administrator of the Agency for Toxic Sub-
8 stances and Disease Registry, pursuant to the grants, co-
9 operative agreements and contracts referred to in this
10 paragraph, is authorized and directed to facilitate, where
11 appropriate, the provision of health services to commu-
12 nities affected by the release of hazardous substances.
13 Such health services may include diagnostic services, test-
14 ing, counseling, specialized treatment, health data reg-
15 istries and preventative public health education.”.

16 **SEC. 415. INDIAN HEALTH PROVISIONS.**

17 Section 104(i) of the Comprehensive Environmental
18 Response, Compensation, and Liability Act of 1980 (42
19 U.S.C. 9406(i)) is amended as follows:

20 (1) In paragraph (1)—

21 (A) by inserting “the Indian Health Serv-
22 ice” after “the Secretary of Transportation”;

23 (B) by inserting “and tribal” after “and
24 local”;

1 (C) in subparagraph (A) by inserting “and
2 Indian tribes” after “the States”; and

3 (D) in subparagraph (C) by inserting “In-
4 dian tribes” after “States,”.

5 (2) In paragraph (4) by—

6 (A) striking “State officials and local offi-
7 cials” and inserting “State, tribal, and local of-
8 ficials”; and

9 (B) inserting in the second sentence “or
10 Indian tribes” after “States”.

11 (3) In paragraph (5)(A) by inserting “and the
12 Indian Health Service” after “Public Health Serv-
13 ice”.

14 (4) In paragraph (6)(C) by inserting “where
15 low population density is not used as an excluding
16 risk factor” after “health appears highest”.

17 (5) In paragraph (6)(E)—

18 (A) by inserting “Indian tribe” after
19 “Any”; and

20 (B) by inserting at the end of the subpara-
21 graph the following: “If the ATSDR or the Ad-
22 ministrator of the Environmental Protection
23 Agency does not act on the recommendations of
24 the State or Indian tribe, then the Administra-
25 tors must respond in writing to the State or

1 tribe why they have not acted on the rec-
2 ommendations.”.

3 (6) In paragraph (6)(F) by striking “and” after
4 “emissions,” and inserting “and any other pathways
5 resulting from subsistence activities” after “contami-
6 nation”.

7 (7) In paragraph (6)(G) by striking the period
8 at the end of the last sentence and inserting the fol-
9 lowing: “and give special consideration, where appro-
10 prium, to any practices of the affected community
11 that may result in increased exposure to hazardous
12 substances, pollutants, or contaminants, such as
13 subsistence hunting, fishing, and gathering.”.

14 (8) In paragraph (10)—

15 (A) by striking “and” at the end of sub-
16 paragraph (D);

17 (B) by striking the period at the end of
18 subparagraph (E) and inserting “; and”; and

19 (C) by inserting after revised subpara-
20 graph (E) the following new subparagraph:

21 “(F) and the health impacts from pollut-
22 ants, contaminants, and hazardous substances
23 on Indian tribes from covered facilities.”.

1 **SEC. 416. PUBLIC HEALTH RECOMMENDATIONS IN REME-**
2 **DIAL ACTIONS.**

3 Section 121(c) of the Comprehensive Environmental
4 Response, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9621(c)) is amended in the first sentence by insert-
6 ing after “remedial action” the second time it appears the
7 following: “, including public health recommendations and
8 decisions resulting from activities under section 104(i),”.

9 **Subtitle C—General Provisions**

10 **SEC. 421. TRANSITION.**

11 (a) **EFFECTIVE DATE IN GENERAL.**—Except as pro-
12 vided in subsection (b), this title and the amendments
13 made by this title shall become effective upon the date of
14 enactment of this Act.

15 (b) **SPECIAL RULE.**—The requirements of para-
16 graphs (2), (3), (5), (8), (9), and (10) of section 117(a),
17 and subsections (b) and (c) of section 117, of the Com-
18 prehensive Environmental Response, Compensation, and
19 Liability Act of 1980 (as added by sections 402 and 403)
20 shall become effective 180 days after the date of enact-
21 ment of this Act.

22 **TITLE V—NATURAL RESOURCE**
23 **DAMAGES**

24 **SEC. 501. STATUTE OF LIMITATIONS.**

25 (a) **LIMITATIONS PERIOD FOR CLAIMS.**—Paragraph
26 (1) of section 113(g) of the Comprehensive Environmental

1 Response, Compensation, and Liability Act of 1980 (42
2 U.S.C 9613(g)(1)) is amended as follows:

3 (1) By striking so much of such paragraph as
4 precedes the words “In no event may” and inserting:

5 “(1)(A) With respect to any facility on the Na-
6 tional Priorities List (NPL), any Federal facility
7 identified under section 120 (42 U.S.C. 9620) (re-
8 lating to Federal facilities), or any vessel or facility
9 at which a remedial action under this chapter is oth-
10 erwise scheduled, an action for natural resource
11 damages under this Act shall be commenced within
12 3 years after the completion of the remedial action
13 (excluding operation and maintenance activities).

14 “(B) With respect to any facility at which there
15 has been a corrective action or closure under the
16 Solid Waste Disposal Act, a reclamation under the
17 Uranium Mill Tailings Reclamation Act, or a re-
18 sponse action under a State remediation, hazardous
19 waste, water quality, or voluntary cleanup program
20 approved under section 127(i), an action for natural
21 resource damages under this Act shall be com-
22 menced before the later of the following:

23 “(i) 3 years from the date of enactment of
24 the Superfund Improvement Act of 1998.

1 1980 (42 U.S.C. 9607(f)) is amended by adding the fol-
2 lowing at the end thereof:

3 “(3) RELATIONSHIP OF RESTORATION TO RE-
4 SPONSE ACTION.—A Federal natural resource trust-
5 ee, State natural resource trustee, or Indian tribe
6 natural resource trustee selecting a restoration alter-
7 native shall take into account the extent to which
8 any removal or remedial action carried out or
9 planned for the facility under this Act or any other
10 Federal or State law has accomplished or will ac-
11 complish restoration. Both response actions and res-
12 toration measures may be implemented at the same
13 facility, or to address releases from the same facility.
14 Such response actions and restoration measures
15 shall be adequate to meet the requirements of both
16 response and restoration, shall not be inconsistent
17 with one another, and shall be implemented, to the
18 extent practicable, in a coordinated and integrated
19 manner.”.

20 (b) CONSIDERATION OF NATURAL RESOURCES IN
21 RESPONSE ACTIONS.—Section 121(a) of the Comprehen-
22 sive Environmental Response, Compensation, and Liabil-
23 ity Act of 1980 (42 U.S.C. 9621(a)) is amended by adding
24 the following at the end: “In evaluating and selecting re-
25 medial actions, the President shall take into account the

1 potential for injury to a natural resource resulting from
2 such actions and the potential for mitigating injury to a
3 natural resource by such actions.”.

