106TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPT. 106–353 Part 1

RECYCLE AMERICA'S LAND ACT OF 1999

SEPTEMBER 30, 1999.—Ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 1300]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1300) to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote brownfields redevelopment, to reauthorize and reform the Superfund program, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Recycle America's Land Act of 1999".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
Sec. 3. Effective date.

TITLE I—BROWNFIELDS REVITALIZATION

Sec. 101. Savings provision.
Sec. 102. Brownfields.
Sec. 103. Assistance for voluntary cleanup programs.
Sec. 104. Enforcement in cases of a release subject to a State response action.
Sec. 105. Additions to National Priorities List.

TITLE II—COMMUNITY PARTICIPATION AND HUMAN HEALTH

Subtitle A—Community Participation

Sec. 201. Improving citizen and community participation in decisionmaking.
Sec. 202. Additional information requirements.
Sec. 203. Technical assistance grants.
Sec. 204. Understandable presentation of materials.

69–006

Sec. 205. Public participation in removal actions.
Sec. 206. Community study.
Sec. 207. Definitions.

Subtitle B—Human Health

Sec. 221. Public health authorities.
Sec. 222. Indian health provisions.
Sec. 223. Hazard ranking system.
Sec. 224. Facility scoring.

TITLE III—LIABILITY REFORM

Sec. 301. Amendments to section 106.
Sec. 302. Innocent parties.
Sec. 303. Statutory construction.
Sec. 304. Livestock treatment.
Sec. 305. Liability relief for small businesses, municipal solid waste, sewage sludge, municipal owners and operators, and de micromis contributors.
Sec. 306. Amendments to section 113.
Sec. 307. Liability of response action contractors.
Sec. 308. Amendments to section 122.
Sec. 309. Clarification of liability for recycling transactions.
Sec. 310. Allocation.

TITLE IV—REMEDY SELECTION

Sec. 401. Remedy selection.
Sec. 402. Hazardous substance property use.
Sec. 403. Risk assessment standards.

TITLE V—GENERAL PROVISIONS

Sec. 501. Trust fund defined.
Sec. 502. Indian tribes.
Sec. 503. Grants for training and education of workers.
Sec. 504. State cost share.
Sec. 505. State and local reimbursement for response actions.
Sec. 506. State role at Federal facilities.
Sec. 507. Federal cost study.
Sec. 508. No preemption of State law claims.
Sec. 509. Purchase of American-made equipment, products, and technologies.
Sec. 510. Development of new technologies and methods.

TITLE VI—EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND

Sec. 601. Expenditures from the Hazardous Substance Superfund.
Sec. 602. Authorization of appropriations from general revenues.
Sec. 603. Completion of National Priorities List.

TITLE VII—REVENUES

Sec. 701. Sense of Committee on Transportation and Infrastructure.

SEC. 2. AMENDMENTS TO COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

SEC. 3. EFFECTIVE DATE.

Except as otherwise specifically provided, this Act, and the amendments made by this Act, shall become effective on the date of enactment of this Act.

TITLE I—BROWNFIELDS REVITALIZATION

SEC. 101. SAVINGS PROVISION.

Nothing in this title (including the amendments made by this title) may be construed to affect the President's authority to respond to a release or threatened release of a hazardous substance, pollutant, or contaminant under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

SEC. 102. BROWNFIELDS.

Title I (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 127. BROWNFIELDS.

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) ADMINISTRATIVE COST.—The term 'administrative cost' does not include the cost of—

"(A) site inventories;

"(B) investigation and identification of the extent of contamination;

"(C) design and performance of a response action; or

"(D) monitoring of natural resources.

"(2) BROWNFIELD FACILITY.—

"(A) IN GENERAL.—The term 'brownfield facility' means real property with respect to which expansion, development, or redevelopment is complicated by the presence or potential presence of a hazardous substance.

"(B) EXCLUDED FACILITIES.—The term 'brownfield facility' does not include—

"(i) any portion of real property that is the subject of an ongoing removal or planned removal under section 104;

"(ii) any portion of real property that is listed or has been proposed for listing on the National Priorities List;

"(iii) any portion of real property with respect to which a cleanup is proceeding under a permit, an administrative order, or a judicial consent decree entered into by the United States or an authorized State under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(iv) a facility that is owned or operated by a department, agency, or instrumentality of the United States, except a facility located on lands held in trust for an Indian tribe; or

"(v) a portion of a facility for which assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

"(3) ELIGIBLE ENTITY.—

"(A) IN GENERAL.—The term 'eligible entity' means—

"(i) a State or a political subdivision of a State, including—

"(I) a general purpose unit of local government; and

"(II) a regional council or group of general purpose units of local government;

"(ii) a redevelopment agency that is chartered or otherwise sanctioned by a State or other unit of government; and

"(iii) an Indian tribe.

"(B) EXCLUDED ENTITIES.—The term 'eligible entity' does not include any entity that is not in full compliance with the requirements of an administrative order, judicial consent decree, or closure plan under a permit which has been issued or entered into by the United States or an authorized State under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) with respect to the real property or portion thereof which is the subject of the order, judicial consent decree, or closure plan.

"(b) BROWNFIELD ASSESSMENT GRANT PROGRAM.—

"(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities for inventory and assessment of brownfield facilities.

"(2) ASSISTANCE FOR SITE ASSESSMENT.—On approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for developing an inventory and conducting an assessment (including an assessment of public health implications) of 1 or more brownfield facilities.

"(3) APPLICATIONS.—

"(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection for 1 or more brownfield facilities.

"(B) APPLICATION REQUIREMENTS.—An application for a grant under this subsection shall include information relevant to the ranking criteria established under paragraph (4) for the facility or facilities for which the grant is requested.

"(4) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

"(A) The demonstrated need for Federal assistance.

"(B) The extent to which a grant will stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

"(C) The estimated extent to which a grant would facilitate the identification of or facilitate a reduction in health and environmental risks.

"(D) The financial involvement of the State and local government in any response action planned for a brownfield facility and the extent to which the response action and the proposed redevelopment is consistent with any applicable State or local community economic development plan.

"(E) The extent to which the site assessment and subsequent development involves the active participation and support of the local community.

"(5) MAXIMUM GRANT AMOUNT PER FACILITY.—A grant made to an eligible entity under this subsection shall not exceed $200,000 with respect to any brownfield facility covered by the grant.

"(c) BROWNFIELD REMEDIATION GRANT PROGRAM.—

"(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities to be used for capitalization of revolving loan funds for remedial actions at brownfield facilities.

"(2) ASSISTANCE FOR SITE REMEDIATION.—Upon approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for establishing a revolving loan fund. Any fund established using such grants shall be used to make loans to a State, a site owner, or a site developer for the purpose of carrying out remedial actions at 1 or more brownfield facilities.

"(3) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS.—A local government that receives a grant under this subsection may use up to 10 percent of the amount of the grant to develop and implement a brownfields site remediation program, including monitoring of human health of any populations exposed to hazardous substances from brownfields facilities, and monitoring and enforcement of any institutional controls required to prevent human exposure to any hazardous substances from brownfields facilities.

"(4) APPLICATIONS.—

"(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection.

"(B) APPLICATION REQUIREMENTS.—An application under this subsection shall include information relevant to the ranking criteria established under paragraph (5).

"(5) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

"(A) The adequacy of the financial controls and resources of the eligible entity to administer a revolving loan fund in accordance with this subsection.

"(B) The ability of the eligible entity to monitor the use of funds provided to loan recipients under this subsection.

"(C) The ability of the eligible entity to ensure that a remedial action funded by the grant will be conducted under the authority of a State cleanup program that ensures that the remedial action is protective of human health and the environment.

"(D) The ability of the eligible entity to ensure that any cleanup funded under this subsection will comply with all laws that apply to the cleanup.

"(E) The need of the eligible entity for financial assistance to clean up brownfield sites that are the subject of the application, taking into consideration the financial resources available to the eligible entity.

"(F) The ability of the eligible entity to ensure that the applicants repay the loans in a timely manner.

"(G) The plans of the eligible entity for using the grant to stimulate economic development or creation of recreational areas on completion of the cleanup.

"(H) The plans of the eligible entity for using the grant to stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

"(I) The plans of the eligible entity for using the grant to facilitate a reduction of health and environmental risks.

"(J) The plans of the eligible entity for using the grant for remediation and subsequent development that involve the active participation and support of the local community.

"(6) MAXIMUM GRANT AMOUNT.—A grant made to an eligible entity under this subsection may not exceed $1,000,000.

"(d) GENERAL PROVISIONS.—

"(1) PROHIBITION.—No part of a grant under this section may be used for the payment of penalties or fines. Except as provided in subsection (c)(3), no part of such a grant may be used for the payment of administrative costs.

"(2) AUDITS.—The President shall audit an appropriate number of grants made under subsections (b) and (c) to ensure that funds are used for the purposes described in this section.

"(3) AGREEMENTS.—

"(A) TERMS AND CONDITIONS.—Each grant made under this section shall be subject to an agreement that—

"(i) requires the eligible entity to comply with all applicable Federal and State laws;

"(ii) requires the eligible entity to use the grant exclusively for the purposes specified in subsection (b) or (c);

"(iii) in the case of an application by a State under subsection (c), requires payment by the State of a matching share, of at least 50 percent of the amount of the grant, from other sources of funding;

"(iv) requires that grants under this section will not supplant State or local funds normally provided for the purposes specified in subsection (b) or (c); and

"(v) contains such other terms and conditions as the President determines to be necessary to ensure proper administration of the grants.

"(B) LIMITATION.—The President shall not place terms or conditions on grants made under this section other than the terms and conditions specified in subparagraph (A).

"(4) LEVERAGING.—An eligible entity that receives a grant under this section may use the funds for part of a project at a brownfield facility for which funding is received from other sources, including other Federal sources, but the grant shall be used only for the purposes described in subsection (b) or (c).

"(e) APPROVAL.—

"(1) INITIAL GRANT.—Before the expiration of the fourth quarter of the first fiscal year following the date of enactment of this section, the President shall make grants under this section to eligible entities and States that submit applications, before the expiration of the second quarter of such year, that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(5).

"(2) SUBSEQUENT GRANTS.—Beginning with the second fiscal year following the date of enactment of this section, the President shall make an annual evaluation of each application received during the prior fiscal year and make grants under this section to eligible entities and States that submit applications during the prior year that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(5).

"(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary. Such funds shall remain available until expended.".

SEC. 103. ASSISTANCE FOR VOLUNTARY CLEANUP PROGRAMS.

Title I (42 U.S.C. 9601 et seq.) is further amended by adding at the end the following:

"SEC. 128. STATE VOLUNTARY CLEANUP PROGRAMS.

"(a) ASSISTANCE TO STATES.—The Administrator may provide technical and other assistance to States to establish and expand State voluntary cleanup programs.

"(b) ELIGIBLE PURPOSES.—The purposes for which assistance may be provided under subsection (a) include the following:

"(1) Providing technical assistance for response actions.

"(2) Providing adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions.

"(3) Developing streamlined procedures to ensure expeditious response actions.

"(4) Providing oversight and enforcement of response actions.

"(5) Performing site inventories and assessments.

"(c) PROHIBITION ON CONDITIONS.—A State may request assistance under this section for 1 or more eligible purposes. The President may require that such assistance be used to carry out the eligible purposes for which the assistance is provided, but

may not require as a condition of such assistance that the State take actions unrelated to such purposes.

"(d) FUNDING.—There is authorized to be appropriated for assistance to States under this section $25,000,000 for each of fiscal years 2000 through 2007. The amount of such assistance shall be distributed among each of the States that notifies the Administrator of the State's intent to establish a State voluntary cleanup program and each of the States with a State voluntary cleanup program.

