

106TH CONGRESS
2D SESSION

S. 2590

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

IN THE SENATE OF THE UNITED STATES

MAY 18, 2000

Mr. VOINOVICH introduced the following bill; which was read twice and
referred to the Committee on Environment and Public Works

A BILL

To reauthorize and amend the Comprehensive Environmental
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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Brownfields Revitalization Act of 2000”.

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

Sec. 1. Short title; table of contents.

TITLE I—BROWNFIELDS REVITALIZATION

Sec. 101. Brownfields.

TITLE II—STATE RESPONSE PROGRAMS

Sec. 201. State response programs.
 Sec. 202. State cost share.

TITLE III—PROPERTY CONSIDERATIONS

Sec. 301. Contiguous properties.
 Sec. 302. Prospective purchasers and windfall liens.
 Sec. 303. Safe harbor innocent landholders.

TITLE IV—FEDERAL ENTITIES AND FACILITIES

Sec. 401. Applicability of law; immunity.

1 **TITLE I—BROWNFIELDS** 2 **REVITALIZATION**

3 **SEC. 101. BROWNFIELDS.**

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

8 **“SEC. 127. BROWNFIELDS.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) BROWNFIELD FACILITY.—

11 “(A) IN GENERAL.—The term ‘brownfield
 12 facility’ means real property, the expansion or
 13 redevelopment of which is complicated by the
 14 presence or potential presence of a hazardous
 15 substance.

16 “(B) EXCLUSIONS.—The term ‘brownfield
 17 facility’ does not include—

18 “(i) any portion of real property that,
 19 as of the date of submission of an applica-
 20 tion for assistance under this section, is

1 the subject of an ongoing removal under
2 this title;

3 “(ii) any portion of real property that
4 has been listed on the National Priorities
5 List or is proposed for listing as of the
6 date of the submission of an application
7 for assistance under this section;

8 “(iii) any portion of real property with
9 respect to which cleanup work is pro-
10 ceeding in substantial compliance with the
11 requirements of an administrative order on
12 consent, or judicial consent decree that has
13 been entered into, or a permit issued by,
14 the United States or a duly authorized
15 State under this Act, the Solid Waste Dis-
16 posal Act (42 U.S.C. 6901 et seq.), section
17 311 of the Federal Water Pollution Con-
18 trol Act (33 U.S.C. 1321), the Toxic Sub-
19 stances Control Act (15 U.S.C. 2601 et
20 seq.), or the Safe Drinking Water Act (42
21 U.S.C. 300f et seq.);

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

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

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

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

6 “(v) a portion of a facility, for which
7 portion assistance for response activity has
8 been obtained under subtitle I of the Solid
9 Waste Disposal Act (42 U.S.C. 6991 et
10 seq.) from the Leaking Underground Stor-
11 age Tank Trust Fund established under
12 section 9508 of the Internal Revenue Code
13 of 1986.

14 “(C) FACILITIES OTHER THAN
15 BROWNFIELD FACILITIES.—That a facility may
16 not be a brownfield facility within the meaning
17 of subparagraph (A) has no effect on the eligi-
18 bility of the facility for assistance under any
19 provision of Federal law other than this section.

20 “(2) ELIGIBLE ENTITY.—

21 “(A) IN GENERAL.—The term ‘eligible en-
22 tity’ means—

23 “(i) a general purpose unit of local
24 government;

1 “(ii) a land clearance authority or
2 other quasi-governmental entity that oper-
3 ates under the supervision and control of
4 or as an agent of a general purpose unit
5 of local government;

6 “(iii) a government entity created by
7 a State legislature;

8 “(iv) a regional council or group of
9 general purpose units of local government;

10 “(v) a redevelopment agency that is
11 chartered or otherwise sanctioned by a
12 State;

13 “(vi) a State; and

14 “(vii) an Indian Tribe.

15 “(B) EXCLUSION.—The term ‘eligible enti-
16 ty’ does not include any entity that is not in
17 substantial compliance with the requirements of
18 an administrative order on consent, judicial
19 consent decree that has been entered into, or a
20 permit issued by, the United States or a duly
21 authorized State under this Act, the Solid
22 Waste Disposal Act (42 U.S.C. 6901 et seq.),
23 the Federal Water Pollution Control Act (33
24 U.S.C. 1251 et seq.), the Toxic Substances
25 Control Act (15 U.S.C. 2601 et seq.), or the

1 Safe Drinking Water Act (42 U.S.C. 300f et
2 seq.) with respect to any portion of real prop-
3 erty that is the subject of the administrative
4 order on consent, judicial consent decree, or
5 permit.

6 “(3) SECRETARY.—The term ‘Secretary’ means
7 the Secretary of Housing and Urban Development.

8 “(b) BROWNFIELD SITE CHARACTERIZATION AND
9 ASSESSMENT GRANT PROGRAM.—

10 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
11 ministrator shall establish a program to provide
12 grants for the site characterization and assessment
13 of brownfield facilities.

14 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
15 AND ASSESSMENT AND RESPONSE ACTIONS.—

16 “(A) IN GENERAL.—On approval of an ap-
17 plication made by an eligible entity, the Admin-
18 istrator may make grants to the eligible entity
19 to be used for the site characterization and as-
20 sessment of 1 or more brownfield facilities.