4 (c) NOTIFICATION OF TRIBAL TRUSTEES.—Section
5 104(b)(2) of the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980 (42 U.S.C.
7 9604(b)(2)) is amended by striking “Federal and State”
8 wherever it appears and inserting “Federal, State, and
9 tribal”.

10 (d) CONSULTATION WITH TRUSTEES ON REMEDY.—
11 Section 104(c)(2) of the Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980 (42
13 U.S.C. 9604(c)(2)) is amended by inserting “and the af-
14 fected natural resource trustees” after “State or States”.

15 (e) DEVELOPMENT OF REGULATION.—Section 105 of
16 the Comprehensive Environmental Response, Compensa-
17 tion, and Liability Act of 1980 (42 U.S.C. 9605) is
18 amended by inserting the following at the end:

19 “(h) COORDINATION AMONG TRUSTEES.—(1) The
20 President shall promulgate a regulation providing for con-
21 sultation with the affected natural resource trustees re-
22 garding the inclusion or deletion of particular facilities on
23 or from the National Priorities List, coordination with af-
24 fected trustees under section 104(b)(2), and coordination

1 with affected trustees prior to the selection of response
2 actions.

3 “(2)(A) All affected trustees of natural resources in-
4 jured, destroyed, or lost as a result of the release at issue
5 may participate in the trustees’ selection of a plan for res-
6 toration of those resources which includes actions to re-
7 store, replace, or acquire the equivalent natural resources
8 under the trusteeship of any participating trustee.

9 “(B) If an affected trustee elects not to participate
10 in the selection of a plan, then the trustee shall not be
11 eligible to obtain funding under section 111 (c)(1) or
12 (c)(2).

13 “(C) The participating trustees shall designate a lead
14 administrative trustee.

15 “(i) DISBURSEMENT OF FUNDS TO TRUSTEES.—The
16 President shall promulgate regulations providing for dis-
17 bursement of funds under section 111 (c)(1) and (c)(2).”.

18 **SEC. 503. USE OF RECOVERED SUMS.**

19 (a) IN GENERAL.—The third and fourth sentences of
20 section 107(f)(1) of the Comprehensive Environmental
21 Response, Compensation, and Liability Act of 1980 (42
22 U.S.C. 9607(f)(1)) are each amended by striking “restore,
23 replace, or acquire” and all that follows through the end
24 of the sentence and inserting the following: “restore or re-
25 place such natural resources in the watershed, aquifer, or

1 regional ecosystem in which the injury to the resources
2 occurred and for the benefit of the injured resources or
3 to acquire the equivalent of such natural resources in the
4 watershed, aquifer, or regional ecosystem in which the in-
5 jury to the resources occurred.”.

6 (b) **MIGRATORY SPECIES.**—Section 107(f)(1) of the
7 Comprehensive Environmental Response, Compensation,
8 and Liability Act of 1980 (42 U.S.C. 9607(f)(1)) is
9 amended by adding the following after the fourth sentence:
10 “In the case of a migratory species, recovered sums may
11 be applied for restoration or replacement of such migra-
12 tory species in a habitat in the migratory pathway of the
13 species if all the trustees participating in the selection of
14 a plan for restoration of the migratory species agree with
15 such use of recovered sums.”.

16 **SEC. 504. USE OF SUPERFUND FOR NATURAL RESOURCE**
17 **DAMAGE ASSESSMENTS.**

18 Section 9507(c)(1)(A) of the Internal Revenue Code
19 of 1986 is amended by inserting “(4),” after “paragraphs
20 (1), (2),” in clause (i) and by striking “other than para-
21 graphs (1) and (2) thereof,” in clause (ii).

1 **TITLE VI—FEDERAL FACILITIES**

2 **SEC. 601. FEDERAL ENTITIES AND FACILITIES.**

3 Section 120 of the Comprehensive Environmental Re-
4 sponse, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9620) is amended as follows:

6 (1) By amending the heading to read as follows:

7 **“SEC. 120. FEDERAL ENTITIES AND FACILITIES.**

8 (2) By amending paragraph (1) of subsection
9 (a) to read as follows:

10 “(1)(A) Each department, agency, and instru-
11 mentality of the executive, legislative, and judicial
12 branches of the United States shall be subject to,
13 and comply with, all Federal, State, interstate and
14 local requirements, both substantive and procedural
15 (including any requirements for permits, reporting,
16 or any provisions for injunctive relief and such sanc-
17 tions as may be imposed by a court to enforce such
18 relief), regarding response actions and damages re-
19 lated to, or management of, hazardous substances,
20 pollutants, or contaminants in the same manner,
21 and to the same extent, as any nongovernmental en-
22 tity is subject to such requirements, including reim-
23 bursement of response costs (including attorneys’
24 fees), payment of natural resource damages, and en-
25 forcement and liability under sections 106 and 107

1 of this title and the payment of reasonable service
2 charges.

3 “(B) The Federal, State, interstate, and local
4 substantive and procedural requirements referred to
5 in subparagraph (A) include, but are not limited to,
6 all administrative orders and all civil and adminis-
7 trative penalties and fines, regardless of whether
8 such penalties and fines are punitive or coercive in
9 nature or are imposed for isolated, intermittent, or
10 continuing violations. The United States hereby ex-
11 pressly waives any immunity otherwise applicable to
12 the United States with respect to any such sub-
13 stantive or procedural requirement (including, but
14 not limited to, any injunctive relief, administrative
15 order or civil or administrative penalty or fine re-
16 ferred to in the preceding sentence, or reasonable
17 service charge).

18 “(C) The reasonable service charges referred to
19 in this paragraph include, but are not limited to,
20 fees or charges assessed in connection with the proc-
21 essing and issuance of permits, renewal of permits,
22 amendments to permits, review of plans, studies,
23 and other documents, and inspection and monitoring
24 of facilities, as well as any other nondiscriminatory

1 charges that are assessed in connection with a State,
2 interstate, or local response program.

3 “(D) Neither the United States, nor any agent,
4 employee, or officer thereof, shall be immune or ex-
5 empt from any process or sanction of any State or
6 Federal court with respect to the enforcement of any
7 injunctive relief.

8 “(E) No agent, employee, or officer of the
9 United States shall be personally liable for any civil
10 penalty under any Federal or State law relating to
11 response actions with respect to any act or omission
12 within the scope of their official duties. An agent,
13 employee, or officer of the United States shall be
14 subject to any criminal sanction (including, but not
15 limited to, any fine or imprisonment) under any
16 Federal or State response law, but no department,
17 agency, or instrumentality of the executive, legisla-
18 tive, or judicial branch of the United States shall be
19 subject to any such sanctions.

20 “(F) The waiver of sovereign immunity pro-
21 vided in this paragraph shall not apply to the extent
22 a State law would apply any standard or require-
23 ment to such Federal department, agency, or instru-
24 mentality in a manner which is more stringent than

1 such standard or requirement would be applied to
2 any other person.