"(e) MINIMUM AMOUNT OF ASSISTANCE.—Subject to appropriations, the minimum amount of assistance the Administrator may provide to a State voluntary cleanup program under this section for a fiscal year shall be $250,000.

"(f) LIMITATION ON ASSISTANCE FOR SITE INVENTORIES.—A State that receives assistance under this section in a fiscal year shall not be eligible in assistance for site inventories and assessments under section 127(b) in such fiscal year.".

SEC. 104. ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO A STATE RESPONSE ACTION.

Title I (42 U.S.C. 9601 et seq.) is further amended by adding at the end the following:

"SEC. 129. ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO A STATE RESPONSE ACTION.

"(a) ENFORCEMENT.—Except as provided in subsection (b), in the case of a facility that is not listed or proposed for listing on the National Priorities List and at which there is a release or threatened release of a hazardous substance, neither the President nor any other person (other than a State) may use authority under this Act against any person who is conducting or has completed a response action in compliance with a State law that specifically governs response actions for the protection of public health and the environment—

"(1) to take an administrative or judicial enforcement action under section 106;

"(2) to take a judicial enforcement action to recover response costs under section 107 or 113; or

"(3) to bring a private civil action to recover response costs under section 107 or 113;

regarding any release or threatened release that is addressed by such response action.

"(b) EXCEPTIONS.—The President may bring an administrative enforcement action or a judicial enforcement action to recover response costs under this Act with respect to a facility described in subsection (a) if—

"(1) the State requests the President to take such action;

"(2) the President determines that response actions are immediately required to prevent, limit, or mitigate an emergency and the State will not take the necessary response actions in a timely manner;

"(3) the Agency for Toxic Substances and Disease Registry issues a public health advisory with respect to the facility; or

"(4) the President determines that contamination has migrated across a State line, resulting in the need for further response action to protect human health or the environment and the affected States will not take the necessary response actions in a timely manner.

"(c) REPORT TO CONGRESS.—Not later than 30 days after the date of any enforcement action by the President against a person described in subsection (a), the President shall submit a report to Congress describing the factual and legal basis for such action, with specific reference to the facts demonstrating that action is permitted under subsection (b).".

SEC. 105. ADDITIONS TO NATIONAL PRIORITIES LIST.

(a) NPL DEFERRALS.—Section 105 (42 U.S.C. 9605) is amended by adding at the end the following:

"(h) NPL DEFERRALS.—

"(1) DEFERRALS TO OTHER FEDERAL AUTHORITY.—The President generally shall defer listing a facility on the National Priorities List if long-term remedial action will be conducted under other Federal authorities, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), and the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"(2) DEFERRAL TO STATE RESPONSE ACTION.—The President generally shall defer listing a facility on the National Priorities List if remedial action that will provide long-term protection of human health and the environment is underway at that facility under a State response program.

"(3) ENCOURAGING STATE VOLUNTARY CLEANUPS.—At the request of a State, the President shall defer final listing of a facility on the National Priorities List if the State is attempting to obtain an agreement from a person or persons to perform a remedial action that will provide long-term protection of human health and the environment at such facility under a State response program. If, after the last day of the 1-year period beginning on the date that the President proposes to list the facility on the National Priorities List, the President finds that the State is not making reasonable progress toward obtaining such an agreement, the President may place the facility on the National Priorities List.".

(b) CROSS REFERENCE.—Section 105(a)(8)(B) (42 U.S.C. 9605(a)(8)(B)) is amended by inserting after "shall revise the list" the following: ", subject to subsection (h),".

TITLE II—COMMUNITY PARTICIPATION AND HUMAN HEALTH

Subtitle A—Community Participation

SEC. 201. IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN DECISIONMAKING.

(a) TECHNICAL AMENDMENTS.—Section 117 (42 U.S.C. 9617) is amended—

(1) in subsection (a)—

(A) by striking "PROPOSED PLAN" and inserting "PROPOSED PLAN";

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) by striking "under paragraph (1)" and inserting "under subparagraph (A)";

(2) by redesignating subsection (a) as paragraph (4) and moving the text of such paragraph 2 ems to the right;

(3) in subsection (b) by striking "FINAL PLAN" and inserting "FINAL PLAN";

(4) in subsection (c)—

(A) by striking "EXPLANATION OF DIFFERENCES" and inserting "EXPLANATION OF DIFFERENCES"; and

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(5) by redesignating subsections (b) and (c) as paragraphs (6) and (7) and moving the text of such paragraphs 2 ems to the right.

(b) PARTICIPATION IN DECISIONMAKING.—

(1) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN DECISIONMAKING.—Section 117 (42 U.S.C. 9617) is further amended by inserting after the section heading the following:

"(a) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN DECISIONMAKING.—

"(1) IN GENERAL.—In order to provide an opportunity for meaningful public participation at every significant phase of a response action at a covered facility, the President shall take the actions specified in this subsection. Public meetings required under this subsection shall be designed to obtain information from the community and to disseminate information to the community concerning the President's activities at a covered facility.

"(2) PRELIMINARY ASSESSMENT AND SITE INSPECTION.—

"(A) EVALUATION OF CONCERNS.—To the extent practicable, before or during site inspection, the President shall solicit and evaluate concerns, interests, and information from affected Indian Tribes, the affected community, local government officials, and State and local health officials.

"(B) REQUIREMENTS FOR EVALUATION.—An evaluation under subparagraph (A) shall include, as appropriate, face-to-face community surveys to identify the location of private drinking water wells, potential exposure pathways, including historic and current or potential use of water, and other environmental resources in the community; a public meeting; written responses to significant concerns; and other appropriate participatory activities.

"(3) REMEDIAL INVESTIGATION AND FEASIBILITY STUDY.—

"(A) PUBLIC MEETINGS.—The President shall provide, as appropriate, an opportunity for public meetings and publish a notice of such meetings before or during the remedial investigation and feasibility study.

"(B) SOLICITATION OF VIEWS.—During the remedial investigation and feasibility study, the President shall solicit the views and preferences of af-

fected Indian tribes, the affected community, local government officials, and State and local health officials on the remediation and disposition of hazardous substances, pollutants, or contaminants at the facility. Such views and preferences shall be described in the remedial investigation and feasibility study and considered in the screening of remedial alternatives for the facility.''.

(2) COMPLETION OF WORK PLAN.—Section 117(a) (42 U.S.C. 9617(a)) is amended by inserting after paragraph (4) of such section, as redesignated by subsection (a)(2) of this section, the following:

''(5) COMPLETION OF WORK PLAN.—The President shall provide, as appropriate, an opportunity for public meetings and publish a notice of such meetings before or during the completion of the work plan for the remedial action.''.

(c) ALTERNATIVES; SELECTING APPROPRIATE ACTIVITIES; PROVIDING INFORMATION.—Section 117(a) (42 U.S.C. 9617(a)) is amended by inserting after paragraph (7) of such section, as redesignated by subsection (a)(5) of this section, the following:

''(8) ALTERNATIVES.—Pursuant to paragraph (4), affected Indian tribes, the affected community, local government officials, and State and local health officials may propose remedial alternatives to the President. The President shall consider such alternatives in the same manner as the President considers alternatives proposed by other parties.

''(9) SELECTING APPROPRIATE ACTIVITIES.—In determining which of the activities set forth in paragraph (2) may be appropriate, the President may consult with affected Indian tribes, the affected community, local government officials, and State and local health officials.

''(10) PROVIDING INFORMATION.—

''(A) IN GENERAL.—The President shall provide information to affected Indian tribes, the affected community, local government officials, and State and local health officials at every significant phase of the response action at the covered facility.

''(B) NOTICE.—The President, on a regular basis, shall inform the entities specified in subparagraph (A) of the progress and substance of technical meetings between the lead agency and potentially responsible parties regarding a covered facility and shall provide notice to such entities concerning—

''(i) the schedule for commencement of construction activities at the covered facility and the location and availability of construction plans;

''(ii) the results of any review under section 121(c) and any modifications to the covered facility made as a result of the review; and

''(iii) the execution of and any revisions to institutional controls being used as part of a remedial action.''.

SEC. 202. ADDITIONAL INFORMATION REQUIREMENTS.

Section 117 (42 U.S.C. 9617) is amended by inserting after subsection (a), as amended by section 201 of this Act, the following:

''(b) ADDITIONAL INFORMATION REQUIREMENTS.—

''(1) ADDITIONAL PUBLIC INVOLVEMENT REQUIREMENTS.—

''(A) AVAILABILITY OF RECORDS.—The President shall make records relating to a response action at a covered facility available to the public throughout all phases of the response action. Such information shall be made available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate. This paragraph shall not apply to a record that is exempt from disclosure under section 552 of title 5, United States Code.

''(B) REQUIREMENTS FOR PUBLIC INFORMATION.—The President, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is unbiased and informative and clearly discloses any uncertainties and data gaps.

''(2) DISCLOSURE OF RELEASES OF HAZARDOUS SUBSTANCES AT SUPERFUND SITES.—

''(A) INFORMATION.—The President shall make the following information available to the public as provided in subparagraph (B) about releases of hazardous substances, pollutants, and contaminants from covered facilities at the following stages of a response action:

''(i) REMOVAL ACTIONS.—A best estimate of the releases from the facility before the removal action is taken, during the period of the removal action, and that are expected after the removal action is completed.

"(ii) REMEDIAL INVESTIGATION.—As part of the requirements for the remedial investigation, a summary and best estimate of the releases from the facility.

"(iii) FEASIBILITY STUDY.—As part of the feasibility study, a summary and best estimate of the releases that are expected both during and at the conclusion of each remedial option that is considered.

"(iv) RECORD OF DECISION.—As part of the record of decision, a summary and best estimate of the releases that are expected both during and at the conclusion of implementation of the selected remedy.

"(v) CONSTRUCTION COMPLETION.—After construction of the remedy is complete and during operation and maintenance, a periodic assessment of releases based on any monitoring required under section 121(g).

"(B) AVAILABILITY OF INFORMATION.—Information provided under this paragraph shall be made available to the residents of the communities surrounding the covered facility, to police, fire, and emergency medical personnel in the surrounding communities, and to the general public. To improve access to such information by Federal, State, and local governments and researchers, such information may be provided to the general public through electronic or other means. Such information shall be expressed in common units and a common format.

"(C) SOURCE OF INFORMATION AND METHODS OF COLLECTION.—Nothing in this paragraph shall require the collection of any additional data beyond that already collected as part of the response action. If data are not readily available, the information provided under this paragraph shall be based on best estimates.".

SEC. 203. TECHNICAL ASSISTANCE GRANTS.

Section 117 (42 U.S.C. 9617) is further amended—

(1) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(2) by striking subsection (d) (as so redesignated) and inserting the following:

"(d) TECHNICAL ASSISTANCE GRANTS.—

"(1) AUTHORITY.—In accordance with rules to be promulgated by the Administrator, the Administrator may make grants for technical assistance available to any affected community with respect to—

"(A) a covered facility;

"(B) a facility at which the Administrator is undertaking a response action anticipated to exceed 1 year; or

"(C) a facility at which the funding limit under section 104 is anticipated to be reached.

"(2) SPECIAL RULES.—

"(A) FEDERAL SHARE.—No matching contribution shall be required for a grant under this subsection.

"(B) ADVANCE PAYMENTS.—The Administrator may make available to a recipient of a grant under this subsection in advance of the expenditures to be covered by the grant the lesser of $5,000 or 10 percent of the total amount of the grant.

"(3) GRANT AVAILABILITY.—The Administrator shall promptly notify residents and Indian tribes living near a facility eligible for grants under paragraph (1) that technical assistance grants are available under this section.

"(4) NUMBER OF GRANTS PER FACILITY.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the Administrator may not make more than 1 grant under this subsection with respect to a single facility.