21 “(B) SITE CHARACTERIZATION AND AS-
22 SESSMENT.—A site characterization and assess-
23 ment carried out with the use of a grant under
24 subparagraph (A)—

1 “(i) shall be performed in accordance
2 with section 101(35)(B); and

3 “(ii) may include a process to identify
4 or inventory potential brownfield facilities.

5 “(c) BROWNFIELD REMEDIATION GRANT PRO-
6 GRAM.—

7 “(1) ESTABLISHMENT OF PROGRAM.—In con-
8 sultation with the Secretary, the Administrator shall
9 establish a program to provide grants to be used for
10 response actions (excluding site characterization and
11 assessment) at 1 or more brownfield facilities.

12 “(2) ASSISTANCE FOR RESPONSE ACTIONS.—
13 On approval of an application made by an eligible
14 entity, the Administrator, in consultation with the
15 Secretary, may make grants to the eligible entity to
16 be used for response actions (excluding site charac-
17 terization and assessment) at 1 or more brownfield
18 facilities.

19 “(d) GENERAL PROVISIONS.—

20 “(1) MAXIMUM GRANT AMOUNT.—

21 “(A) IN GENERAL.—The total of all grants
22 under subsections (b) and (c) shall not exceed,
23 with respect to any individual brownfield facility
24 covered by the grants, \$350,000.

1 “(B) WAIVER.—The Administrator may
 2 waive the \$350,000 limitation under subpara-
 3 graph (A) based on the anticipated level of con-
 4 tamination, size, or status of ownership of the
 5 facility.

6 “(2) PROHIBITION.—

7 “(A) IN GENERAL.—No part of a grant
 8 under this section may be used for payment of
 9 penalties, fines, or administrative costs.

10 “(B) EXCLUSIONS.—For the purposes of
 11 subparagraph (A), the term ‘administrative
 12 cost’ does not include the cost of—

13 “(i) investigation and identification of
 14 the extent of contamination;

15 “(ii) design and performance of a re-
 16 sponse action; or

17 “(iii) monitoring of natural resources.

18 “(3) AUDITS.—The Inspector General of the
 19 Environmental Protection Agency shall conduct such
 20 reviews or audits of grants under this section as the
 21 Inspector General considers necessary to carry out
 22 the objectives of this section. Audits shall be con-
 23 ducted in accordance with the auditing procedures of
 24 the General Accounting Office, including chapter 75
 25 of title 31, United States Code.

1 “(4) LEVERAGING.—An eligible entity that re-
 2 ceives a grant under this section may use the funds
 3 for part of a project at a brownfield facility for
 4 which funding is received from other sources, but
 5 the grant shall be used only for the purposes de-
 6 scribed in subsection (b) or (c).

7 “(5) AGREEMENTS.—Each grant made under
 8 this section shall be subject to an agreement that—

9 “(A) requires the eligible entity to comply
 10 with all applicable State laws (including regula-
 11 tions);

12 “(B) requires that the eligible entity shall
 13 use the grant exclusively for purposes specified
 14 in subsection (b) or (c);

15 “(C) in the case of an application by an el-
 16 igible entity under subsection (c), requires pay-
 17 ment by the eligible entity of a matching share
 18 (which may be in the form of a contribution of
 19 labor, material, or services) of at least 20 per-
 20 cent of the costs of the response action for
 21 which the grant is made, is from non-Federal
 22 sources of funding;

23 “(D) contains such other terms and condi-
 24 tions as the Administrator determines to be
 25 necessary to carry out this section.

1 “(e) GRANT APPLICATIONS.—

2 “(1) SUBMISSION.—

3 “(A) IN GENERAL.—Any eligible entity
4 may submit an application to the Adminis-
5 trator, through a regional office of the Environ-
6 mental Protection Agency and in such form as
7 the Administrator may require, for a grant
8 under this section for 1 or more brownfield fa-
9 cilities.

10 “(B) COORDINATION.—In developing ap-
11 plication requirements, the Administrator shall
12 coordinate with the Secretary and other Federal
13 agencies and departments, such that eligible en-
14 tities under this section are made aware of
15 other available Federal resources.

16 “(C) GUIDANCE.—The Administrator shall
17 publish guidance to assist eligible entities in ob-
18 taining grants under this section.

19 “(2) APPROVAL.—The Administrator, in con-
20 sultation with the Secretary, shall make an annual
21 evaluation of each application received during the
22 prior fiscal year and make grants under this section
23 to eligible entities that submit applications during
24 the prior year and that the Administrator, in con-
25 sultation with the Secretary, determines have the

1 highest rankings under the ranking criteria estab-
2 lished under paragraph (3).

3 “(3) RANKING CRITERIA.—The Administrator,
4 in consultation with the Secretary, shall establish a
5 system for ranking grant applications that includes
6 the following criteria:

7 “(A) The extent to which a grant will stim-
8 ulate the availability of other funds for environ-
9 mental remediation and subsequent redevelop-
10 ment of the area in which the brownfield facili-
11 ties are located.

12 “(B) The potential of the development plan
13 for the area in which the brownfield facilities
14 are located to stimulate economic development
15 of the area on completion of the cleanup, such
16 as the following:

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

20 “(ii) The demonstration by applicants
21 of the intent and ability to create new or
22 expand existing business, employment,
23 recreation, or conservation opportunities
24 on completion of any necessary response
25 action.