3 “(G)(i) The Administrator may issue an order
4 under section 106 of this Act to any department,
5 agency, or instrumentality of the executive, legisla-
6 tive, or judicial branch of the United States. The
7 Administrator shall initiate an administrative en-
8 forcement action against such a department, agency,
9 or instrumentality in the same manner and under
10 the same circumstances as action would be initiated
11 against any other person.

12 “(ii) No administrative order issued to such de-
13 partment, agency, or instrumentality shall become
14 final until such department, agency, or instrumentality
15 has had the opportunity to confer with the Ad-
16 ministrator.

17 “(iii) Unless a State law in effect on the date
18 of enactment of the Superfund Improvement Act of
19 1998, or a State Constitution, requires the funds to
20 be used in a different manner, all funds collected by
21 a State from the Federal Government from penalties
22 and fines imposed for violation of any substantive or
23 procedural requirement referred to in subsection (a)
24 of this section shall be used by the State only for
25 projects designed to improve or protect the environ-

1 ment or to defray the costs of environmental protec-
2 tion or enforcement.

3 “(I) Each such department, agency, and instru-
4 mentality shall have the right to contribution protec-
5 tion set forth in section 113, when such department,
6 agency, or instrumentality resolves its liability under
7 this Act.”.

8 (3) By striking paragraph (4) of subsection (a).

9 (4) By inserting “(other than the indemnifica-
10 tion requirements of section 119)” after “respon-
11 sibility” in subsection (a)(3).

12 **SEC. 602. ADJOINING STATES.**

13 Section 121(f) of the Comprehensive Environmental
14 Response, Compensation, and Liability Act of 1980 (42
15 U.S.C. 9621(f)) is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(4) The President shall provide to any State within
18 a 50-mile radius of a remedial action at a Federal facility
19 a reasonable opportunity to review and comment on each
20 of the following:

21 “(A) The remedial investigation and feasibility
22 study and all data and technical documents leading
23 to its issuance.

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

1 “(C) The engineering design following selection
2 of the final remedial action.

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

5 “(E) Any proposed finding or decision by the
6 President to exercise the authority of subsection
7 (d)(4).”.

8 **SEC. 603. ENFORCEABILITY OF FEDERAL COMPLIANCE**
9 **AGREEMENTS.**

10 Section 120(e) of the Comprehensive Environmental
11 Response, Compensation, and Liability Act of 1980 (42
12 U.S.C. 9620) is amended by adding the following at the
13 end:

14 “(7) STATE REQUIREMENTS.—Notwithstanding
15 any other provision of this Act, an interagency
16 agreement under this section shall not impair or di-
17 minish the authority of a State to enforce compli-
18 ance with requirements of State or Federal law, un-
19 less those requirements have been—

20 “(A) specifically addressed in the agree-
21 ment; or

22 “(B) waived;
23 without objection after notice to the State on or be-
24 fore the date on which the response action is se-
25 lected.”.

1 **SEC. 604. REQUIREMENTS RELATING TO PROPERTY TRANS-**
2 **FERRED BY FEDERAL AGENCIES.**

3 (a) ADDITIONAL REQUIREMENT RELATING TO
4 LEASES OF PROPERTY LOCATED AT CLOSING MILITARY
5 INSTALLATIONS.—Section 120(h)(3)(B) of the Com-
6 prehensive Environmental Response, Compensation, and
7 Liability Act of 1980 (42 U.S.C. 9620(h)(3)(B)) is
8 amended in the last sentence—

9 (1) by striking out “and” before “that there are
10 adequate”; and

11 (2) by adding before the period at the end the
12 following: “, and that such lease is unlikely to result
13 in the head of any department or agency having to
14 hold harmless, defend, and indemnify any person or
15 entity pursuant to applicable law”.

16 (b) ENFORCEABLE AGREEMENT FOR REMEDIAL AC-
17 TION.—(1) Clause (i) of section 120(h)(3)(C) of such Act
18 (42 U.S.C. 9620(h)(3)(C)) is amended—

19 (A) by redesignating subclauses (III) and
20 (IV) as subclauses (V) and (VI), respectively;
21 and

22 (B) by inserting after subclause (II) the
23 following:

24 “(III) the Federal agency re-
25 questing deferral has entered into an
26 enforceable agreement containing a

1 cleanup plan that identifies all re-
2 sponse actions needed to be taken and
3 schedules for completion of such ac-
4 tions;

5 “(IV) the Federal agency re-
6 questing deferral has identified the in-
7 stitutional controls that are to be re-
8 lied on during and after the period of
9 deferral and the enforcement mecha-
10 nisms that will ensure the effective-
11 ness of such controls;”.

12 (2) Clause (ii) of section 120(h)(3)(C) of such Act
13 (42 U.S.C. 9620(h)(3)(C)) is amended—

14 (A) by redesignating subclauses (III) and (IV)
15 as subclauses (IV) and (V), respectively;

16 (B) by inserting after subclause (II) the follow-
17 ing:

18 “(III) provide that all restrictions
19 on the use of the property shall apply
20 to and be binding on any transferee or
21 assignee, and that the United States
22 and the State in which the property is
23 located are third-party beneficiaries
24 for purposes of enforcing the land use
25 restrictions;”; and

1 (C) in subclause (V), as so redesignated—

2 (i) by striking “adequately addresses” and
3 inserts “, if approved, would result in sufficient
4 funding to comply fully with all”; and

5 (ii) by striking “action, subject to congres-
6 sional authorizations and appropriations.” and
7 inserting “action.”.

8 (3) Clause (iv) of section 120(h)(3)(C) of such Act
9 (42 U.S.C. 9620(h)(3)(C)) is amended by striking “any
10 rights or obligations of a Federal agency (including any
11 rights or obligations” and inserting “any rights, obliga-
12 tions, or liability of a Federal agency under any Federal
13 or State law (including any rights, obligations, or liabil-
14 ity”.

15 **SEC. 605. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**
16 **TION AT FEDERAL FACILITIES.**

17 (a) IN GENERAL.—Section 311 (42 U.S.C. 9660) is
18 amended by adding at the end the following:

19 “(h) FEDERAL FACILITIES.—

20 “(1) DESIGNATION.—The President may des-
21 ignate a facility that is owned or operated by any de-
22 partment, agency, or instrumentality of the United
23 States, and that is listed or proposed for listing on
24 the National Priorities List, to facilitate the re-

1 search, development, and application of innovative
2 technologies for remedial action at the facility.

3 “(2) USE OF FACILITIES.—

4 “(A) IN GENERAL.—A facility designated
5 under paragraph (1) may be made available to
6 Federal departments and agencies, State de-
7 partments and agencies, and public and private
8 instrumentalities, to carry out activities de-
9 scribed in paragraph (1).

10 “(B) COORDINATION.—The Adminis-
11 trator—

12 “(i) shall coordinate the use of the fa-
13 cilities with the departments, agencies, and
14 instrumentalities of the United States and
15 with other persons and instrumentalities;
16 and

17 “(ii) may approve or deny the use of
18 a particular innovative technology for re-
19 medial action at any such facility.”.