"(B) RENEWAL OF GRANTS.—A grant made under this subsection with respect to a facility may be renewed to facilitate public participation at all stages of a response action.

"(C) SPECIAL RULE.—In exceptional circumstances, the Administrator may provide more than 1 grant under this subsection with respect to a single facility, after considering such factors as the area affected by the facility and the distances between affected communities.

"(5) FUNDING AMOUNT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a grant under this subsection may not exceed $50,000 for a single grant recipient.

"(B) ADDITIONAL FUNDS.—The Administrator may increase the amount of a grant under this subsection if—

"(i) the grant recipient demonstrates that the characteristics of a facility indicate that additional funds are necessary due to the complexity of the response action, including the size and complexity of the facility, or the nature or volume of site-related information; and

"(ii) the Administrator finds that the grant recipient's management of a previous grant under this subsection, if any, was satisfactory, and the costs incurred under the grant were allowable and reasonable.

"(6) SIMPLIFICATION.—To ensure that the application process is accessible to all affected citizens, the Administrator shall review the existing guidelines and application procedures for grants under this subsection and, not later than 180 days after the date of enactment of this paragraph, revise, as appropriate, such guidelines and procedures to simplify the process of obtaining such grants.

"(7) AUTHORIZED GRANT ACTIVITIES.—

"(A) INFORMATION AND PARTICIPATION.—To facilitate full participation by a grant recipient in response activities at a facility, a grant made under this subsection may be used to obtain technical assistance, including the hiring of health and safety experts, in interpreting information for, and disseminating information to, members of the community, and in providing information and recommendations to the President, with regard to—

"(i) the nature of the hazard at a facility, including information used to rank facilities according to the Hazard Ranking System;

"(ii) sampling and monitoring plans;

"(iii) the remedial investigation and feasibility study;

"(iv) the record of decision;

"(v) the selection, design, and construction of the remedial action;

"(vi) operation and maintenance;

"(vii) institutional controls;

"(viii) removal activities at the facility; and

"(ix) public health assessment or health studies.

"(B) ADDITIONAL ACTIVITIES.—In addition to the activities specified in subparagraph (A), not more than 10 percent of the amount of a grant under this subsection may be used for educational training, hiring neutral professionals to facilitate deliberations and consensus efforts, and hiring community liaisons to potentially responsible parties and government agencies to facilitate public participation at the facility.

"(C) AVAILABILITY OF INFORMATION.—Information generated by the recipients of grants under this subsection shall be made publicly available.

"(D) LIMITATION.—Grants made under this subsection may not be used for the purposes of collecting field sampling data.

"(8) NON-SITE-SPECIFIC GRANTS.—In accordance with rules to be promulgated by the Administrator, the Administrator may make grants under this subsection to Indian tribes, nonprofit organizations, and citizens groups to enhance their participation, prior to final agency action, in rulemaking processes carried out in accordance with this Act. Total funding for all such grants shall not exceed $100,000.

"(9) REPRESENTATIVE OF THE COMMUNITY.—The Administrator shall publish guidance for determining whether a recipient of a grant under this subsection is a legitimate representative of the community affected by a facility.".

SEC. 204. UNDERSTANDABLE PRESENTATION OF MATERIALS.

Section 117 (42 U.S.C. 9617) is further amended by adding at the end the following:

"(e) UNDERSTANDABLE PRESENTATION OF MATERIALS.—The President shall ensure that information prepared for distribution to the public under this section will be provided or summarized in a manner that may be easily understood by the community, after considering any unique cultural needs of the community, including presentation of information orally and distribution of information in languages other than English, as appropriate.".

SEC. 205. PUBLIC PARTICIPATION IN REMOVAL ACTIONS.

Section 117 (42 U.S.C. 9617) is further amended by adding at the end the following:

"(f) PUBLIC PARTICIPATION IN REMOVAL ACTIONS.—In the case of a removal action taken in accordance with section 104, the President shall provide opportunities for meaningful public participation as follows:

"(1) REMOVAL ACTIONS WHERE ON-SITE ACTIVITIES MUST BEGIN IN LESS THAN 6 MONTHS.—In the case of a removal action where on-site activities must begin in less than 6 months, the President shall—

"(A) publish a notice of availability of the administrative record established under section 113(k) in a local newspaper of general circulation within 60 days of any on-site removal activity;

"(B) provide a public comment period, as appropriate, of not less than 30 days from the date on which the administrative record is made available for public inspection; and

"(C) prepare a written response to comments.

"(2) REMOVAL ACTIONS WHERE ON-SITE ACTIVITIES WILL EXTEND BEYOND 120 DAYS.—In the case of a removal action where on-site activities are expected to extend beyond 120 days, the President shall—

"(A) conduct interviews with any relevant community advisory group, affected Indian tribes, the affected community, local government officials, and State and local health officials, as appropriate, to solicit their concerns and information needs and to determine the method and timing of involvement in the response action by the affected community;

"(B) prepare a formal community relations plan based on the community interviews and other relevant information, specifying the community relations activities that the President expects to undertake during the response; and

"(C) establish at least 1 local information repository at or near the location of the response action.

The information repository shall contain items made available for public information and the administrative record. The President shall inform the affected community of the establishment of the information repository and provide a notice of availability of the administrative record for public review. All items in the repository shall be available for public inspection and copying.

"(3) REMOVAL ACTIONS WHERE PLANNING PERIOD WILL EXTEND BEYOND 6 MONTHS.—In the case of a removal action where the planning period is expected to extend beyond 6 months, the President shall—

"(A) comply with the requirements of paragraph (2);

"(B) provide a notice of availability of and a brief description of the removal engineering evaluation and cost analysis in a local newspaper of general circulation;

"(C) provide a reasonable opportunity, not less than 30 days, for submission of written and oral comments after completion of the engineering evaluation and cost analysis; and

"(D) prepare a written response to significant comments.".

SEC. 206. COMMUNITY STUDY.

Section 117 (42 U.S.C. 9617) is further amended by adding at the end the following:

"(g) COMMUNITY STUDY.—

"(1) REPORT BY THE ADMINISTRATOR.—Not later than 2 years after the date of enactment of this Act, the Administrator shall prepare and submit to Congress a community study. The Administrator shall periodically update the study. The Administrator shall ensure that copies of such studies are made available to the public.

"(2) CONTENTS OF THE REPORT.—The Administrator's report shall include an analysis of—

"(A) the time between the discovery and listing of a facility;

"(B) the timing and nature of response actions;

"(C) the degree to which public views are reflected in response actions;

"(D) future land use determinations and use of institutional controls;

"(E) the population, race, ethnicity, and income characteristics of each community affected by a facility listed or proposed for listing on the National Priorities List; and

"(F) the risk presented by each such facility.

"(3) EVALUATION.—The Administrator shall evaluate the information in the study to determine whether priority setting, response actions, and public participation requirements were conducted in a fair and equitable manner and identify program areas that require improvements or modification.

"(4) ACTIONS BASED ON EVALUATION.—The Administrator shall institute necessary improvements or modifications to address any deficiencies identified by the study prepared under this section.".

SEC. 207. DEFINITIONS.

Section 117 (42 U.S.C. 9617) is further amended by adding at the end the following:

"(h) DEFINITIONS.—In this section, the following definitions apply:

"(1) COVERED FACILITY.—The term 'covered facility' means a facility that has been listed or proposed for listing on the National Priorities List.

"(2) AFFECTED COMMUNITY.—The term 'affected community' means any group of 2 or more individuals (including representatives of Indian tribes) which may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a covered facility.".

Subtitle B—Human Health

SEC. 221. PUBLIC HEALTH AUTHORITIES.

(a) DISEASE REGISTRY AND MEDICAL CARE PROVIDERS.—Section 104(i)(1) (42 U.S.C. 9604(i)(1)) is amended—

(1) by striking subparagraph (A) and inserting the following:

"(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;"; and

(2) by striking the last sentence and inserting the following:

"In cases of public health emergencies, exposed persons shall be eligible for referral to licensed or accredited health care providers.".

(b) SUBSTANCE PROFILES.—Section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended—

(1) by inserting "(A)" after "(3)";

(2) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

(3) by striking "Any toxicological profile or revision thereof" and all that follows through "parties." and inserting the following:

"(B) Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the list but which have been found at facilities for which there has been a response action under this Act and which have been determined by ATSDR to be of health concern. Profiles required under this paragraph shall be revised and republished, as appropriate, based on scientific development and shall be provided to the States, including State health departments, tribal health officials, and local health departments, and made available to other interested parties.".

(c) DETERMINING HEALTH EFFECTS.—Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is amended—

(1) by striking "designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance." and inserting "conducted directly or by means such as cooperative agreements and grants with appropriate public and nonprofit institutions. The research shall be designed to determine the health effects of the substance and techniques for development of methods to determine such health effects.";

(2) by redesignating clause (iv) as clause (v);

(3) by striking "and" at the end of clause (iii); and

(4) by inserting after clause (iii) the following:

"(iv) laboratory and other studies to develop innovative techniques for predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and".

(d) PUBLIC HEALTH AT NPL FACILITIES.—

(1) PRELIMINARY PUBLIC HEALTH ASSESSMENTS.—Section 104(i)(6) (42 U.S.C. 9604(i)(6)) is amended by striking "(6)(A)" and all that follows through the period at the end of subparagraph (A) and inserting the following:

"(6)(A)(i) The Administrator of ATSDR shall perform a preliminary public health assessment or health consultation for each facility on the National Priorities List, including those facilities owned by any department, agency, or instrumentality of the United States, and those sites that are the subject of a petition under subparagraph (B). The preliminary public health assessment or health consultation shall be commenced as soon as practicable after each facility is proposed for inclusion on the National Priorities List or the Administrator of ATSDR accepts a petition for a public health assessment. If the Administrator of ATSDR, in consultation with local public health officials, determines that the results of a preliminary public health assessment or health consultation indicate the need for a public health assessment, the Administrator of the ATSDR shall conduct the public health assessment of those

sites posing a health hazard. The results of the public health assessment should be considered in selecting the remedial action for the facility.

"(ii) The Administrator of ATSDR, in cooperation with States, shall design public health assessments that take into account the needs and conditions of the affected community.

"(iii) The Administrator of EPA shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or adverse health effects as identified in a public health assessment conducted by the Administrator of ATSDR or are reasonably anticipated based on currently known facts.".

(2) STRATEGIES FOR OBTAINING DATA; COMMUNITY INVOLVEMENT.—Section 104(i)(6)(D) (42 U.S.C. 9604(i)(6)(D)) is amended—

(A) by inserting "(i)" after "(D)"; and

(B) by adding at the end the following:

"(ii) The President and the Administrator of ATSDR shall develop strategies to obtain relevant on-site and off-site characterization data for use in the public health assessment. The President shall, to the maximum extent practicable, provide the Administrator of ATSDR with the data and information necessary to make public health assessments sufficiently prior to the choice of remedial actions to allow the Administrator of ATSDR to complete these assessments.

"(iii) Where appropriate, the Administrator of ATSDR shall provide to the President as soon as practicable after site discovery, recommendations for sampling environmental media for hazardous substances of public health concern. To the extent feasible, the President shall incorporate such recommendations into the President's site investigation activities.

"(iv) In order to improve community involvement in public health assessments, the Administrator of ATSDR shall carry out each of the following duties:

"(I) Collect from community advisory groups, from State and local public health authorities, and from other sources in communities affected or potentially affected by releases of hazardous substances data regarding exposure, relevant human activities, and other factors.

"(II) Design public health assessments that take into account the needs and conditions of the affected community. Community-based research models, local expertise, and local health resources should be used in designing the public health assessment. In developing such designs, emphasis shall be placed on collection of actual exposure data, and sources of multiple exposure shall be considered.".