1 “(iii) If commercial redevelopment is
2 planned, the estimated additional full-time
3 employment opportunities and tax revenues
4 expected to be generated by economic rede-
5 velopment in the area in which a
6 brownfield facility is located.

7 “(iv) The estimated extent to which a
8 grant would facilitate the identification of
9 or facilitate a reduction of health and envi-
10 ronmental risks.

11 “(v) The financial involvement of the
12 State and local government in any re-
13 sponse action planned for a brownfield fa-
14 cility and the extent to which the response
15 action and the proposed redevelopment is
16 consistent with any applicable State or
17 local community economic development
18 plan.

19 “(vi) The extent to which the site
20 characterization and assessment or re-
21 sponse action and subsequent development
22 of a brownfield facility involves the active
23 participation and support of the local com-
24 munity.

1 “(vii) The extent to which the appli-
2 cant coordinated with the State agency.

3 “(viii) Such other factors as the Ad-
4 ministrator considers appropriate to carry
5 out the purposes of this section.

6 “(C) The extent to which a grant will en-
7 able the creation of or addition to parks, green-
8 ways, or other recreational property.

9 “(D) The extent to which a grant will meet
10 the needs of a community that has an inability
11 to draw on other sources of funding for environ-
12 mental remediation and subsequent redevelop-
13 ment of the area in which a brownfield facility
14 is located because of the small population or
15 low income of the community.”.

16 **TITLE II—STATE RESPONSE** 17 **PROGRAMS**

18 **SEC. 201. STATE RESPONSE PROGRAMS.**

19 (a) DEFINITIONS.—Section 101 of the Comprehen-
20 sive Environmental Response, Compensation, and Liabil-
21 ity Act of 1980 (42 U.S.C. 9601) is amended by adding
22 at the end the following:

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

1 date of enactment of this paragraph, or a tenant of
2 such a person, that establishes each of the following
3 by a preponderance of the evidence:

4 “(A) DISPOSAL PRIOR TO ACQUISITION.—

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

8 “(B) INQUIRIES.—

9 “(i) IN GENERAL.—The person made
10 all appropriate inquiries into the previous
11 ownership and uses of the facility and the
12 facility’s real property in accordance with
13 generally accepted good commercial and
14 customary standards and practices.

15 “(ii) STANDARDS AND PRACTICES.—

16 The standards and practices referred to in
17 paragraph (35)(B)(ii) or those issued or
18 adopted by the Administrator under that
19 paragraph shall be considered to satisfy
20 the requirements of this subparagraph.

21 “(iii) RESIDENTIAL USE.—In the case

22 of property for residential or other similar
23 use purchased by a nongovernmental or
24 noncommercial entity, a facility inspection
25 and title search that reveal no basis for

1 further investigation shall be considered to
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 each hazardous sub-
10 stance found at the facility by taking reasonable
11 steps to stop any continuing release, prevent
12 any threatened future release and prevent or
13 limit human or natural resource exposure to
14 any previously released hazardous substance.

15 “(E) COOPERATION, ASSISTANCE, AND AC-
16 CESS.—The person has not failed to substan-
17 tially comply with the requirement stated in
18 section 122(p)(2)(H) with respect to the facil-
19 ity.

20 “(F) NO AFFILIATION.—The person is not
21 affiliated through any familial or corporate rela-
22 tionship with any person that is or was a party
23 potentially responsible for response costs at the
24 facility.

1 “(40) FACILITY SUBJECT TO STATE CLEAN-
2 UP.—The term ‘facility subject to State cleanup’
3 means a facility other than a facility—

4 “(A) that is listed on the National Prior-
5 ities List;

6 “(B) that is proposed for listing on the
7 National Priorities List, based on a determina-
8 tion by the Administrator published in the Fed-
9 eral Register that the facility qualifies for list-
10 ing under section 105; or

11 “(C) for which an administrative order on
12 consent or judicial consent decree requiring re-
13 sponse action has been entered into by the
14 United States with respect to the facility
15 under—

16 “(i) this Act;

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

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

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

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

1 “(41) QUALIFYING STATE RESPONSE PROGRAM.—

2 The term ‘qualifying State response program’ means
3 a State program that includes the elements de-
4 scribed in section 128(b).”.

5 (b) QUALIFYING STATE RESPONSE PROGRAMS.—

6 Title I of the Comprehensive Environmental Response,
7 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
8 et seq.) (as amended by section 101(a)) is amended by
9 adding at the end the following:

10 **“SEC. 128. QUALIFYING STATE RESPONSE PROGRAMS.**

11 “(a) ASSISTANCE TO STATES.—The Administrator
12 shall provide grants to States to establish and expand
13 qualifying State response programs that include the ele-
14 ments listed in subsection (b).

15 “(b) ELEMENTS.—The elements of a qualifying State
16 response program are the following:

17 “(1) Oversight and enforcement authorities or
18 other mechanisms that are adequate to ensure
19 that—

20 “(A) response actions will protect human
21 health and the environment and be conducted
22 in accordance with applicable Federal and State
23 law; and

24 “(B) in the case of a voluntary response
25 action, if the person conducting the voluntary

1 response action fails to complete the necessary
2 response activities, including operation and
3 maintenance or long-term monitoring activities,
4 the response activities will be completed as nec-
5 essary to protect human health and the environ-
6 ment.