20 (b) REPORT TO CONGRESS.—Section 311(e) (42
21 U.S.C. 9660(e)) is amended—

22 (1) by striking “At the time” and inserting the
23 following:

24 “(1) IN GENERAL.—At the time”; and

25 (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 **TITLE VII—STATE ROLES**

8 **SEC. 701. DELEGATION OF AUTHORITY TO STATES.**

9 Title I of the Comprehensive Environmental Re-
10 sponse, Compensation, and Liability Act of 1980 (42
11 U.S.C. 9601 et seq.), as amended by title II of this Act,
12 is further amended by adding after section 129 the follow-
13 ing new section:

14 **“SEC. 130. DELEGATION OF AUTHORITY TO STATES.**

15 “(a) **IN GENERAL.**—

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

1 “(2) APPLICATION FOR AUTHORITY TO TAKE
2 RESPONSE ACTION AT NPL FACILITIES.—(A) A
3 State may apply to the Administrator to take or re-
4 quire any or all of the actions listed in subparagraph
5 (B) under a contract or cooperative agreement as
6 provided in this section at any non-federally owned
7 or operated facility within the boundaries of the
8 State that is listed on the National Priorities List
9 (NPL) or to take or require removal actions at any
10 facility proposed for listing on the National Prior-
11 ities List.

12 “(B) The actions referred to in subparagraph
13 (A) are the following:

14 “(i) Response actions under section 104.

15 “(ii) Response actions under section
16 106(a) and enforcement under section 106(b).

17 “(iii) Cost recovery actions under section
18 107.

19 “(iv) Remedy selections under section 121.

20 “(v) Settlements under section 122.

21 “(vi) Allocations under section 128.

22 “(vii) Community participation activities
23 under section 117, other than the making of
24 grants for technical assistance under section
25 117(e).

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

5 “(A) meets the qualification requirements
6 set forth in the regulations promulgated pursu-
7 ant to subsection (b); and

8 “(B) with respect to authority to select re-
9 medial actions and use allocation procedures,
10 meets the qualification requirements set forth
11 in subsection (c).

12 “(b) REGULATIONS.—The Administrator, in con-
13 sultation with the States, shall promulgate regulations to
14 implement this section. The regulations shall provide such
15 additional qualifications for a contract or cooperative
16 agreement under this section as the Administrator consid-
17 ers reasonable, including qualifications applicable to par-
18 ticular types of preremedial or response actions. The regu-
19 lations shall include requirements that—

20 “(1) the Administrator must provide notice and
21 an opportunity for public comment on the applica-
22 tion submitted pursuant to subsection (a)(2);

23 “(2) entering into the contract or cooperative
24 agreement will not cause delay in the response ac-

1 tion and will not result in waste of Federal funds
2 that have been obligated or expended; and

3 “(3) in order for a State to qualify for a con-
4 tract or cooperative agreement with respect to a fa-
5 cility under this section, the State may not be a
6 major potentially responsible party with respect to
7 that facility.

8 “(c) QUALIFICATION REQUIREMENTS WITH RE-
9 SPECT TO SELECTION OF REMEDIAL ACTION AND USE
10 OF ALLOCATION PROCEDURES.—For purposes of sub-
11 section (a)(3)(B), with respect to a contract or cooperative
12 agreement under this section for authority to select reme-
13 dial action or to use the allocation procedures under sec-
14 tion 128, the Administrator also shall make each of the
15 following determinations:

16 “(1) The State has the capability to select re-
17 medial actions or to use the allocation procedures
18 under section 128, including adequate legal author-
19 ity, financial and personnel resources, organization,
20 and expertise.

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

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

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

11 “(e) STATE AUTHORITY REGARDING ENFORCEMENT
12 OF SELECTED REMEDIAL ACTION.—(1) A State that se-
13 lects a remedial action pursuant to a contract or coopera-
14 tive agreement entered into under subsection (a) shall
15 have the authority to enforce a settlement, order, or agree-
16 ment requiring such remedial action (and the require-
17 ments of the remedial action) in the United States district
18 court for the district in which the facility is located.

19 “(2) Such State also shall have the authority to en-
20 force compliance with any standard, regulation, condition,
21 requirement, order, or final determination of the State
22 with respect to the remedial action. Such State also may
23 seek civil penalties not to exceed \$25,000 per day for any
24 violation of such standard, regulation, condition, require-
25 ment, order, or final determination. Such State may com-

1 mence an action seeking such relief unless the standard,
2 regulation, condition, requirement, order, or final deter-
3 mination is arbitrary, capricious, or contrary to law when
4 reviewed upon the administrative record presented by the
5 State.

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

10 “(f) REQUIREMENTS FOR ENFORCEMENT AND ALLO-
11 CATION.—

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

19 “(2) USE OF ALLOCATION PROCEDURES.—(A)
20 In the case of a contract or cooperative agreement
21 providing for a State to initiate an enforcement ac-
22 tion with respect to a facility subject to mandatory
23 allocation pursuant to section 128(b)(1), the con-
24 tract or cooperative agreement shall require the
25 State to use allocation procedures with respect to

1 the facility. The contract or cooperative agreement
2 shall require the State to initiate the allocation pro-
3 cess by certifying each of the following:

4 “(i) The State has completed a potentially
5 responsible party search substantially consistent
6 with subsection (c) of section 128 and will make
7 the results of that search available to the allo-
8 cator and the parties.

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

14 “(iii) The facility would be subject to man-
15 datory allocation under section 128 if the Presi-
16 dent were conducting the response action.

17 “(B) After the State has made a certification
18 under subparagraph (A), the Administrator shall ini-
19 tiate an allocation in accordance with the terms of
20 section 128. The Administrator may assign to the
21 State, by cooperative agreement or otherwise, any
22 responsibilities to conduct the allocation, except that
23 the Administrator and Attorney General shall retain
24 their authority relating to orphan share funding as
25 provided by this paragraph and in section 128, in-

1 including the timing and terms of payment (subject to
2 the availability of funds pursuant to section
3 128(m)). The State may accept or reject the alloca-
4 tion report on the same basis as provided in section
5 128(h). If the State does not reject the allocation,
6 it shall use the allocator's report as the basis of
7 State settlements. The State may recover the costs
8 of the allocation pursuant to State law or the provi-
9 sions of this Act.

10 “(D) The President, through either the Admin-
11 istrator or the Attorney General, or both, may par-
12 ticipate in any phase of an allocation proceeding
13 where an orphan share is identified according to the
14 factors set forth in section 128.

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

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

23 “(ii) The assignment of an orphan share
24 shall be in accordance with section 128.

1 “(F) The Administrator and the Attorney Gen-
2 eral shall accept a State’s request for orphan share
3 funding supported by an allocation report and the
4 certification described in subparagraph (E), unless
5 the Administrator and Attorney General determine,
6 within 120 days after the request by the State, that
7 the allocation does not meet the standards set forth
8 in section 128. Such determination shall be made in
9 the same manner, and shall be subject to the same
10 limitations, as set forth in section 128.