(3) CONFORMING AMENDMENTS.—Section 104(i) (42 U.S.C. 9604(i)) is amended by inserting "public" before "health assessment" each place it appears and before "health assessments" each place it appears.

(e) HEALTH STUDIES.—Section 104(i)(7) (42 U.S.C. 9604(i)(7)) is amended by striking "(7)(A)" and all that follows through the period at the end of subparagraph (A) and inserting the following:

"(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a public health assessment or on the basis of other appropriate information, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epidemiologic or other health studies of the entire exposed population.".

(f) DISTRIBUTION OF MATERIALS TO HEALTH PROFESSIONALS AND MEDICAL CENTERS.—Section 104(i)(14) (42 U.S.C. 9604(i)(14)) is amended to read as follows:

"(14) EDUCATIONAL MATERIALS.—In implementing this subsection and other health-related provisions of this Act the Administrator of ATSDR, in cooperation with the States, shall—

"(A) assemble, develop as necessary, and distribute to the State and local health officials, tribes, medical colleges, physicians, nursing institutions, nurses, and other health professionals and medical centers appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of prevention, diagnosis, and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed under paragraph (2)) through means the Administrator of ATSDR considers appropriate; and

"(B) assemble, develop as necessary, and distribute to the general public and to at-risk populations appropriate educational materials and other information on human health effects of hazardous substances.".

(g) GRANTS, CONTRACTS, AND COMMUNITY ASSISTANCE ACTIVITIES.—Section 104(i)(15) (42 U.S.C. 9604(i)(15)) is amended—

(1) by striking "(15)" and inserting the following:

"(15) GRANTS, CONTRACTS, AND COMMUNITY ASSISTANCE.—(A)";

(2) in the first sentence by striking "cooperative agreements with States (or political subdivisions thereof)" and inserting "grants, cooperative agreements, or contracts with States (or political subdivisions thereof), other appropriate public authorities, public or private institutions, colleges, universities, and professional associations";

(3) by aligning the text of subparagraph (A) (as designated by paragraph (1) of this subsection) accordingly; and

(4) by adding at the end the following:

"(B) When a public health assessment is conducted at a facility on the National Priorities List, or a facility is being evaluated for inclusion on the National Priorities List, the Administrator of ATSDR may provide the assistance specified in this paragraph to public or private nonprofit entities, individuals, and community-based groups that may be affected by the release or threatened release of hazardous substances in the environment.

"(C) The Administrator of ATSDR, pursuant to the grants, cooperative agreements, and contracts referred to in this paragraph, is authorized and directed to provide, where appropriate, diagnostic services, health data registries and preventative public health education to communities affected by the release of hazardous substances.".

(h) PEER REVIEW COMMITTEE.—Section 104(i) (42 U.S.C. 9604(i)) is amended by adding at the end the following:

"(19) PEER REVIEW COMMITTEE.—The Administrator of ATSDR shall establish an external peer review committee of qualified health scientists who serve for fixed periods and meet periodically to—

"(A) provide guidance on initiation of studies;

"(B) assess the quality of study reports funded by the agency; and

"(C) provide guidance on effective and objective risk characterization and communication.

The peer review committee may include additional specific experts representing a balanced group of stakeholders on an ad hoc basis for specific issues. Meetings of the committee should be open to the public.".

(i) CONFORMING AMENDMENTS.—Section 104(i) is further amended—

(1) in paragraph (16) by inserting "PERSONNEL.—" after "(16)";

(2) in paragraph (17) by inserting "AUTHORITIES.—" after "(17)";

(3) in paragraph (18) by inserting "POLLUTANTS AND CONTAMINANTS.—" after "(18)"; and

(4) by moving paragraphs (16), (17), and (18) 2 ems to the right.

SEC. 222. INDIAN HEALTH PROVISIONS.

Section 104(i) (42 U.S.C. 9604(i)) is further amended—

(1) in paragraph (1) by inserting "the Director of the Indian Health Service," after "the Secretary of Transportation,";

(2) in paragraph (5)(A) by inserting "and the Director of the Indian Health Service" after "EPA";

(3) in paragraph (6)(C) by inserting "where low population density is not used as an excluding risk factor" after "health appears highest";

(4) by adding at the end of paragraph (6)(E) the following: "If the Administrator of ATSDR or the Administrator of EPA does not act on the recommendations of the State, the Administrator of ATSDR or EPA must respond in writing to the State or tribe as to why the Administrator of ATSDR or EPA has not acted on the recommendations.";

(5) in paragraph (6)(F)—

(A) by striking "and" after "emissions,"; and

(B) by inserting ", and any other pathways resulting from subsistence activities" after "food chain contamination"; and

(6) by striking the period at the end of paragraph (6)(G) and inserting the following: ", and may give special consideration, where appropriate, to any practices of the affected community that may result in increased exposure to hazardous substances, pollutants, or contaminants, such as subsistence hunting, fishing, and gathering.".

SEC. 223. HAZARD RANKING SYSTEM.

Section 105(c) (42 U.S.C. 9605(c)) is amended by adding at the end the following:

"(5) RISK PRIORITIZATION.—In setting priorities under subsection (a)(8), the President shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or demonstrated adverse health effects as identified in a public

health assessment conducted by the Agency for Toxic Substances and Disease Registry or are reasonably anticipated based on currently known facts.

"(6) PRIOR RESPONSE ACTION.—Any evaluation under this section shall take into account all prior response actions taken at a facility.".

SEC. 224. FACILITY SCORING.

Section 105 (42 U.S.C. 9605) is amended by adding at the end the following:

"(i) FACILITY SCORING.—The Administrator shall evaluate areas, such as Indian reservations or poor rural or urban communities, that warrant special attention and identify up to 5 facilities in each region of the Environmental Protection Agency that are likely to warrant inclusion on the National Priorities List. These facilities shall be accorded a priority in evaluation for National Priorities List listing and scoring and shall be evaluated for listing within 2 years after the date of enactment of this subsection.".

TITLE III—LIABILITY REFORM

SEC. 301. AMENDMENTS TO SECTION 106.

(a) SUFFICIENT CAUSE.—Section 106(b)(1) (42 U.S.C. 9606(b)(1)) is amended—

(1) by inserting "(A)" after "(b)(1)";

(2) by striking "to enforce such order";

(3) by inserting before the period "or be required to comply with such order, or both, even if another person has complied, or is complying, with the terms of the same order or another order pertaining to the same facility and release or threatened release"; and

(4) by adding at the end the following:

"(B) For purposes of this subsection and section 107(c)(3), a 'sufficient cause' includes an objectively reasonable belief by the person to whom the order is issued that—

"(i) the person is not liable for any response costs under section 107; or

"(ii) that the action to be performed pursuant to the order is inconsistent with the national contingency plan.".

(b) LIMITATION ON LIABLE PARTIES.—Section 106 is amended by adding at the end the following:

"(d) LIMITATION ON LIABLE PARTIES.—No Federal agency or department with authority to use the imminent hazard, enforcement, and emergency response authorities under this section may use such authorities with respect to a release or threatened release for which the agency or department is a responsible party under section 107."

SEC. 302. INNOCENT PARTIES.

(a) LIABILITY RELIEF FOR INNOCENT PARTIES.—Section 107(b) (42 U.S.C. 9607(b)) is amended to read as follows:

"(b) DEFENSES TO LIABILITY.—

"(1) IN GENERAL.—There shall be no liability under subsection (a) for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

"(A) an act of God;

"(B) an act of war;

"(C) an act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises exclusively from a contract for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the defendant's acts or omissions, and (ii) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

"(D) any combination of acts or omissions described in subparagraphs (A), (B), and (C).

"(2) LIABILITY RELIEF FOR INNOCENT PARTIES.—

"(A) OWNERS OR OPERATORS.—

"(i) IN GENERAL.—There shall be no liability under subsection (a) for a person whose liability is based solely on the person's status as an owner or operator of a facility or vessel and who can establish by a preponderance of the evidence that—

"(I) the person acquired the facility or vessel after the disposal or placement of the hazardous substances for which liability is alleged under subsection (a);

"(II) the person did not, by any act or omission, cause or contribute to the release or threatened release of such hazardous substances; and

"(III) the person exercised appropriate care with respect to such hazardous substances.

"(ii) SPECIAL RULE FOR PROPERTY ACQUIRED AFTER DATE OF ENACTMENT OF CERCLA.—In addition to the requirements of clause (i), a person who acquired ownership of a facility or vessel after December 11, 1980, must establish by a preponderance of the evidence that the person, prior to such acquisition, made all appropriate inquiry into the previous ownership and uses of the facility or vessel in accordance with the generally accepted commercial and customary standards and practices of the time of acquisition.

"(iii) SPECIAL RULE FOR PROPERTY ACQUIRED BEFORE MARCH 25, 1999.—In addition to the requirements of clauses (i) and (ii), a person who acquired a facility or vessel before March 25, 1999, must establish by a preponderance of the evidence that, at the time the person acquired the facility or vessel, the person did not know and had no reason to know that any hazardous substance which is the subject of a release or threatened release was disposed of on, in, or at the facility or vessel. This clause shall not apply to any person who expanded, developed, or redeveloped a commercial or industrial facility, notwithstanding the presence or potential presence of hazardous substances, under a Federal, State, or local program for the redevelopment of property that is or may be contaminated by hazardous substances.

"(B) RECIPIENTS OF PROPERTY BY INHERITANCE OR BEQUEST.—There shall be no liability under subsection (a) for a person whose liability is based solely on the person's status as an owner or operator of a facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of subparagraph (A)(i) and that the person acquired the property by inheritance or bequest.

"(C) RECIPIENTS OF PROPERTY BY CHARITABLE DONATION.—Liability under subsection (a) shall be limited to the lesser of the fair market value of the facility or vessel and the actual proceeds of the sale of the facility for a person whose liability is based solely on the person's status as an owner or operator of the facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of subparagraph (A)(i) and that the person holding title, either outright or in trust, to the vessel or facility is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and holds such title as a result of a charitable donation that qualifies under section 170, 2055, or 2522 of such Code.

"(D) GOVERNMENTAL ENTITIES.—There shall be no liability under subsection (a) for a person that is a governmental entity, that meets the requirements of subparagraph (A)(i), and that acquired a facility or vessel by escheat or through any other involuntary transfer or by acquisition through the exercise of eminent domain authority if the person's liability is based solely on—

"(i) the person's status as an owner or operator of the facility or vessel; or

"(ii) the granting of a license or permit to conduct business.

"(E) OWNERS AND OPERATORS OF SEWAGE TREATMENT WORKS.—There shall be no liability under subsection (a) for a person who is an owner or operator of a treatment works (as defined in section 212(2) of the Federal Water Pollution Control Act) that is publicly or federally owned or that, without regard to ownership, would be considered a publicly owned treatment works and is principally treating municipal waste water or domestic sewage and who can establish by a preponderance of the evidence that—

"(i) the treatment works, at the time of the release or threatened release, was subject to and in compliance with substantive requirements for pretreatment under section 307 of the Federal Water Pollution Con-

trol Act applicable to the hazardous substances, pollutants, and contaminants that are the subject of the response action; and

"(ii) the release or threatened release was not caused by a failure to properly operate and maintain the treatment works or by conduct that constitutes gross negligence or intentional misconduct.

"(F) OWNERS OR OPERATORS OF RIGHTS-OF-WAY.—There shall be no liability under subsection (a) for a person whose liability is based solely on ownership or operation of a road, street, or other right-of-way or public transportation route (other than railroad rights-of-way and railroad property) over which hazardous substances are transported if such person can establish by a preponderance of the evidence that the person did not, by any act or omission, cause or contribute to the release or threatened release.