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

11 “(3) Mechanisms for approval of a response ac-
12 tion plan, or a requirement for certification or simi-
13 lar documentation from the State to the person con-
14 ducting a response action indicating that the re-
15 sponse is complete.

16 “(c) ENFORCEMENT IN CASES OF A RELEASE SUB-
17 JECT TO A STATE PLAN.—

18 “(1) ENFORCEMENT.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), in the case of a release or
21 threatened release of a hazardous substance at
22 a facility subject to State cleanup, neither the
23 President nor any other person, except the
24 State, may use any authority under this Act to
25 take an administrative or enforcement action

1 against any person regarding any matter that is
2 within the scope of a response action—

3 “(i) that is being conducted or has
4 been completed under State law; or

5 “(ii) at a site, the cleanup of which
6 shall be subject to State oversight.

7 “(B) EXCEPTIONS.—The President may
8 bring an enforcement action under this Act
9 with respect to a facility described in subpara-
10 graph (A) if—

11 “(i) the enforcement action is author-
12 ized under section 104;

13 “(ii) the State requests that the Presi-
14 dent provide assistance in the performance
15 of a response action and that the enforce-
16 ment bar in subparagraph (A) be lifted;

17 “(iii) at a facility at which response
18 activities are ongoing the Administrator—

19 “(I) makes a written determina-
20 tion that the State is unwilling or un-
21 able to take appropriate action, after
22 the Administrator has provided the
23 Governor notice and an opportunity to
24 cure; and

1 “(II) the Administrator deter-
2 mines that the release or threat of re-
3 lease constitutes a public health or en-
4 vironmental emergency under section
5 104(a)(4);

6 “(iv) the Administrator determines
7 that contamination has migrated across a
8 State line, resulting in the need for further
9 response action to protect human health or
10 the environment; or

11 “(v) in the case of a facility at which
12 all response actions have been completed,
13 the Administrator—

14 “(I) makes a written determina-
15 tion that the State is unwilling or un-
16 able to take appropriate action, after
17 the Administrator has provided the
18 Governor notice and an opportunity to
19 cure; and

20 “(II) makes a written determina-
21 tion that the facility presents a sub-
22 stantial risk that requires further re-
23 mediation to protect human health or
24 the environment, as evidenced by—

1 “(aa) newly discovered infor-
2 mation regarding contamination
3 at the facility;

4 “(bb) the discovery that
5 fraud was committed in dem-
6 onstrating attainment of stand-
7 ards at the facility;

8 “(cc) the failure of the rem-
9 edy to prepare a site for the in-
10 tended use of the site;

11 “(dd) a structural failure of
12 the remedy; or

13 “(ee) a change in land use
14 giving rise to a clear threat of ex-
15 posure to which a State is unwill-
16 ing to respond.

17 “(C) EPA NOTIFICATION.—

18 “(i) IN GENERAL.—In the case of a
19 facility at which there is a release or
20 threatened release of a hazardous sub-
21 stance, pollutant, or contaminant and for
22 which the Administrator intends to under-
23 take an administrative or enforcement ac-
24 tion, the Administrator, prior to taking the
25 administrative or enforcement action, shall

1 notify the State of the action the Adminis-
 2 trator intends to take and wait for a pe-
 3 riod of 30 days for an acknowledgment
 4 from the State under clause (ii).

5 “(ii) STATE RESPONSE.—Not later
 6 than 30 days after receiving a notice from
 7 the Administrator under clause (i), the
 8 State shall notify the Administrator if the
 9 facility contains a site, the cleanup of
 10 which—

11 “(I) is being conducted or has
 12 been completed under State law; or

13 “(II) shall be subject to State
 14 oversight.

15 “(iii) PUBLIC HEALTH OR ENVIRON-
 16 MENTAL EMERGENCY.—If the Adminis-
 17 trator finds that a release or threatened
 18 release constitutes a public health or envi-
 19 ronmental emergency under section
 20 104(a)(4), the Administrator may take ap-
 21 propriate action immediately after giving
 22 notification under clause (i) without wait-
 23 ing for State acknowledgment.

24 “(2) COST OR DAMAGE RECOVERY ACTIONS.—

25 Paragraph (1) shall not apply to an action brought

1 by a State, Indian Tribe, or general purpose unit of
2 local government for the recovery of costs or dam-
3 ages under this Act.

4 “(3) SAVINGS PROVISION.—

5 “(A) EXISTING AGREEMENTS.—A memo-
6 randum of agreement, memorandum of under-
7 standing, or similar agreement between the
8 President and a State or Indian tribe defining
9 Federal and State or tribal response action re-
10 sponsibilities that was in effect as of the date
11 of enactment of this section with respect to a
12 facility to which paragraph (1)(C) does not
13 apply shall remain effective until the agreement
14 expires in accordance with the terms of the
15 agreement.

16 “(B) NEW AGREEMENTS.—Nothing in this
17 subsection precludes the President from enter-
18 ing into an agreement with a State or Indian
19 tribe regarding responsibility at a facility to
20 which paragraph (1)(C) does not apply.”.