11 “(G) The contract or cooperative agreement
12 shall provide the following:

13 “(i) The Administrator may deduct from
14 orphan share funding the costs incurred in con-
15 ducting the allocation.

16 “(ii) The State may use the orphan share
17 funding only to fund response actions through
18 settlement or to reimburse parties performing
19 work in excess of the share assigned to them in
20 allocation. No such reimbursement may exceed
21 the reimbursement level available under section
22 128.

23 “(H) The State may recover funds provided
24 through orphan share funding from nonsettling re-
25 sponsible parties pursuant to State law or the provi-

1 sions of this Act. Seventy-five percent of such recov-
2 ered funds shall be returned to the Fund. The re-
3 maining 25 percent may be used by the recovering
4 State only for any other response action eligible
5 under section 111 and cost sharing requirements
6 under section 104(c)(3)).

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

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

3 “(ii) the President or the State has not
4 been provided notice of, and an opportunity to
5 participate in, the settlement concerning the re-
6 sponse action; or

7 “(iii) the President or the State objects to
8 the settlement within 120 days of the date of
9 signature for the record of decision or receipt of
10 notice of the settlement, whichever is later.

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

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

22 “(1) IN GENERAL.—A contract or cooperative
23 agreement under this section shall be subject to such
24 terms and conditions as the Administrator may pre-
25 scribe. If a State fails to comply with a requirement

1 of a contract or cooperative agreement, the Adminis-
2 trator, after 90 days notice to the affected State,
3 may seek in the appropriate United States district
4 court to ensure performance of the response action,
5 or to recover any funds advanced or any costs in-
6 curred because of the breach.

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

10 “(A) A requirement that the State shall
11 exercise any authority conferred by this section
12 or the contract or cooperative agreement on be-
13 half of the State, and not on behalf of or in the
14 name of the Administrator, the President, or
15 the United States.

16 “(B) A requirement that the State have
17 and maintain sufficient legal authority under
18 applicable State law to enter into the contract
19 or cooperative agreement.

20 “(C) A requirement that the Administrator
21 retain authority to terminate and recoup fund-
22 ing, and to terminate or renegotiate as appro-
23 priate the contract or cooperative agreement, if
24 the State fails to perform the contract or coop-
25 erative agreement in a manner consistent with

1 this Act. At least 90 days before terminating
2 any contract or cooperative agreement with a
3 State, the Administrator shall provide to the
4 State a written explanation of the reasons for
5 the proposed termination and afford an oppor-
6 tunity to the State to discuss the termination
7 and to propose actions to correct any defi-
8 ciencies.

9 “(D) A requirement imposing a non-
10 discretionary duty on the Administrator to per-
11 form or compel expeditious performance of re-
12 sponse actions under the contract or cooperative
13 agreement if the State fails to comply with the
14 terms of the contract or cooperative agreement.

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

18 **SEC. 702. STATE COST SHARE.**

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

21 “(10) EXISTING CONTRACTS AND COOPERATIVE
22 AGREEMENTS.—The requirements of paragraphs (3), (6),
23 and (7) of this subsection shall apply only to contracts
24 and cooperative agreements pursuant to section 104(d)

1 entered into prior to the enactment of the Superfund Im-
2 provement Act of 1998.

3 “(11) STATE COST SHARE.—After the date of enact-
4 ment of the Superfund Improvement Act of 1998, the Ad-
5 ministrator shall not provide any funding under this sub-
6 section or section 130, or any response action pursuant
7 to this section, except for emergency removal actions, un-
8 less the State in which the release or threatened release
9 occurs has entered into a contract or cooperative agree-
10 ment pursuant to this subsection or section 130 that pro-
11 vides assurances, deemed adequate by the Administrator,
12 that—

13 “(A) the State will pay or assure payment of 10
14 percent of the cost of such response action or fund-
15 ing, including 10 percent of orphan share funding
16 and operation and maintenance costs; and

17 “(B) the State will assure oversight of any op-
18 eration and maintenance of funded response ac-
19 tions.”.

20 **SEC. 703. CONFORMING AND MISCELLANEOUS AMEND-**
21 **MENTS.**

22 (a) TRANSFER OF ENFORCEMENT PROVISIONS OF
23 SECTION 121(e).—(1) Section 121(e) of the Comprehen-
24 sive Environmental Response, Compensation, and Liabil-
25 ity Act of 1980 (42 U.S.C. 9621(e)) is amended—

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

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

4 (2) Section 121(f) of such Act (42 U.S.C. 9621(f)),
5 as amended by title VI, is further amended by adding at
6 the end the following new paragraph:

7 “(5) A State may enforce any Federal or State stand-
8 ard, requirement, criteria, or limitation to which the reme-
9 dial action is required to conform under this Act in the
10 United States district court for the district in which the
11 facility is located.”.

12 (b) SECTION 126(a).—Section 126(a) of such Act (42
13 U.S.C. 9626(a)) is amended—

14 (1) by adding after “section 104(i) (regarding
15 health authorities)” the following: “, section 127 (re-
16 garding voluntary response actions), subsection (f)
17 of section 121 (relating to cleanup standards), sec-
18 tion 122(d)(1)(D) (relating to compliance with con-
19 sent decrees),”; and

20 (2) by adding at the end the following: “The
21 governing body of an Indian tribe shall be afforded
22 substantially the same treatment as a State with re-
23 spect to the provisions of section 130 (regarding del-
24 egation of authority) with respect to facilities located

1 in Indian country (as defined in section 1151 of title
2 18, United States Code).”.

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

5 (d) TRANSITION.—Subsection (d) of section 104 is
6 amended by adding at the end the following new para-
7 graph:

8 “(5) TERMINATION.—This subsection shall cease to
9 be in effect on the effective date of regulations promul-
10 gated to implement section 130, as added by the Super-
11 fund Improvement Act of 1998.”.

12 **SEC. 704. STATE ROLE AT FEDERAL FACILITIES.**

13 Subsection (g) of section 120 is amended to read as
14 follows:

15 “(g) TRANSFER OF AUTHORITIES.—

16 “(1) STATE APPLICATION FOR TRANSFER OF
17 AUTHORITIES.—A State may apply to the Adminis-
18 trator to exercise the authorities vested in the Ad-
19 ministrator under subsections (e) and (h) (other
20 than (h)(2)) of this section at any or all facilities
21 owned or operated by any department, agency, or in-
22 strumentality of the United States (including the ex-
23 ecutive, legislative, and judicial branches of govern-
24 ment), including the authority—

1 “(A) to publish a timetable and deadlines
2 for completion of any remedial investigation
3 and feasibility study;

4 “(B) to review and approve all documents
5 prepared in connection with any such investiga-
6 tion and study;

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

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

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

20 “(A) The State has the ability to exercise
21 such authorities in accordance with this Act, in-
22 cluding adequate legal authority, financial and
23 personnel resources, organization, and exper-
24 tise.