"(G) RAILROAD OWNERS OR OPERATORS OF SPUR TRACK.—There shall be no liability under subsection (a) for a person whose liability is based solely on the status of the person as a railroad owner or railroad operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator if the railroad owner or operator can establish by a preponderance of the evidence that—

"(i) the spur track provides access to a main line or branch line track that is owned or operated by the railroad owner or operator;

"(ii) the spur track is 10 miles long or less; and

"(iii) the railroad owner or operator did not cause or contribute to a release or threatened release of the hazardous substances for which liability is alleged under subsection (a).

"(H) CONSTRUCTION CONTRACTORS.—There shall be no liability under subsection (a) for a person who is a construction contractor (other than a response action contractor covered by section 119) if such person can establish by a preponderance of the evidence that—

"(i) the person's liability is based solely on construction activities that were specifically directed by and carried out in accordance with a contract with an owner or operator of the facility;

"(ii) the person did not know or have reason to know of the presence of hazardous substances at the facility concerned before beginning construction activities; and

"(iii) the person exercised appropriate care with respect to the hazardous substances discovered in the course of performing the construction activity, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the person's acts or omissions.

"(3) APPROPRIATE CARE.—

"(A) SITE-SPECIFIC BASIS.—The determination whether or not a person has exercised appropriate care with respect to hazardous substances within the meaning of paragraph (2)(A)(i)(III) shall be made on a site-specific basis taking into consideration the characteristics of the hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the defendant's acts or omissions.

"(B) SAFE HARBOR.—A person shall be deemed to have exercised appropriate care within the meaning of paragraph (2)(A)(i)(III) if—

"(i) the person took reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human or natural resource exposure to any previously released hazardous substance, or

"(ii) in any case in which the release or threatened release of hazardous substances is the subject of a response action by persons authorized to conduct the response action at the facility or vessel, the person provides access for and all reasonable cooperation with the response action.

"(4) ALL APPROPRIATE INQUIRY.—

"(A) SITE-SPECIFIC BASIS.—The determination whether or not a person has made all appropriate inquiry into the previous ownership and uses of a facility or vessel within the meaning of paragraph (2)(A)(ii) shall be made on a site-specific basis taking into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if contaminated, commonly known or reason-

ably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

"(B) ASTM SAFE HARBOR.—A person who has acquired real property shall be deemed to have made all appropriate inquiry within the meaning of paragraph (2)(A)(ii) if the person—

"(i) establishes that an environmental assessment has been conducted in accordance with the standards set forth in the American Society for Testing and Materials Standards E1527–94, entitled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process' or with alternative standards issued by rule by the Administrator or promulgated or developed by others and designated by rule by the Administrator; and

"(ii) maintains a compilation of the information reviewed and gathered in the course of the environmental site assessment.

"(C) GOVERNMENTAL REVIEW SAFE HARBOR.—A person who has acquired real property shall be deemed to have made all appropriate inquiry within the meaning of paragraph (2)(A)(ii) if, prior to such acquisition, the person reviewed a final determination by a State or Federal environmental or health agency with jurisdiction over response actions at a facility that no further response action was planned at the facility based on the level of risk to human health and the environment.

"(5) LIMITATIONS.—No defense shall be available to any of the following:

"(A) A person who obtained actual knowledge of a release or threat of release of a hazardous substance at a facility when such person owned the real property and subsequently transferred ownership of the property to another person without disclosing such knowledge.

"(B) A person who knowingly and willfully impedes the performance of a response action or natural resource restoration at a facility.

"(C) A person who did not provide all legally required notices with respect to the discovery or release of any hazardous substances at a facility.

"(D) A person (other than a person described in paragraph (2)(B)) who is affiliated with any other person liable for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services.

"(6) WINDFALL LIENS.—

"(A) IN GENERAL.—In any case in which there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (2), and the conditions described in subparagraph (C) are met, the United States shall have a lien upon such facility for such unrecovered costs.

"(B) SPECIAL RULES.—A lien under this paragraph—

"(i) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

"(ii) shall arise at the time costs are first incurred by the United States with respect to a response action at the facility;

"(iii) shall be subject to the requirements for notice and validity established by subsection (l)(3);

"(iv) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility; and

"(v) shall not arise against a recipient of a grant under section 127(b) or 127(c) with respect to such grant.

"(C) CONDITIONS.—The conditions referred to in subparagraph (A) are the following:

"(i) A response action for which there are unrecovered costs is carried out at the facility.

"(ii) The United States has made reasonable efforts to recover such unrecovered response costs from parties liable under this section.

"(iii) Such response action increases the fair market value of the facility above the fair market value of the facility that existed in the 6-month period preceding the date that response action began.

"(D) LIMITATIONS.—No lien under this paragraph shall arise—

"(i) with respect to property for which the property owner preceding the current owner is not a liable party or has resolved its liability under this Act; or

"(ii) in any case in which an environmental assessment gave the owner or operator no reason to know of the release of hazardous substances.".

(b) RENDERING CARE OR ADVICE.—

(1) STATE, TRIBAL, AND LOCAL GOVERNMENTS.—Section 107(d)(2) (42 U.S.C. 9607(d)(2)) is amended to read as follows:

"(2) STATE, TRIBAL, AND LOCAL GOVERNMENTS.—

"(A) IN GENERAL.—No State, tribal, or local government, including a municipality or other political subdivision of a State, shall be liable under this title for costs or damages as a result of—

"(i) actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person; or

"(ii) actions to improve water quality protection at an abandoned mine site and adjacent lands that are owned by a person other than the State, tribal, or local government if such actions are taken in accordance with a response action approved under applicable State or Federal law.

"(B) LIMITATION ON STATUTORY CONSTRUCTION.—This paragraph shall not be construed to preclude liability for costs or damages as a result of gross negligence or intentional misconduct by a governmental entity referred to in subparagraph (A). For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.".

(2) SAVINGS PROVISION.—Section 107(d)(3) (42 U.S.C. 9607(d)(3)) is amended by striking "This" and inserting "Except with respect to costs and damages referred to in paragraphs (1) and (2)(A), this".

(c) CLARIFICATION OF LIABILITY FOR CONTIGUOUS PROPERTY OWNERS.—Section 101(20) (42 U.S.C. 9601(20)) is amended by adding at the end the following:

"(H) CONTIGUOUS PROPERTY OWNER.—The term 'owner or operator' does not include a person who owns or operates real property that is contiguous to, or onto which a release has migrated from, a facility under separate ownership or operation from which there is a release or threatened release of a hazardous substance if—

"(i) the person did not, by any act or omission, cause or contribute to the release or threatened release of a hazardous substance; and

"(ii) the person is not affiliated with any other person that is potentially liable for any response costs at the facility at which there has been a release or threatened release of a hazardous substance.".

(d) CONFORMING AMENDMENTS.—Section 101 (42 U.S.C. 9601) is amended by striking paragraph (35).

SEC. 303. STATUTORY CONSTRUCTION.

Section 107(f) (42 U.S.C. 9607(f)) is amended—

(1) by inserting "SPECIAL RULES FOR NATURAL RESOURCES.—" after "(f)";

(2) by indenting paragraph (1) and aligning it with paragraph (2) of such section; and

(3) by adding at the end the following:

"(3) UNITARY EXECUTIVE.—In any judicial action brought under this Act by the United States seeking recovery for damages to natural resources, any brief or motion addressing the interpretation and construction of this subsection filed by the United States in any other judicial action seeking recovery from the United States for damages to natural resources under this Act shall be admissible in the action brought by the United States.".

SEC. 304. LIVESTOCK TREATMENT.

Section 107(i) (42 U.S.C. 9607(i)) is amended—

(1) by inserting "LIMITATION ON LIABILITY FOR APPLICATION OF PESTICIDE PRODUCTS.—" after "(i)";

(2) by striking "No person" and inserting "(1) IN GENERAL.—No person";

(3) by adding at the end the following:

"(2) APPLICATION IN COMPLIANCE WITH LAW.—For the purposes of paragraph (1), the term 'application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act' includes a release of a hazardous substance resulting from the application, before the date of enactment of this paragraph, of any pesticide, insecticide, or similar product in compliance with a Federal or State law (including a regulation) requiring the treatment of livestock to prevent, suppress, control, or eradicate any dangerous, contagious, or infectious disease or any vector organism for such disease."; and

(4) by indenting and aligning paragraph (1) (as designated by paragraph (2) of this section) with paragraph (2) (as added by paragraph (3) of this section).

SEC. 305. LIABILITY RELIEF FOR SMALL BUSINESSES, MUNICIPAL SOLID WASTE, SEWAGE SLUDGE, MUNICIPAL OWNERS AND OPERATORS, AND DE MICROMIS CONTRIBUTORS.

(a) LIMITATION ON LIABILITY FOR SMALL BUSINESSES.—Section 107 (42 U.S.C. 9607) is amended by adding at the end the following:

"(o) LIMITATION ON LIABILITY FOR SMALL BUSINESSES.—

"(1) IN GENERAL.—With respect to actions taken before March 25, 1999, no small business concern shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a facility or vessel on the National Priorities List.

"(2) LIMITATION.—Paragraph (1) shall not apply to an action brought by the President against a small business concern if the hazardous substances attributable to the small business concern have contributed, or contribute, significantly to the costs of the response action at the facility.

"(3) SMALL BUSINESS CONCERN DEFINED.—In this subsection, the term 'small business concern' means a business entity that on average over the previous 3 years preceding the date of notification by the President that the business entity is a potentially responsible party—

"(A) has no more than 75 full-time employees or the equivalent thereof; and

"(B) has $3,000,000 or less in gross revenues.".

(b) LIABILITY RELIEF FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—Section 107 is further amended by adding at the end the following:

"(p) LIABILITY EXEMPTIONS AND LIMITATIONS FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—

"(1) PRE-ENACTMENT ACTIVITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that the person arranged or transported municipal solid waste or municipal sewage sludge prior to the date of enactment of this paragraph for disposal at the landfill facility.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), if the President determines that a person transported material containing hazardous substances to a landfill facility that has contributed, or contributes, significantly to the costs of response at the facility and such person is engaged in the business of transporting waste materials, such person may be liable under subsection (a)(4). The liability of such person shall be subject to the aggregate limits on liability for municipal solid waste set forth in paragraph (2). Any determination of such person's equitable share of response costs shall be determined on the basis of such person's equitable share of the aggregate amount of response costs attributable to municipal solid waste and municipal sewage sludge under paragraph (2).

"(2) POST-ENACTMENT ACTIVITIES.—

"(A) IN GENERAL.—To the extent that a person or group of persons is liable under subsection (a)(3) or (a)(4) for arranging or transporting municipal solid waste or municipal sewage sludge for disposal at a landfill facility on the National Priorities List on or after the date of enactment of this paragraph and is not exempt from liability under paragraph (3), the total aggregate liability for all such persons or groups of persons for response costs at such a landfill facility shall not exceed 10 percent of such costs. With respect to actions taken on or after the date that is 36 months after the date of enactment of this paragraph this limitation on liability shall apply only at a landfill facility within a municipality that has instituted or participates in a qualified household hazardous waste collection program.

"(B) EXPEDITED SETTLEMENTS.—The President may offer a person subject to a limitation on liability under subparagraph (A) an expedited settlement based on the average unit cost of remediating municipal solid waste and municipal sewage sludge in landfills in lieu of the aggregate 10 percent limitation on liability provided by subparagraph (A).

"(3) SPECIAL RULE.—No person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that—

"(A) the materials that the person arranged or transported for disposal consist of municipal solid waste; and

"(B) the person is—

"(i) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

"(ii) a business entity that employs no more than 100 individuals and is a small business concern as defined under the Small Business Act (15 U.S.C. 631 et seq.) from which was generated all of the entity's municipal solid waste with respect to the facility; or

"(iii) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code if such organization employs no more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

"(4) MIXED WASTES.—Liability for wastes that do not fall within the definition of municipal solid waste under paragraph (5)(A) and are collected and disposed of with municipal solid wastes and municipal sewage sludge shall be governed by section 107(a) and any applicable exemptions or limitations on liability without regard to the wastes covered by paragraph (5)(A).