21 **SEC. 202. STATE COST SHARE.**

22 Section 104(c) of the Comprehensive Environmental
23 Response, Compensation, and Liability Act of 1980 (42
24 U.S.C. 9604(c)) is amended—

1 (1) by striking “(c)(1) Unless” and inserting
2 the following:

3 “(c) MISCELLANEOUS LIMITATIONS AND REQUIRE-
4 MENTS.—

5 “(1) CONTINUANCE OF OBLIGATIONS FROM
6 FUND.—Unless”;

7 (2) in paragraph (1), by striking “taken obliga-
8 tions” and inserting “taken, obligations”;

9 (3) by striking “(2) The President” and insert-
10 ing the following:

11 “(2) CONSULTATION.—The President”; and

12 (4) by striking paragraph (3) and inserting the
13 following:

14 “(3) STATE COST SHARE.—

15 “(A) IN GENERAL.—The Administrator
16 shall not provide any funding for remedial ac-
17 tion under this section unless the State in
18 which the release occurs first enters into a con-
19 tract or cooperative agreement with the Admin-
20 istrator that provides assurances that the State
21 will pay, in cash or through in-kind contribu-
22 tions, 10 percent of—

23 “(i) the remedial action costs; and

24 “(ii) operation and maintenance costs.

1 “(B) ACTIVITIES WITH RESPECT TO
2 WHICH STATE COST SHARE IS REQUIRED.—No
3 State cost share shall be required except for re-
4 medial actions under this section.

5 “(C) INDIAN TRIBES.—The requirements
6 of this paragraph shall not apply in the case of
7 remedial action to be taken on land or water—

8 “(i) held by an Indian Tribe;

9 “(ii) held by the United States in
10 trust for an Indian Tribe;

11 “(iii) held by a member of an Indian
12 Tribe (if the land or water is subject to a
13 trust restriction on alienation); or

14 “(iv) within the borders of an Indian
15 reservation.”.

16 **TITLE III—PROPERTY** 17 **CONSIDERATIONS**

18 **SEC. 301. CONTIGUOUS PROPERTIES.**

19 (a) IN GENERAL.—Section 107 of the Comprehensive
20 Environmental Response, Compensation, and Liability Act
21 of 1980 (42 U.S.C. 9607) is amended by adding at the
22 end the following:

23 “(o) CONTIGUOUS PROPERTIES.—

24 “(1) NOT CONSIDERED TO BE AN OWNER OR
25 OPERATOR.—

1 “(A) IN GENERAL.—A person that owns or
2 operates real property that is contiguous to or
3 otherwise similarly situated with respect to real
4 property on which there has been a release or
5 threatened release of a hazardous substance
6 and that is or may be contaminated by the re-
7 lease shall not be considered to be an owner or
8 operator of a vessel or facility under paragraph
9 (1) or (2) of subsection (a) solely by reason of
10 the contamination if—

11 “(i) the person did not cause, con-
12 tribute, or consent to the release or threat-
13 ened release;

14 “(ii) the person is not affiliated
15 through any familial or corporate relation-
16 ship with any person that is or was a party
17 potentially responsible for response costs at
18 the facility; and

19 “(iii) the person exercised appropriate
20 care with respect to each hazardous sub-
21 stance found at the facility by taking rea-
22 sonable steps to stop any continuing re-
23 lease, prevent any threatened future re-
24 lease and prevent or limit human or nat-

1 ural resource exposure to any previously
2 released hazardous substance.

3 “(B) GROUND WATER.—With respect to
4 hazardous substances in ground water beneath
5 a person’s property solely as a result of sub-
6 surface migration in an aquifer from a source
7 or sources outside the property, appropriate
8 care shall not require the person to conduct
9 ground water investigations or to install ground
10 water remediation systems.

11 “(2) COOPERATION, ASSISTANCE, AND AC-
12 CESS.—A party described in paragraph (1) may be
13 considered an owner or operator of a vessel or facil-
14 ity under paragraph (1) or (2) of subsection (a) if
15 the party has failed to substantially comply with the
16 requirement stated in section 122(p)(2)(H) with re-
17 spect to the facility.

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

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

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

1 (b) NATIONAL PRIORITIES LIST.—

2 (1) IN GENERAL.—Section 105 of the Com-
3 prehensive Environmental Response, Compensation,
4 and Liability Act of 1980 (42 U.S.C. 9605) is
5 amended—

6 (A) in subsection (a)(8)—

7 (i) in subparagraph (B), by inserting
8 “and” after the semicolon at the end; and

9 (ii) by adding at the end the fol-
10 lowing:

11 “(C) provision that in listing a facility on the
12 National Priorities List, the Administrator shall
13 not—

14 “(i) list the facility unless the Adminis-
15 trator first obtains concurrence for the listing
16 from the Governor of the State in which the fa-
17 cility is located; and

18 “(ii) include in a listing any parcel of real
19 property at which no release has actually oc-
20 curred, but to which a released hazardous sub-
21 stance, pollutant, or contaminant has migrated
22 in ground water that has moved through sub-
23 surface strata from another parcel of real estate
24 at which the release actually occurred, unless—

1 “(I) the ground water is in use as a
 2 public drinking water supply or was in
 3 such use at the time of the release; and

4 “(II) the owner or operator of the fa-
 5 cility is liable, or is affiliated with any
 6 other person that is liable, for any re-
 7 sponse costs at the facility, through any di-
 8 rect or indirect familial relationship, or any
 9 contractual, corporate, or financial rela-
 10 tionship other than that created by the in-
 11 struments by which title to the facility is
 12 conveyed or financed.”; and

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

14 “(h) LISTING OF PARTICULAR PARCELS.—

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

23 “(2) STATUTORY CONSTRUCTION.—Nothing in
 24 subsection (a)(8)(C) limits the Administrator’s au-
 25 thority under section 104 to obtain access to and

1 undertake response actions at any parcel of real
 2 property to which a released hazardous substance,
 3 pollutant, or contaminant has migrated in the
 4 ground water.”.