1 “(B) The State demonstrates experience in
2 exercising similar authorities.

3 “(3) EFFECT OF AUTHORIZATION UNDER SOLID
4 WASTE DISPOSAL ACT.—In the review by the Admin-
5 istrator of an application of a State for transfer of
6 authorities under this subsection, if the State is au-
7 thorized to implement the corrective action provi-
8 sions of the Solid Waste Disposal Act under a State
9 hazardous waste program pursuant to section 3006
10 of that Act, the Administrator shall approve the ap-
11 plication and provide for the orderly transfer of au-
12 thorities as expeditiously as possible, but in no case
13 later than 6 months after the date of receipt of the
14 application, unless the parties agree to another
15 deadline.

16 “(4) EFFECT OF TRANSFER.—Any State to
17 which authorities are transferred under this sub-
18 section shall not be deemed to be an agent of the
19 President but shall exercise such authorities in its
20 own name, and the Administrator may transfer to a
21 State only those authorities of the Administrator
22 identified in this subsection.

23 “(5) DEADLINES.—Except as provided in para-
24 graph (3)(B), the Administrator shall make a deter-
25 mination on an application from a State under this

1 subsection not later than 90 days after the date the
2 Administrator receives the application.

3 “(6) WITHDRAWAL OF AUTHORITIES.—(A) The
4 Administrator may withdraw or renegotiate the au-
5 thorities transferred under this subsection in whole
6 or in part if the Administrator determines—

7 “(i) that the State, in whole or in part, is
8 exercising such authorities in a manner clearly
9 inconsistent with the requirements of this Act;
10 or

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

16 “(B) At least 90 days before withdrawing any
17 such transferred authorities from a State, the Ad-
18 ministrator shall provide to the State a written ex-
19 planation of the reasons for the proposed withdrawal
20 and afford an opportunity to the State to discuss the
21 withdrawal and to propose actions to correct any de-
22 ficiencies.

23 “(7) ENFORCEMENT AND REMEDY SELEC-
24 TION.—(A) An interagency agreement under this
25 section between a State (including States which are

1 parties to such agreements through the exercise of
2 the Administrator's authorities pursuant to a coop-
3 erative agreement or contract under this subsection)
4 and any department, agency, or instrumentality of
5 the United States, shall be enforceable by the State
6 or the Federal department, agency, or instrumentality
7 in the United States district court for the district
8 in which the facility is located. The district court
9 shall have the jurisdiction to enforce compliance with
10 any provision, standard, regulation, condition, re-
11 quirement, order, or final determination which has
12 become effective under such agreement, and to im-
13 pose any appropriate civil penalty provided for any
14 violation of the agreement, not exceed \$25,000 per
15 day. Nothing in this subparagraph affects the appli-
16 cability of section 310 or the rights of any person
17 under that section.

18 “(B) At Federal facilities where the Adminis-
19 trator's authorities under subsection (e)(4) have
20 been transferred to the State pursuant to this sec-
21 tion, and the State does not concur in the remedy
22 selection proposed by the Federal agency, the parties
23 shall enter into dispute resolution as provided in the
24 interagency agreement, provided that the final level
25 for such disputes concerning remedy selection shall

1 be to the head of the Federal department, agency,
2 or instrumentality and the Governor of the State. If
3 no agreement is reached between the head of the
4 Federal department, agency, or instrumentality and
5 the Governor, the State may issue the final deter-
6 mination. In order to compel implementation of the
7 State's selected remedy, the State must bring a civil
8 action in the appropriate Federal district court. The
9 district court shall have jurisdiction as provided in
10 subparagraph (A) to issue any relief that may be
11 necessary to implement the remedial action, to im-
12 pose appropriate civil penalties not to exceed
13 \$25,000 per day from the date the selected remedy
14 becomes final, and to review any challenges to the
15 State's final determination consistent with the
16 standards set forth in section 113(j) of this Act.

17 “(8) LIMITATION.—(A) Except for authorities
18 that are transferred by the Administrator to a State
19 pursuant to this subsection, or that are transferred
20 by the Administrator to an officer or employee of the
21 Environmental Protection Agency, no authority vest-
22 ed in the Administrator under this section may be
23 transferred, by executive order of the President or
24 otherwise, to any other officer or employee of the
25 United States or to any other person.

1 “(B) Except as necessary to specifically imple-
2 ment the transfer of the Administrator’s authorities
3 to a State pursuant to this subsection, nothing in
4 this subsection shall be construed as altering, modi-
5 fying, or impairing in any manner, or authorizing
6 the unilateral modification of, any terms of any—

7 “(i) agreement, permit, administrative or
8 judicial order, decree, or interagency agreement
9 existing on the effective date of the Superfund
10 Improvement Act of 1998; or

11 “(ii) contract or cooperative agreement be-
12 tween a State and the Administrator related to
13 a response action or part of a response action.

14 “(C) Any other modifications or revisions of an
15 interagency agreement entered into under this sec-
16 tion shall require the consent of all parties to such
17 agreement, and absent such consent the agreement
18 shall remain unchanged.

19 “(D) Nothing in this subsection shall affect the
20 exercise by a State of any other authorities that may
21 be applicable to facilities in such State.”.

22 **TITLE VIII—FUNDING**

23 **SEC. 801. AUTHORIZATION OF APPROPRIATIONS.**

24 Section 111(a) of the Comprehensive Environmental
25 Response, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9611(a)) is amended by striking “\$8,500,000,000
2 for the 5-year period beginning on the date of enactment
3 of the Superfund Amendments and Reauthorization Act
4 of 1986, and not more than \$5,100,000,000 for the period
5 commencing October 1, 1991, and ending September 30,
6 1994” and inserting “\$9,200,000,000 for the period com-
7 mencing October 1, 1998, and ending September 30,
8 2003”.

9 **SEC. 802. ORPHAN SHARE FUNDING.**

10 Section 111(a) is amended by adding after paragraph
11 (6) the following new paragraph:

12 “(7) ORPHAN SHARE FUNDING.—Payment of
13 orphan shares pursuant to section 128(m) of this
14 Act.”.

15 **SEC. 803. AGENCY FOR TOXIC SUBSTANCES AND DISEASE**
16 **REGISTRY.**

17 Section 111(m) (relating to ATSDR) is amended to
18 read as follows:

19 “(m) AGENCY FOR TOXIC SUBSTANCES AND DIS-
20 EASE REGISTRY.—There shall be directly available to the
21 Agency for Toxic Substances and Disease Registry to be
22 used for the purpose of carrying out activities described
23 in subsection (c)(4) of this section and section 104(i) of
24 this Act not less than \$100,000,000 per fiscal year for
25 each of fiscal years 1999, 2000, 2001, 2002, and 2003,

1 of which \$20,000,000 per fiscal year shall be available for
2 the purposes of section 104(i)(15)(B). Any funds so made
3 available which are not obligated by the end of the fiscal
4 year in which made available shall be turned back to the
5 Fund.”.