"(5) DEFINITIONS.—In this section, the following definitions apply:

"(A) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means waste materials generated by households, including single and multifamily residences, and hotels and motels, and waste materials generated by commercial, institutional, and industrial sources, to the extent that such materials (i) are essentially the same as waste materials normally generated by households, or (ii) are collected and disposed of with other municipal solid waste, and contain hazardous substances that would qualify for the de micromis exemption under section 107(r). The term includes food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, wooden pallets, cardboard, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators; solid waste from the extraction, beneficiation, and processing of ores and minerals; or waste from manufacturing or processing operations (including pollution control) that is not essentially the same as waste normally generated by households.

"(B) MUNICIPAL SEWAGE SLUDGE.—The term 'municipal sewage sludge' means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by (i) a publicly owned treatment works, (ii) a federally owned treatment works, or (iii) a treatment works that, without regard to ownership, would be considered to be a publicly owned treatment works and is principally treating municipal waste water or domestic sewage.

"(C) QUALIFIED HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.—The term 'qualified household hazardous waste collection program' means a program established by an entity of the Federal Government, a State, a municipality, or an Indian tribe that provides, at a minimum, for semiannual collection of household hazardous waste at accessible, well-publicized collection points within the relevant jurisdiction.

"(q) LIMITATION ON LIABILITY FOR MUNICIPAL OWNERS AND OPERATORS.—

"(1) AGGREGATE LIABILITY OF SMALL MUNICIPALITIES.—With respect to a facility that received municipal solid waste, that was proposed for listing on the National Priorities List before March 25, 1999, that is or was owned or operated by municipalities with a population of less than 100,000 according to the 1990 census, and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of such municipalities for response costs incurred on or after March 25, 1999, shall be the lesser of—

"(A) 10 percent of the total amount of response costs at the facility; or

"(B) the costs of compliance with the requirements of such subtitle for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).

"(2) AGGREGATE LIABILITY OF LARGE MUNICIPALITIES.—With respect to a facility that received municipal solid waste, that was proposed for listing on the National Priorities List before March 25, 1999, that is or was owned or operated by municipalities with a population of 100,000 or more according to the 1990 census, and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part

258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of such municipalities for response costs incurred on or after March 25, 1999, shall be the lesser of—

"(A) 20 percent of the total amount of response costs at the facility; or

"(B) the costs of compliance with the requirements of such subtitle for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).".

(c) DE MICROMIS EXEMPTION.—Section 107 is further amended by adding at the end the following:

"(r) DE MICROMIS EXEMPTION.—

"(1) IN GENERAL.—In the case of a facility or vessel listed on the National Priorities List, no person shall be liable under subsection (a)(3) or (a)(4) if no more than 110 gallons or 200 pounds of materials containing hazardous substances at the facility or vessel is attributable to such person, and the acts on which liability is based took place before the date of enactment of this paragraph.

"(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that the material described in paragraph (1) has contributed, or contributes, significantly to the costs of response at the facility.".

(d) INELIGIBILITY FOR EXEMPTIONS OR LIMITATIONS.—Section 107 is further amended by adding at the end the following:

"(s) INELIGIBILITY FOR EXEMPTIONS OR LIMITATIONS.—

"(1) IMPEDING RESPONSE OR RESTORATION.—The exemptions and limitations set forth in subsections (o), (p), (q), and (r) and sections 114(c) and 130 shall not apply to any person with respect to a facility if such person impedes the performance of a response action or natural resource restoration at the facility.

"(2) FAILURE TO RESPOND TO INFORMATION REQUEST.—The exemptions and limitations set forth in subsections (o), (p), (q), and (r) and sections 114(c) and 130 shall not apply to any person who—

"(A) willfully fails to submit a complete and timely response to an information request under section 104(e); or

"(B) knowingly makes any false or misleading material statement or representation in any such response.

"(3) FAILURE TO PROVIDE COOPERATION AND FACILITY ACCESS.—The limitation set forth in subsection (q) shall not apply to any owner or operator of a facility who does not provide all reasonable cooperation and facility access to persons authorized to conduct response actions at the facility.".

(e) EXEMPT PARTY FUNDING; CONCLUDED ACTIONS; OVERSIGHT COSTS.—Section 107 is further amended by adding at the end the following:

"(t) EXEMPT PARTY FUNDING.—

"(1) EXEMPT PARTY FUNDING.—Except as provided in paragraph (2), the equitable share of liability under section 107(a) for any release or threatened release of a hazardous substance from a facility or vessel on the National Priorities List that is extinguished through an exemption or limitation on liability under subsection (o), (p), or (q) of this section, section 114(c), or section 130 shall be transferred to and assumed by the Trust Fund.

"(2) CERTAIN MSW GENERATORS.—Paragraph (1) shall not apply to the equitable share of liability of any person who would have been liable under subsection (a)(3) or (a)(4) but for the exemption from liability under subsection (p)(3).

"(3) SOURCE OF FUNDS.—Payments made by the Trust Fund or work performed on behalf of the Trust Fund to meet the obligations under paragraph (1) shall be funded from amounts made available by section 111(a)(1).

"(u) EFFECT ON CONCLUDED ACTIONS.—The exemptions from and limitations on liability provided under subsections (o), (p), (q), and (r) and sections 114(c) and 130 shall not affect any settlement or judgment approved by a United States District Court not later than 30 days after the date of enactment of this subsection or any administrative action against a person otherwise covered by such exemption or limitation that becomes effective not later than 30 days after such date of enactment.

"(v) LIMITATION ON RECOVERY OF OVERSIGHT COSTS.—

"(1) IN GENERAL.—Costs of oversight of a response action shall not be recoverable under this section from a person referred to in paragraph (2) to the extent that such costs exceed 10 percent of the costs of the response action.

"(2) ACCOUNTING OF RESPONSE COSTS.—Paragraph (1) shall apply only to a person who provides the Administrator with an accounting of the direct and indirect costs that the person incurred in conducting the response action. The Administrator may require an independent audit of the costs from such person.".

(f) SMALL BUSINESS OMBUDSMAN.—The Administrator shall establish a small business Superfund assistance section within the small business ombudsman office

at the Environmental Protection Agency. Such section shall carry out the following functions:

(1) Act as a clearinghouse of information for small businesses regarding the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such information shall be comprehensible to a lay person and shall include information regarding the exemptions to liability under section 107 of such Act, the allocation process under section 131 of such Act, requirements and procedures for expedited settlements pursuant to section 122(g) of such Act, and de minimis status and ability-to-pay procedures.

(2) Provide general advice and assistance to small businesses as to their questions and problems concerning liability and the exemptions to liability under such Act and the allocation and settlement processes, except that such advice and assistance shall not include any legal advice as to liability or any other legal representation. The ombudsman shall not participate in the allocation process.

SEC. 306. AMENDMENTS TO SECTION 113.

Section 113(f) (42 U.S.C. 9613(f)) is amended—

(1) by adding at the end the following:

"(4) LIMITATIONS ON CONTRIBUTION ACTIONS.—

"(A) IN GENERAL.—There shall be no right of contribution under this subsection in any of the following circumstances:

"(i) The person asserting the right of contribution has waived the right in a settlement pursuant to this Act.

"(ii) The person from whom contribution is sought is not liable under this Act.

"(iii) The person from whom contribution is sought has entered into a settlement with the United States pursuant to section 122(g), with respect to matters addressed in that settlement.

"(B) ATTORNEYS' FEES.—Any person who commences an action for contribution shall be liable to the person against whom the claim of contribution is brought for all reasonable costs of defending against the claim, including all reasonable attorneys' and expert witness fees, if—

"(i) the action is barred by subparagraph (A);

"(ii) the action is brought against a person who is protected from such suits pursuant to section 113(f)(2) by reason of a settlement with the United States; or

"(iii) the action is brought during the moratorium pursuant to section 131 (relating to allocation).".

SEC. 307. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) EXTENSION OF NEGLIGENCE STANDARD.—Subsection (a) of section 119 (42 U.S.C. 9619(a)) is amended—

(1) in paragraph (1) by striking "title or under any other Federal law" and inserting "title, under any other Federal law, or under the law of any State or political subdivision of a State";

(2) by adding at the end of paragraph (1) the following: "Notwithstanding the preceding sentence, this section shall not apply in determining the liability of a response action contractor under the law of any State or political subdivision thereof if the State has enacted a law determining the liability of a response action contractor."; and

(3) by adding at the end of paragraph (2) the following: "Such conduct shall be evaluated based on the generally accepted standards and practices in effect at the time and place that the conduct occurred.".

(b) CLARIFICATION OF LIABILITY.—Section 119(a) is amended by inserting after paragraph (4) the following:

"(5) LIABILITY.—Notwithstanding any other provision of this Act, any liability of a response action contractor under this Act shall be determined solely in accordance with this section.".

(c) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c) is amended by adding at the end of paragraph (1) the following: "Any such agreement may apply to claims for negligence arising under Federal law or under the law of any State or political subdivision of a State.".

(d) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5) is amended in subparagraph (A) by inserting "or threatened release" after "release" each place it appears.

(e) EXTENSION OF COVERAGE TO ALL RESPONSE ACTIONS.—Section 119(e)(1) is amended—

(1) by striking "carrying out an agreement under section 106 or 122"; and

(2) by striking "any remedial action under this Act at a facility listed on the National Priorities List, or any removal action under this Act," and inserting "any response as defined by section 101(25),".

(f) LIMITATION ON ACTIONS.—Section 119 is amended by adding at the end the following:

"(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—No action to recover for any injury to property, real or personal, or for bodily injury or wrongful death, or any other expenses or costs arising out of the performance of services under a response action contract, nor any action for contribution or indemnity for damages sustained as a result of such injury, shall be brought against any response action contractor more than 6 years after the completion of work at any site under such contract. Notwithstanding the preceding sentence, this section shall not—

"(1) bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct;

"(2) affect any right of indemnification that such response action contractor may have under this section or may acquire by written agreement with any party; or

"(3) apply in any State or political subdivision thereof if the State has enacted a statute of repose determining the liability of a response action contractor.".

SEC. 308. AMENDMENTS TO SECTION 122.

(a) ADMINISTRATIVE SETTLEMENTS.—Section 122 (42 U.S.C. 9622) is amended by adding at the end the following:

"(n) CHALLENGE TO COST RECOVERY COMPONENT OF SETTLEMENT.—Notwithstanding the limitations on review in section 113(h), and except as provided in subsection (g) of this section, a person whose potential claim for response costs or contribution is limited as a result of contribution protection afforded by an administrative settlement under this section may challenge the cost recovery component of such settlement. Such a challenge may be made only by filing a complaint against the Administrator in the United States District Court within 60 days after such settlement becomes final. Venue shall lie in the district in which the principal office of the appropriate region of the Environmental Protection Agency is located. Any review of an administrative settlement shall be limited to the administrative record, and the settlement shall be upheld unless the objecting party can demonstrate on that record that the decision of the President to enter into the administrative settlement was arbitrary, capricious, or otherwise not in accordance with law.".

(b) FINAL COVENANTS.—Section 122(f) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements that are in the public interest a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs addressed in the settlement, if all of the following conditions are met:

"(A) The settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action authorized by the Administrator for the release or threat of release that is the subject of the settlement.

"(B) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility.

"(C) The settling party waives all contribution rights against other potentially responsible parties at the facility.

"(D) The settling party (other than a small business) pays a premium that compensates for the risks of remedy failure; future liability resulting from unknown conditions; and unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action. The President shall have sole discretion to determine the appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President has discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.

"(E) The remedial action does not rely on institutional controls to ensure continued protection of human health and the environment.