5 (2) REVISION OF NATIONAL PRIORITIES LIST.—
 6 Not later than 180 days after the date of enactment
 7 of this Act, the President shall revise the National
 8 Priorities List to conform with the amendments
 9 made by paragraph (1).

10 (c) CONFORMING AMENDMENT.—Section 107(a) of
 11 the Comprehensive Environmental Response, Compensa-
 12 tion, and Liability Act of 1980 (42 U.S.C. 9607) is
 13 amended by striking “of this section” and inserting “and
 14 the exemptions and limitations stated in this section”.

15 **SEC. 302. PROSPECTIVE PURCHASERS AND WINDFALL**
 16 **LIENS.**

17 Section 107 of the Comprehensive Environmental Re-
 18 sponse, Compensation, and Liability Act of 1980 (42
 19 U.S.C. 9607) (as amended by section 301(a)) is amended
 20 by adding at the end the following:

21 “(p) PROSPECTIVE PURCHASER AND WINDFALL
 22 LIEN.—

23 “(1) LIMITATION ON LIABILITY.—Notwith-
 24 standing subsection (a), a bona fide prospective pur-
 25 chaser whose potential liability for a release or

1 threatened release is based solely on the purchaser's
2 being considered to be an owner or operator of a
3 facility shall not be liable as long as the bona fide
4 prospective purchaser does not impede the perform-
5 ance of a response action or natural resource res-
6 toration.

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

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

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

21 “(B) FAIR MARKET VALUE.—The response
22 action increases the fair market value of the fa-
23 cility above the fair market value of the facility
24 that existed 180 days before the response action
25 was initiated.

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

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

4 “(A) shall not exceed the increase in fair
5 market value of the property attributable to the
6 response action at the time of a subsequent sale
7 or other disposition of the property;

8 “(B) shall arise at the time at which costs
9 are first incurred by the United States with re-
10 spect to a response action at the facility;

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

13 “(D) shall continue until the earlier of sat-
14 isfaction of the lien or recovery of all response
15 costs incurred at the facility.”.

16 **SEC. 303. SAFE HARBOR INNOCENT LANDHOLDERS.**

17 (a) AMENDMENT.—Section 101(35) of the Com-
18 prehensive Environmental Response, Compensation, and
19 Liability Act of 1980 (42 U.S.C. 9601(35)) is amended—

20 (1) in subparagraph (A)—

21 (A) in the matter that precedes clause (i),
22 by striking “deeds or” and inserting “deeds,
23 easements, leases, or”; and

24 (B) in the matter that follows clause (iii)—

1 (i) by striking “he” and inserting “the
2 defendant”; and

3 (ii) by striking the period at the end
4 and inserting “, has provided full coopera-
5 tion, assistance, and facility access to the
6 persons that are responsible for response
7 actions at the facility, including the co-
8 operation and access necessary for the in-
9 stallation, integrity, operation, and mainte-
10 nance of any complete or partial response
11 action at the facility, and has taken no ac-
12 tion that impeded the effectiveness or in-
13 tegrity of any institutional control em-
14 ployed under section 121 at the facility.”;
15 and

16 (2) by striking subparagraph (B) and inserting
17 the following:

18 “(B) REASON TO KNOW.—

19 “(i) ALL APPROPRIATE INQUIRIES.—
20 To establish that the defendant had no
21 reason to know of the matter described in
22 subparagraph (A)(i), the defendant must
23 show that—

24 “(I) at or prior to the date on
25 which the defendant acquired the fa-

1 cility, the defendant undertook all ap-
2 propriate inquiries into the previous
3 ownership and uses of the facility in
4 accordance with generally accepted
5 good commercial and customary
6 standards and practices; and

7 “(II) the defendant exercised ap-
8 propriate care with respect to each
9 hazardous substance found at the fa-
10 cility by taking reasonable steps to
11 stop any continuing release, prevent
12 any threatened future release and pre-
13 vent or limit human or natural re-
14 source exposure to any previously re-
15 leased hazardous substance.

16 “(ii) STANDARDS AND PRACTICES.—
17 The Administrator shall by regulation es-
18 tablish as standards and practices for the
19 purpose of clause (i)—

20 “(I) the American Society for
21 Testing and Materials (ASTM) Stand-
22 ard E1527–94, entitled ‘Standard
23 Practice for Environmental Site As-
24 sessments: Phase I Environmental
25 Site Assessment Process’; or

1 “(II) alternative standards and
2 practices under clause (iii).