6 **SEC. 804. LIMITATIONS ON RESEARCH, DEVELOPMENT,**
7 **AND DEMONSTRATION PROGRAMS.**

8 Section 111(n) is amended to read as follows:

9 “(n) LIMITATIONS ON RESEARCH, DEVELOPMENT,
10 AND DEMONSTRATION PROGRAM.—

11 “(1) SECTION 311(a).—From the amounts
12 available in the Fund, not more than the following
13 amounts may be used for the purposes of section
14 311(a) of this title (relating to hazardous substance
15 research, demonstration, and training activities):

16 “(A) For fiscal year 1999, \$40,000,000.

17 “(B) For fiscal year 2000, \$50,000,000.

18 “(C) For fiscal year 2001, \$55,000,000.

19 “(D) For fiscal year 2002, \$55,000,000.

20 “(E) For fiscal year 2003, \$55,000,000.

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

24 “(2) SECTION 311(d).—For each of the fiscal
25 years 1999, 2000, 2001, 2002, and 2003, not more

1 than \$5,000,000 of the amounts available in the
2 Fund may be used for the purposes of section
3 311(d) of this title (relating to university hazardous
4 substance research centers).”.

5 **SEC. 805. AUTHORIZATION OF APPROPRIATIONS FROM**
6 **GENERAL REVENUES.**

7 (a) AUTHORIZATION.—Section 111(p)(1) is amended
8 to read as follows:

9 “(1) IN GENERAL.—The following sums are au-
10 thORIZED to be appropriated, out of any money in the
11 Treasury not otherwise appropriated, to the Hazard-
12 ous Substance Superfund:

13 “(A) For fiscal year 1999, \$250,000,000.

14 “(B) For fiscal year 2000, \$250,000,000.

15 “(C) For fiscal year 2001, \$250,000,000.

16 “(D) For fiscal year 2002, \$250,000,000.

17 “(E) For fiscal year 2003, \$250,000,000.

18 In addition, there is authorized to be appropriated to
19 the Hazardous Substance Superfund for each fiscal
20 year an amount equal to so much of the aggregate
21 amount authorized to be appropriated under this
22 subsection as has not been appropriated before the
23 beginning of the fiscal year involved.”.

24 (b) REPEAL OF DUPLICATIVE AUTHORIZATION.—(1)
25 Subsection (b) of section 517 of the Superfund Amend-

1 ments and Reauthorization Act (26 U.S.C. 9507 note) is
2 hereby repealed.

3 (2) Section 9507(a)(2) of the Internal Revenue Code
4 of 1986 is amended by striking out “section 517(b) of the
5 Superfund Revenue Act of 1986” and inserting in lieu
6 thereof “section 111(p) of the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9611(p))”.

9 **SEC. 806. ADDITIONAL LIMITATIONS.**

10 Section 111 is amended by adding after subsection
11 (p) the following new subsections:

12 “(q) CITIZEN INFORMATION AND ACCESS OF-
13 FICES.—For each of the fiscal years 1999, 2000, 2001,
14 2002, and 2003, not more than \$25,000,000 of the
15 amounts available in the Fund may be used for the pur-
16 poses of section 117(e) of this Act (relating to Waste Site
17 Information Offices).”.

18 **SEC. 807. USES OF THE FUND.**

19 Section 111(a) is amended by adding after paragraph
20 (7), as added by this subtitle, the following new para-
21 graph:

22 “(8) REIMBURSEMENT OF POTENTIALLY RE-
23 SPONSIBLE PARTY COSTS.—If a potentially respon-
24 sible party and the Administrator enter into a settle-
25 ment under this Act in which the Administrator is

1 reimbursed for its response costs, and if the Admin-
2 istrator determines, through a Federal audit of re-
3 sponse the costs, that costs for which the Adminis-
4 trator was reimbursed—

5 “(A) are unallowable due to contractor
6 fraud;

7 “(B) are unallowable under the Federal
8 Acquisition Regulation; or

9 “(C) should be adjusted due to routine
10 contract and Environmental Protection Agency
11 response cost audit procedures;

12 then the Administrator is authorized to use the fund
13 to reimburse a potentially responsible party for any
14 costs identified under subparagraph (A), (B), or (C)
15 of this paragraph.”.

16 **SEC. 808. WORKER TRAINING AND EDUCATION GRANTS.**

17 Section 111(c)(12) (42 U.S.C. 9611(c)(12)) is
18 amended—

19 (1) by striking “\$10,000,000” and inserting
20 “\$40,000,000”; and

21 (2) by striking “and 1994” and inserting “,
22 1994, 1998, 1999, 2000, 2001, 2002, and 2003”.

1 **TITLE IX—MISCELLANEOUS**

2 **SEC. 901. SMALL BUSINESS OMBUDSMAN.**

3 The Administrator of the Environmental Protection
4 Agency shall establish a small business Superfund assist-
5 ance section within the small business ombudsman office
6 at the Environmental Protection Agency. Such section
7 shall carry out the following functions:

8 (1) Act as a clearinghouse of information for
9 small businesses regarding the Comprehensive Envi-
10 ronmental Response, Compensation, and Liability
11 Act of 1980. Such information shall be comprehen-
12 sible to a lay person and shall include information
13 regarding the allocation process under section 128 of
14 such Act, requirements and procedures for expedited
15 settlements pursuant to section 122(g) of such Act,
16 de minimis and de micromis status, and ability-to-
17 pay procedures.

18 (2) Provide general advice and assistance to
19 small businesses as to their questions and problems
20 concerning the allocation and settlement processes,
21 except that such advice and assistance shall not in-
22 clude any legal advice as to liability or any other
23 legal representation. The ombudsman shall not par-
24 ticipate in the allocation process.

1 sponsible party may request similar consideration, in the
2 Administrator’s discretion. Nothing in this subparagraph
3 shall affect the responsibility of the Administrator to
4 schedule and oversee the conduct of remedial action so as
5 to assure protection of human health and the environ-
6 ment.”.

7 **SEC. 903. REPORT AND OVERSIGHT REQUIREMENTS.**

8 (a) **SUBMISSION TO STATE GOVERNORS.**—Section
9 301(h)(1) of the Comprehensive Environmental Response,
10 Compensation, and Liability Act of 1980 (42 U.S.C.
11 9651(h)(1)) is amended in the matter preceding subpara-
12 graph (A) by striking “to Congress of such Agency” and
13 inserting “of such Agency to Congress and the Governor
14 of each State”.

15 (b) **PROGRESS REPORT.**—Section 301(h)(1)(A) is
16 amended to read as follows:

17 “(A) A progress report of accomplishments
18 and expenditures on a State-by-State basis, in-
19 cluding—

20 “(i) a statement of the number of
21 completed records of decision, removal ac-
22 tions, remedial actions, and enforcement
23 actions; and

24 “(ii) a statement of—

1 “(I) the aggregate amount ex-
2 pended in each State;

3 “(II) the amount expended in
4 each State for site investigation and
5 cleanup activities;

6 “(III) the amount expended in
7 each State for non site-specific costs;
8 and

9 “(IV) the amount expended for
10 enforcement actions and cost recovery
11 activities.”.