"(F) The settlement is otherwise acceptable to the United States.";

(2) in paragraph (2) by striking "remedial" each place it appears and inserting "response";

(3) by striking paragraph (3) and inserting the following:

"(3) DISCRETIONARY COVENANTS.—For settlements under this Act for which covenants under paragraph (1) are not available, the President may provide any person with a covenant not to sue concerning any liability to the United States under this Act, if the covenant not to sue is in the public interest. Such covenants shall be subject to the requirements of paragraph (5). The President may include any conditions in such covenant not to sue, including the additional condition referred to in paragraph (5). In determining whether such conditions or covenants are in the public interest, the President shall consider the nature and scope of the commitment by the settling party under the settlement, the effectiveness and reliability of the response action, the nature of the risks remaining at the facility, the strength of evidence, the likelihood of cost recovery, the reliability of any response action or actions to restore, replace, or acquire the equivalent of injured natural resources, the extent to which performance standards are included in the order or decree, the extent to which the technology used in the response action is demonstrated to be effective, and any other factors relevant to the protection of human health and the environment.";

(4) by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(5) in subparagraph (A) of paragraph (5) (as so redesignated)—

(A) by striking "remedial" and inserting "response";

(B) by striking "paragraph (2)" in the first sentence and inserting "paragraph (1) or (2)";

(C) by striking "de minimis settlements" and inserting "de minimis and other expedited settlements pursuant to subsection (g) of this section"; and

(D) by striking "the President certifies under paragraph (3) that remedial action has been completed at the facility concerned" and inserting "that the response action that is the subject of the settlement agreement is selected"; and

(6) in subparagraph (B) of paragraph (5) (as so redesignated)—

(A) by striking "In extraordinary circumstances, the" and inserting "The";

(B) by striking "those referred to in paragraph (4) and";

(C) by striking "if other terms," and inserting ", if the agreement containing the covenant not to sue provides for payment of a premium to address possible remedy failure or any releases that may result from unknown conditions, and if other terms,"; and

(D) by adding at the end the following: "The President may waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.".

(c) EXPEDITED FINAL SETTLEMENTS.—Section 122 is further amended—

(1) in subsection (g) by striking "(g)" and all that follows through the period at the end of paragraph (1) and inserting the following:

"(g) EXPEDITED FINAL SETTLEMENT.—

"(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—The President shall, as promptly as possible, offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet the following conditions for eligibility for an expedited settlement in subparagraph (A) or (B):

"(A) The potentially responsible party's individual contribution to the release of hazardous substances at the facility as an owner or operator, arranger for disposal, or transporter for disposal is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if both of the following conditions are met:

"(i) The contribution of materials containing hazardous substances that the potentially responsible party arranged or transported for treatment or disposal, or that were treated or disposed during the potentially responsible party's period of ownership or operation of the facility, is minimal in comparison to the total volume of materials containing hazardous substances at the facility. Such individual contribution is presumed to be minimal if it is not more than 1 percent of the total volume of such materials, unless the Administrator identifies a different threshold based on site-specific factors.

"(ii) Such hazardous substances do not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the facility.

"(B)(i) The potentially responsible party is a natural person, a small business, or a municipality and can demonstrate to the United States an inability or limited ability to pay response costs. A party who enters into a settle-

ment pursuant to this subparagraph shall be deemed to have resolved its liability under this Act to the United States for all matters addressed in the settlement.

"(ii) For purposes of this subparagraph, the following provisions apply:

"(I) In the case of a small business, the President shall take into consideration the ability to pay of the business, if requested by the business. The term 'ability to pay' means the President's reasonable expectation of the ability of the small business to pay its total settlement amount and still maintain its basic business operations. Such consideration shall include the business's overall financial condition and demonstrable constraints on its ability to raise revenues.

"(II) Any business requesting such consideration shall promptly provide the President with all relevant information needed to determine the business's ability to pay.

"(III) If the President determines that a small business is unable to pay its total settlement amount immediately, the President shall consider alternative payment methods as may be necessary or appropriate. The methods to be considered may include installment payments to be paid during a period of not to exceed 10 years and the provision of in-kind services.

"(iii) Any municipality which is a potentially responsible party may submit for consideration by the President an evaluation of the potential impact of the settlement on essential services that the municipality must provide, and the feasibility of making delayed payments or payments over time. If a municipality asserts that it has additional environmental obligations besides its potential liability under this Act, then the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations.

"(iv) Any municipality which is a potentially responsible party may establish an inability to pay through an affirmative showing that such payment of its liability under this Act would either—

"(I) create a substantial demonstrable risk that the municipality would default on existing debt obligations, be forced into bankruptcy, be forced to dissolve, or be forced to make budgetary cutbacks that would substantially reduce current levels of protection of public health and safety; or

"(II) necessitate a violation of legal requirements or limitations of general applicability concerning the assumption and maintenance of fiscal municipal obligations.

"(v) This subparagraph does not limit or affect the President's authority to evaluate any person's ability to pay or to enter into settlements with any person based on that person's inability to pay.";

(2) by striking paragraphs (2) and (3) of subsection (g) and inserting the following:

"(2) BASIS OF DETERMINATION.—Any person who enters into a settlement pursuant to this subsection shall provide any information requested by the President in accordance with section 104(e). The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the President at the time the determination is made. The President's determination as to the eligibility of a party that is not a department, agency, or instrumentality of the United States for settlement pursuant to this section shall not be subject to judicial review. If the President determines that a party is not eligible for a settlement pursuant to this section, the President shall explain the basis for that determination in writing to any person who requests such a settlement.

"(3) ADDITIONAL FACTORS RELEVANT TO SETTLEMENTS WITH MUNICIPALITIES.—In any settlement with a municipality pursuant to this Act, the President may take additional equitable factors into account in determining an appropriate settlement amount, including the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.";

(3) in subsection (g)(4) by striking "$500,000" and inserting "$2,000,000";

(4) by striking paragraph (5) of subsection (g) and inserting the following:

"(5) SMALL BUSINESS DEFINED.—In this section, the term 'small business' refers to any business entity that employs no more than 100 individuals and is a 'small business concern' as defined under the Small Business Act (15 U.S.C. 631 et seq.).";

(5) by adding at the end of subsection (g) the following:

"(7) DEADLINE.—If the President does not make a settlement offer to a small business on or before the 180th day following the date of the President's determination that such small business is eligible for an expedited settlement under this subsection, or on or before the 180th day following the date of the enactment of this paragraph, whichever is later, such small business shall have no further liability under this Act, unless the failure to make a settlement offer on or before such 180th day is due to circumstances beyond the control of the President.

"(8) PREMIUMS.—In any settlement under this Act with a small business, the President may not require the small business to pay any premium over and above the small business's share of liability."; and

(6) in subsection (h)—

(A) by striking the subsection heading and inserting the following: "AUTHORITY TO SETTLE CLAIMS FOR FINES, CIVIL PENALTIES, PUNITIVE DAMAGES, AND COST RECOVERY.—";

(B) by striking "costs incurred" in the first sentence of paragraph (1) and inserting "past and future costs incurred or that may be incurred";

(C) by inserting after "if the claim has not been referred to the Department of Justice for further action." in the first sentence of paragraph (1) the following: "The head of any department or agency with the authority to seek fines, civil penalties, or punitive damages under this Act may consider, compromise, and settle claims for any such fines, civil penalties, or punitive damages which may otherwise be assessed in civil administrative or judicial proceedings if the claim has not been referred to the Department of Justice for further action. If the total claim for response costs, fines, civil penalties, or punitive damages exceeds $3,000,000, such claim may be compromised and settled only with the prior written approval of the Attorney General.";

(D) by striking "$500,000 (excluding interest), any claim referred to in the preceding sentence" in the second sentence of paragraph (1) and inserting "$2,000,000 (excluding interest), any claim for response costs referred to in this subsection"; and

(E) by striking paragraph (4).

(d) MUNICIPALITY DEFINED.—Section 101 (42 U.S.C. 9601), as amended by section 302(d) of this Act, is further amended by inserting after paragraph (34) the following:

"(35) The term 'municipality' means a political subdivision of a State, including a city, county, village, town, township, borough, parish, school district, sanitation district, water district, or other public entity performing local governmental functions. The term also includes a natural person acting in the capacity of an official, employee, or agent of any entity referred to in the preceding sentence in the performance of governmental functions.".

SEC. 309. CLARIFICATION OF LIABILITY FOR RECYCLING TRANSACTIONS.

(a) RECYCLING TRANSACTIONS.—Title I (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 130. RECYCLING TRANSACTIONS.

"(a) LIABILITY CLARIFICATION.—As provided in subsections (b), (c), (d), (e), and (f), a person who arranged for the recycling of recyclable material or transported such material shall not be liable under sections 107(a)(3) and 107(a)(4) with respect to such material. A determination whether or not any person shall be liable under section 107(a)(3) or 107(a)(4) for any transaction not covered by subsections (b) and (c), (d), (e), or (f) of this section shall be made, without regard to subsections (b), (c), (d), (e), and (f) of this section, on a case-by-case basis, based on the individual facts and circumstances of such transaction.

"(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap metal, spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap, and used oil; except that such term shall not include—

"(1) shipping containers with a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

"(2) any item of material containing polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

"(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—

"(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

"(A) The recyclable material met a commercial specification grade.

"(B) A market existed for the recyclable material.

"(C) A substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product.

"(D) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

"(E) For transactions occurring on or after the 90th day following the date of the enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

"(2) REASONABLE CARE.—For purposes of this subsection, 'reasonable care' shall be determined using criteria that include—

"(A) the price paid in the recycling transaction;

"(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material; and

"(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

"(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with the recyclable materials shall be deemed to be a substantive provision.

"(d) TRANSACTIONS INVOLVING SCRAP METAL.—

"(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

"(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

"(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator issues under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) after the date of the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

"(C) the person did not melt the scrap metal prior to the transaction.

"(2) MELTING OF SCRAP METAL.—For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').

"(3) SCRAP METAL DEFINED.—In this subsection, the term 'scrap metal' means—

"(A) bits and pieces of metal parts (such as bars, turnings, rods, sheets, and wire) or metal pieces that may be combined together with bolts or sol-

dering (such as radiators, scrap automobiles, and railroad box cars) which when worn or superfluous can be recycled; and

"(B) notwithstanding subsection (d)(1)(C), metal byproducts of the production of copper and copper based alloys that—

"(i) are not the sole or primary products of a secondary production process,

"(ii) are not produced separately from the primary products of a secondary production process,

"(iii) are not and have not been stored in a pile or surface impoundment, and

"(iv) are sold to another recycler that is not speculatively accumulating such byproducts,

except for any scrap metal that the Administrator excludes from this definition by regulation.

"(e) TRANSACTIONS INVOLVING BATTERIES.—

"(1) IN GENERAL.—Transactions involving recyclable materials that consist of spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

"(A) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries but did not recover the valuable components of such batteries; and

"(B)(i) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

"(ii) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries and the person was in compliance with such regulations or standards and any amendments thereto; or

"(iii) with respect to transactions involving other spent batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries and the person was in compliance with such regulations or standards and any amendments thereto.

"(2) RECOVERY OF VALUABLE BATTERY COMPONENTS.—For purposes of paragraph (1)(A), a person who, by contract, arranges or pays for processing of batteries by an unrelated third person and receives from such third person materials reclaimed from such batteries shall not thereby be deemed to recover the valuable components of such batteries.