3 “(iii) ALTERNATIVE STANDARDS AND
4 PRACTICES.—

5 “(I) IN GENERAL.—The Admin-
6 istrator may by regulation issue alter-
7 native standards and practices or des-
8 ignate standards developed by other
9 organizations than the American Soci-
10 ety for Testing and Materials after
11 conducting a study of commercial and
12 industrial practices concerning the
13 transfer of real property in the United
14 States.

15 “(II) CONSIDERATIONS.—In
16 issuing or designating alternative
17 standards and practices under sub-
18 clause (I), the Administrator shall
19 consider including each of the fol-
20 lowing:

21 “(aa) The results of an in-
22 quiry by an environmental pro-
23 fessional.

24 “(bb) Interviews with past
25 and present owners, operators,

1 and occupants of the facility and
2 the facility's real property for the
3 purpose of gathering information
4 regarding the potential for con-
5 tamination at the facility and the
6 facility's real property.

7 “(cc) Reviews of historical
8 sources, such as chain of title
9 documents, aerial photographs,
10 building department records, and
11 land use records to determine
12 previous uses and occupancies of
13 the real property since the prop-
14 erty was first developed.

15 “(dd) Searches for recorded
16 environmental cleanup liens, filed
17 under Federal, State, or local
18 law, against the facility or the fa-
19 cility's real property.

20 “(ee) Reviews of Federal,
21 State, and local government
22 records (such as waste disposal
23 records), underground storage
24 tank records, and hazardous
25 waste handling, generation, treat-

1 ment, disposal, and spill records,
2 concerning contamination at or
3 near the facility or the facility's
4 real property.

5 “(ff) Visual inspections of
6 the facility and facility's real
7 property and of adjoining prop-
8 erties.

9 “(gg) Specialized knowledge
10 or experience on the part of the
11 defendant.

12 “(hh) The relationship of
13 the purchase price to the value of
14 the property if the property was
15 uncontaminated.

16 “(ii) Commonly known or
17 reasonably ascertainable informa-
18 tion about the property.

19 “(jj) The degree of obvious-
20 ness of the presence or likely
21 presence of contamination at the
22 property, and the ability to detect
23 such contamination by appro-
24 priate investigation.

1 “(iv) SITE INSPECTION AND TITLE
 2 SEARCH.—In the case of property for resi-
 3 dential use or other similar use purchased
 4 by a nongovernmental or noncommercial
 5 entity, a facility inspection and title search
 6 that reveal no basis for further investiga-
 7 tion shall be considered to satisfy the re-
 8 quirements of this subparagraph.”.

9 (b) STANDARDS AND PRACTICES.—

10 (1) ESTABLISHMENT BY REGULATION.—The
 11 Administrator of the Environmental Protection
 12 Agency shall issue the regulation required by section
 13 101(35)(B)(ii) of the Comprehensive Environmental
 14 Response, Compensation, and Liability Act of 1980
 15 (as added by subsection (a)) not later than 1 year
 16 after the date of enactment of this Act.

17 (2) INTERIM STANDARDS AND PRACTICES.—
 18 Until the Administrator issues the regulation de-
 19 scribed in paragraph (1), in making a determination
 20 under section 101(35)(B)(i) of the Comprehensive
 21 Environmental Response, Compensation, and Liabil-
 22 ity Act of 1980 (as added by subsection (a)), there
 23 shall be taken into account—

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

1 (B) the relationship of the purchase price
 2 to the value of the property if the property was
 3 uncontaminated;

4 (C) commonly known or reasonably ascer-
 5 tainable information about the property;

6 (D) the degree of obviousness of the pres-
 7 ence or likely presence of contamination at the
 8 property; and

9 (E) the ability to detect the contamination
 10 by appropriate investigation.

11 **TITLE IV—FEDERAL ENTITIES** 12 **AND FACILITIES**

13 **SEC. 401. APPLICABILITY OF LAW; IMMUNITY.**

14 Section 120 of the Comprehensive Environmental Re-
 15 sponse, Compensation, and Liability Act of 1980 (42
 16 U.S.C. 9620) is amended—

17 (1) by striking the section heading and insert-
 18 ing the following:

19 **“SEC. 120. FEDERAL ENTITIES AND FACILITIES.”;**

20 (2) in subsection (a)—

21 (A) by striking paragraph (1) and insert-
 22 ing the following:

23 **“(1) IN GENERAL.—**

1 “(A) DEFINITION OF SERVICE CHARGES.—

2 In this paragraph, the term ‘service charge’
3 includes—

4 “(i) a fee or charge assessed in con-
5 nection with—

6 “(I) the processing or issuance of
7 a permit, renewal of a permit, or
8 amendment of a permit;

9 “(II) review of a plan, study, or
10 other document; or

11 “(III) inspection or monitoring of
12 a facility; and

13 “(ii) any other charge that is assessed
14 in connection with a State, interstate, or
15 local response program.

16 “(B) APPLICATION OF FEDERAL, STATE,
17 INTERSTATE, AND LOCAL LAW.—

18 “(i) IN GENERAL.—Each department,
19 agency, and instrumentality of the execu-
20 tive, legislative, or judicial branch of the
21 United States shall be subject to and shall
22 comply with this Act and all other Federal,
23 State, interstate, and local substantive and
24 procedural requirements and other provi-
25 sions of law relating to a response action

1 or restoration action or the management of
2 a hazardous waste, pollutant, or contami-
3 nant in the same manner, and to the same
4 extent, as any nongovernmental entity is
5 subject to those provisions of law.