12 (c) OTHER REPORT CONTENTS.—Section 301(h)(1)
13 is further amended—

14 (1) in subparagraph (B), by striking “such
15 study” and inserting “removal and remedial action”;
16 and

17 (2) in subparagraph (C), by striking “study”
18 and inserting “removal action and remedial action”.

19 (d) RESPONSE TO STATE COMMENTS BY EPA.—Sec-
20 tion 301(h) is amended by adding at the end the following:

21 “(4) RESPONSE TO STATE COMMENTS BY
22 EPA.—The Administrator of the Environmental Pro-
23 tection Agency shall respond in writing to any com-
24 ments submitted to the Administrator by a State re-
25 garding reports developed under this subsection.”.

1 **SEC. 904. REIMBURSEMENT TO STATE AND LOCAL GOVERN-**
2 **MENTS.**

3 (a) AMENDMENT OF SECTION 123.—Section 123 of
4 the Comprehensive Environmental Response, Compensa-
5 tion, and Liability Act of 1980 (42 U.S.C. 9623) is
6 amended to read as follows:

7 **“SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOV-**
8 **ERNMENTS.**

9 “(a) APPLICATION.—Any State or general purpose
10 unit of local government for a political subdivision of a
11 State that is affected by a release or threatened release
12 at any facility may apply to the President for reimburse-
13 ment under this section.

14 “(b) REIMBURSEMENT.—

15 “(1) EMERGENCY RESPONSE ACTIONS.—The
16 President is authorized to reimburse States and local
17 community authorities for expenses incurred (before
18 or after the enactment of the Superfund Improve-
19 ment Act of 1998) in carrying out emergency re-
20 sponse actions necessary to prevent or mitigate in-
21 jury to human health or the environment associated
22 with the release or threatened release of any hazard-
23 ous substance or pollutant or contaminant. Such ac-
24 tions may include, where appropriate, security fenc-
25 ing to limit access, cleanup of illicit drug labora-
26 tories, response to fires and explosions, and other

1 measures that require immediate response at the
2 State or local level.

3 “(2) STATE OR LOCAL FUNDS NOT SUP-
4 PLANTED.—Reimbursement under this section shall
5 not supplant State or local funds normally provided
6 for response.

7 “(c) AMOUNT.—(1) The amount of any reimburse-
8 ment to a local authority under subsection (b)(1) may not
9 exceed \$25,000 for a single response. The reimbursement
10 under this section with respect to a single facility shall
11 be limited to the units of local government having jurisdic-
12 tion over the political subdivision in which the facility is
13 located.

14 “(2) The amount of any reimbursement to a State
15 under subsection (b)(1) may not exceed \$50,000 for a sin-
16 gle response. The reimbursement under this section with
17 respect to a single facility shall be limited to the State
18 in which the facility is located.

19 “(3) The total amount made available to State and
20 local governments under subsection (b)(1) may not exceed
21 \$50,000 for a single response.

22 “(d) PROCEDURE.—Reimbursements authorized pur-
23 suant to this section shall be in accordance with rules pro-
24 mulgated by the Administrator.”.

1 (b) AMENDMENT OF SECTION 111.—Paragraph (11)
2 of section 111(c) of such Act is amended—

3 (1) by striking “LOCAL GOVERNMENT REIM-
4 BURSEMENT.—” and inserting in lieu thereof
5 “STATE AND LOCAL GOVERNMENT REIMBURSE-
6 MENT.—(A)”; and

7 (2) by adding at the end the following new sub-
8 paragraph:

9 “(B) Reimbursements to States under section
10 123, except that no State may receive more than
11 \$2,000,000 in any one fiscal year.”.

12 (c) DEADLINE FOR REGULATIONS.—The Adminis-
13 trator of Environmental Protection Agency shall promul-
14 gate any regulations necessary to implement section 123
15 of the Comprehensive Environmental Response, Com-
16 pensation, and Liability Act of 1980 (42 U.S.C. 9623),
17 as amended by subsection (a), not later than 24 months
18 after the date of the enactment of this Act.

19 **TITLE X—5-YEAR EXTENSION OF**
20 **HAZARDOUS SUBSTANCE**
21 **SUPERFUND**

22 **SEC. 1001. EXTENSION OF HAZARDOUS SUBSTANCE SUPER-**
23 **FUND.**

24 (a) EXTENSION OF TAXES.—

1 (1) Paragraph (1) of section 59A(e) of the In-
2 ternal Revenue Code of 1986 is amended to read as
3 follows:

4 “(1) IN GENERAL.—The tax imposed by this
5 section shall apply to taxable years beginning after
6 December 31, 1998, and before January 1, 2004.”

7 (2) Paragraph (1) of section 4611(e) of such
8 Code is amended to read as follows:

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (2), the Hazardous Substance Superfund fi-
11 nancing rate under this section shall apply after De-
12 cember 31, 1998, and before January 1, 2004.”

13 (3) Paragraph (2) of section 4611(e) of such
14 Code is amended—

15 (A) by striking “1993” and inserting
16 “2001”,

17 (B) by striking “1994” each place it ap-
18 pears and inserting “2002”, and

19 (C) by striking “1995” each place it ap-
20 pears and inserting “2003”.

21 (b) INCREASE IN AGGREGATE TAX WHICH MAY BE
22 COLLECTED.—Paragraph (3) of section 4611(e) of such
23 Code is amended by striking “\$11,970,000,000” each
24 place it appears and inserting “\$22,000,000,000” and by

1 striking “December 31, 1995” and inserting “December
2 31, 2003”.

3 (c) EXTENSION OF REPAYMENT DEADLINE FOR
4 SUPERFUND BORROWING.—Subparagraph (B) of section
5 9507(d)(3) of such Code is amended by striking “Decem-
6 ber 31, 1995” and inserting “December 31, 2003”.

7 (d) TRUST FUND PURPOSES.—Paragraph (1) of sec-
8 tion 9507(c) of such Code is amended by striking subpara-
9 graphs (A) and (B) and inserting the following new sub-
10 paragraphs:

11 “(A) to carry out the purposes specified in
12 subsections (b), (c), and (d) of section 111 of
13 CERCLA, or

14 “(B) hereafter authorized by a law which
15 does not authorize the expenditure out of the
16 Superfund for a general purpose not covered by
17 subparagraph (A).”

18 (e) COORDINATION WITH OTHER PROVISIONS.—
19 Paragraph (2) of section 9507(e) of such Code is amended
20 by striking “CERCLA” and all that follows through
21 “Acts)” and inserting “CERCLA, the Superfund Amend-
22 ments and Reauthorization Act of 1986, and the Super-
23 fund Improvement Act of 1998 (or in any amendment
24 made by any of such Acts)”.

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