6 “(ii) PROVISIONS INCLUDED.—The
7 provisions of law referred to in clause (i)
8 include—

9 “(I) a permit requirement;

10 “(II) a reporting requirement;

11 “(III) a provision authorizing in-
12 junctive relief (including such sanc-
13 tions as a court may impose to en-
14 force injunctive relief);

15 “(IV) sections 106 and 107 and
16 similar provisions of Federal, State,
17 or local law relating to enforcement
18 and liability for cleanup, reimburse-
19 ment of response costs, contribution,
20 and payment of damages;

21 “(V) a requirement to pay rea-
22 sonable service charges; and

23 “(VI) all administrative orders
24 and all civil and administrative pen-
25 alties and fines, regardless of whether

1 the penalties or fines are punitive or
2 coercive in nature or are imposed for
3 an isolated, intermittent, or con-
4 tinuing violation.

5 “(C) WAIVER OF IMMUNITY.—

6 “(i) IN GENERAL.—The United States
7 waives any immunity applicable to the
8 United States with respect to any provision
9 of law described in subparagraph (B).

10 “(ii) LIMITATION.—The waiver of sov-
11 ereign immunity under clause (i) does not
12 apply to the extent that a State law would
13 apply any standard or requirement to the
14 Federal department, agency, or instrumen-
15 tality in a manner that is more stringent
16 than the manner in which the standard or
17 requirement would apply to any other per-
18 son.

19 “(D) CIVIL AND CRIMINAL LIABILITY.—

20 “(i) INJUNCTIVE RELIEF.—Neither
21 the United States nor any agent, employee,
22 or officer of the United States shall be im-
23 mune or exempt from any process or sanc-
24 tion of any Federal or State court with re-
25 spect to the enforcement of injunctive re-

1 lief referred to in subparagraph
2 (B)(ii)(III).

3 “(ii) NO PERSONAL LIABILITY FOR
4 CIVIL PENALTY.—No agent, employee, or
5 officer of the United States shall be per-
6 sonally liable for any civil penalty under
7 any Federal or State law relating to a re-
8 sponse action or to management of a haz-
9 ardous substance, pollutant, or contami-
10 nant with respect to any act or omission
11 within the scope of the official duties of
12 the agent, employee, or officer.

13 “(iii) CRIMINAL LIABILITY.—An
14 agent, employee, or officer of the United
15 States shall be subject to any criminal
16 sanction (including a fine or imprison-
17 ment) under any Federal or State law re-
18 lating to a response action or to manage-
19 ment of a hazardous substance, pollutant,
20 or contaminant, but no department, agen-
21 cy, or instrumentality of the executive, leg-
22 islative, or judicial branch of the United
23 States shall be subject to any such sanc-
24 tion.

25 “(E) ENFORCEMENT.—

1 “(i) ABATEMENT ACTIONS.—The Ad-
 2 ministrator may issue an order under sec-
 3 tion 106 to any department, agency, or in-
 4 strumentality of the executive, legislative,
 5 or judicial branch of the United States.
 6 The Administrator shall initiate an admin-
 7 istrative enforcement action against such a
 8 department, agency, or instrumentality in
 9 the same manner and under the same cir-
 10 cumstances as an action would be initiated
 11 against any other person.

12 “(ii) CONSULTATION.—No adminis-
 13 trative order issued to a department, agen-
 14 cy, or instrumentality of the United States
 15 shall become final until the department,
 16 agency, or instrumentality has had the op-
 17 portunity to confer with the Administrator.

18 “(iii) USE OF PENALTIES AND
 19 FINES.—Unless a State law in effect on
 20 the date of enactment of this clause re-
 21 quires the funds to be used in a different
 22 manner, all funds collected by a State from
 23 the Federal Government as penalties or
 24 fines imposed for violation of a provision of
 25 law referred to in subparagraph (B) shall

1 be used by the State only for projects de-
 2 signed to improve or protect the environ-
 3 ment or to defray the costs of environ-
 4 mental protection or enforcement.

5 “(F) CONTRIBUTION.—A department,
 6 agency, or instrumentality of the United States
 7 shall have the right to contribution under sec-
 8 tion 113 if the department, agency, or instru-
 9 mentality resolves its liability under this Act.”;

10 (B) in the second sentence of paragraph
 11 (3), by inserting “(other than the indemnifica-
 12 tion requirements of section 119)” after “re-
 13 sponsibility”; and

14 (C) by striking paragraph (4); and
 15 (2) in subsection (e), by adding at the end the
 16 following:

17 “(7) STATE REQUIREMENTS.—Notwithstanding
 18 any other provision of this Act, an interagency
 19 agreement under this section shall not impair or di-
 20 minish the authority of a State, political subdivision
 21 of a State, or any other person or the jurisdiction
 22 of any court to enforce compliance with require-
 23 ments of State or Federal law, unless those require-
 24 ments have been specifically addressed in the agree-
 25 ment or waived without objection after notice to the

- 1 State before or on the date on which the response
- 2 action is selected.”.