"(f) TRANSACTIONS INVOLVING USED OIL.—

"(1) IN GENERAL.—Transactions involving recyclable materials that consist of used oil shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) did not mix the recyclable material with a hazardous substance following the removal of the used oil from service and can demonstrate by a preponderance of the evidence that at the time of the transaction—

"(A) the recyclable material was sent to a facility that recycled used oil by using it as feed stock for the manufacture of a new saleable product;

"(B) the person met the criteria specified in paragraphs (1)(D) and (1)(E) of subsection (c), as modified by paragraphs (2) and (3) of subsection (c), with respect to used oil; and

"(C) regulations or standards for the management of used oil promulgated under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) were in effect on the date of the transaction and the person was in compliance with such regulations or standards and any amendment thereto.

"(2) USED OIL DEFINED.—In this subsection, the term 'used oil' means any oil that has been refined from crude oil, or any synthetic oil, that has been used or stored. Such term does not include any oil that is subject to regulation under section 6(e)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2605(e)(1)(A)), relating to regulations prescribing methods for disposal of polychlorinated biphenyls.

“(g) EXCLUSIONS.—

“(1) IN GENERAL.—The exemptions set forth in subsections (c), (d), (e), and (f) shall not apply if—

“(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction that—

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

“(ii) in the case of recyclable materials other than used oil meeting used oil specifications promulgated under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the recyclable material would be burned as fuel or for energy recovery or incineration; or

“(iii) for transactions occurring on or before the 90th day following the date of the enactment of this section, the consuming facility was not in compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

“(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

“(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

“(2) OBJECTIVELY REASONABLE BASIS.—For purposes of paragraph (1)(A), an objectively reasonable basis for belief shall be determined using criteria that include the size of the person’s business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility’s operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

“(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

“(h) EFFECT ON OWNER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under section 107(a)(1) or 107(a)(2).

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

“(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

“(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

“(j) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

“(1) affect any rights, defenses or liabilities under section 107 of any person with respect to any transaction involving any material other than a recyclable material subject to subsection (a) of this section; or

“(2) relieve a plaintiff of the burden of proof that the elements of liability under section 107 are met under the particular circumstances of any transaction for which liability is alleged.”.

(b) SERVICE STATION DEALERS.—Section 114(c) (42 U.S.C. 9614(c)) is amended—

(1) in paragraph (1)(B) by striking “authorities.” and inserting “authorities that were in effect on the date of such activity.”;

(2) in paragraph (2)—

(A) by striking “a service station dealer may presume that”;

(B) by striking “is not mixed with” and inserting “is presumed to be not mixed with”; and

(C) by striking subparagraphs (A) and (B) and inserting the following:

“(A) has been removed from the engine of a light duty motor vehicle or household appliance by the owner of such vehicle or appliance and is presented by such owner to the dealer for collection, accumulation, and delivery to an oil recycling facility; or

"(B) has been removed from such an engine or appliance by the dealer for collection, accumulation, and delivery to an oil recycling facility."; and

(3) by striking paragraph (4).

SEC. 310. ALLOCATION.

Title I (42 U.S.C. 9601 et seq.) is amended by adding at the end the following new section:

"SEC. 131. ALLOCATION.

"(a) PURPOSE OF ALLOCATION.—The purpose of an allocation under this section is to determine an equitable allocation of the costs of a removal or remedial action at a facility on the National Priorities List that is eligible for an allocation under this section, including the share to be borne by the Trust Fund under subsection (i).

"(b) ELIGIBLE RESPONSE ACTION.—

"(1) IN GENERAL.—A removal or remedial action is eligible for an allocation under this section if the action is at a facility on the National Priorities List and if—

"(A) the performance of the removal or remedial action is not the subject of an administrative order or consent decree as of March 25, 1999;

"(B) the President's estimate of the costs for performing such removal or remedial action that have not been recovered by the President as of March 25, 1999, exceeds $2,000,000; and

"(C) there are response costs attributable to the Fund share under subsection (i).

"(2) EXCLUDED RESPONSE ACTIONS.—

"(A) CHAIN OF TITLE SITES.—Notwithstanding paragraph (1), a removal or remedial action is not eligible for an allocation if—

"(i) the facility is located on a contiguous area of real property under common ownership or control; and

"(ii) all of the parties potentially liable for response costs are current or former owners or operators of such facility,

unless the current owner of such facility is insolvent or defunct.

"(B) CURRENT OWNER.—If the current owner of the property on which the facility is located is not liable under section 107(b)(2), the owner immediately preceding such owner shall be considered to be the current owner of the property for purposes of subparagraph (A).

"(C) AFFILIATED PARTIES.—If the current owner is affiliated with any other person through any direct or indirect familial relationship or any contractual, corporate, or financial relationship other than that created by instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services, and such other person is liable for response costs at the facility, such other person's assets may be considered assets of the current owner when determining under subparagraph (A) whether the current owner is insolvent or defunct.

"(c) DISCRETIONARY ALLOCATION PROCESS.—Notwithstanding subsection (b), the President may initiate an allocation under this section for any removal or remedial action at a facility listed on the National Priorities List and may provide a Fund share under subsection (i).

"(d) ALLOCATION PROCESS.—For each eligible removal or remedial action, the President shall ensure that a fair and equitable allocation of liability is undertaken at an appropriate time by a neutral allocator selected by agreement of the parties under such process or procedures as are agreed to by the parties. An allocation under this section shall apply to subsequent removal or remedial actions for a facility unless the allocator determines that the allocation should address only one or more of such removal or remedial actions.

"(e) EARLY OFFER OF SETTLEMENT.—As soon as practicable and prior to the selection of an allocator, the President shall provide an estimate of the aggregate Fund share in accordance with subsection (i). The President shall offer to contribute to a settlement of liability for response costs on the basis of this estimate.

"(f) REPRESENTATION OF THE UNITED STATES AND AFFECTED STATES.—The Administrator or the Attorney General, as a representative of the Fund, and a representative of any State that is or may be responsible pursuant to section 104(c)(3) for any costs of a removal or remedial action that is the subject of an allocation shall be entitled to participate in the allocation proceeding to the same extent as any potentially responsible party.

"(g) MORATORIUM ON LITIGATION.—

"(1) MORATORIUM ON LITIGATION.—No person may commence any civil action or assert any claim under this Act seeking recovery of any response costs, or contribution toward such costs, in connection with any response action for

which the President has initiated an allocation under this section, until 150 days after issuance of the allocator's report or of a report under this section.

"(2) STAY.—If any action or claim referred to in paragraph (1) is pending on the date of enactment of this section or on the date of initiation of an allocation, such action or claim (including any pendant claim under State law over which a court is exercising jurisdiction) shall be stayed until 150 days after the issuance of the allocator's report or of a report under this section, unless the court determines that a stay will result in manifest injustice.

"(3) TOLLING OF LIMITATIONS PERIOD.—Any applicable limitations period with respect to actions subject to paragraph (1) shall be tolled from the earlier of—

"(A) the date of listing of the facility on the National Priorities List, where such listing occurs after the date of enactment of this section; or

"(B) the commencement of the allocation process pursuant to this section, until 180 days after the President rejects or waives the President's right to reject the allocator's report.

"(h) EFFECT ON PRINCIPLES OF LIABILITY.—The allocation process under this section shall not be construed to modify or affect in any way the principles of liability under this title as determined by the courts of the United States.

"(i) FUND SHARE.—For each removal or remedial action that is the subject of an allocation under this section, the allocator shall determine the share of response costs, if any, to be allocated to the Fund. The Fund share shall consist of the sum of following amounts:

"(1) The amount attributable to the aggregate share of response costs that the allocator determines to be attributable to parties who are not affiliated with any potentially responsible party and whom the President determines are insolvent or defunct.

"(2) The amount attributable to the difference in the aggregate share of response costs that the allocator determines to be attributable to parties who have resolved their liability to the United States under section 122(g)(1)(B) (relating to limited ability to pay settlements) for the removal or remedial action and the amount actually assumed by those parties in any settlement for the response action with the United States.

"(3) Except as provided in subsection (j), the amount attributable to the aggregate share of response costs that the allocator determines to be attributable to persons who are entitled to an exemption from liability under subsection (o) or (p) of section 107 or section 114(c) or 130 at a facility or vessel on the National Priorities List.

"(4) The amount attributable to the difference in the aggregate share of response costs that an allocator determines to be attributable to persons subject to a limitation on liability under section 107(p) or 107(q) and the amount actually assumed by those parties in accordance with such limitation.

"(j) CERTAIN MSW GENERATORS.—Notwithstanding subsection (i)(3), the allocator shall not attribute any response costs to any person who would have been liable under section 107(a)(3) or 107(a)(4) but for the exemption from liability under section 107(p)(3).

"(k) UNATTRIBUTABLE SHARE.—The share attributable to the aggregate share of response costs incurred to respond to materials containing hazardous substances for which no generator, transporter, or owner or operator at the time of disposal or placement, can be identified shall be divided pro rata among the potentially responsible parties and the Fund share determined under subsection (i).

"(l) EXPEDITED ALLOCATION.—At the request of the potentially responsible parties or the United States, to assist in reaching settlement, the allocator may, prior to reaching a final allocation of response costs among all parties, first provide an estimate of the aggregate Fund share, in accordance with subsection (i), and an estimate of the aggregate share of the potentially responsible parties.

"(m) SETTLEMENT BEFORE ALLOCATION DETERMINATION.—

"(1) SETTLEMENT OF ALL REMOVAL OR REMEDIAL COSTS.—A group of potentially responsible parties may submit to the allocator a private allocation for any removal or remedial action that is within the scope of the allocation. If such private allocation meets each of the following criteria, the allocator shall promptly adopt it as the allocation report:

"(A) The private allocation is a binding allocation of at least 80 percent of the past, present, and future costs of the removal or remedial action.

"(B) The private allocation does not allocate any share to any person who is not a signatory to the private allocation.

"(C) The signatories to the private allocation waive their rights to seek recovery of removal or remedial costs or contribution under this Act with

respect to the removal or remedial action from any other party at the facility.

"(2) OTHER SETTLEMENTS.—The President may use the authority under section 122(g) to enter into settlement agreements with respect to any response action that is the subject of an allocation at any time.

"(n) SETTLEMENTS BASED ON ALLOCATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), the President shall accept an offer of settlement of liability for response costs for a removal or remedial action that is the subject of an allocation if—

"(A) the offer is made within 90 days after issuance of the allocator's report; and

"(B) the offer is based on the share of response costs specified by the allocator and such other terms and conditions (other than the allocated share of response costs) as are acceptable to the President.

"(2) REJECTION OF ALLOCATION REPORT.—The requirement of paragraph (1) to accept an offer of settlement shall not apply if the Administrator and the Attorney General reject the allocation report.

"(o) REIMBURSEMENT FOR UAO PERFORMANCE.—

"(1) REIMBURSEMENT.—The Administrator shall enter into agreements to provide mixed funding to reimburse parties who satisfactorily perform, pursuant to an administrative order issued under section 106, a removal or remedial action eligible for an allocation under subsection (b) for the reasonable and necessary costs of such removal or remedial action to the extent that—

"(A) the costs incurred by a performing party exceed the share of response costs assigned to such party in an allocation that is performed in accordance with the provisions of this section;

"(B) the allocation is not rejected by the United States; and

"(C) the performing party, in consideration for such reimbursement—

"(i) agrees not to contest liability for all response costs not inconsistent with the National Contingency Plan to the extent of the allocated share;

"(ii) receives no covenant not to sue; and

"(iii) waives contribution rights against all parties who are potentially responsible parties for the response action, as well as waives any rights to challenge any settlement the President enters into with any other potentially responsible party.

"(2) OFFSET.—Any reimbursement provided to a performing party under this subsection shall be subject to equitable offset or reduction by the Administrator upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.

"(3) TIME OF PAYMENT.—Any reimbursement to a performing party under this subsection shall be paid after work is completed, but no sooner than completion of the construction of the remedial action and, subject to paragraph (5), without any increase for interest or inflation.

"(4) LIMIT ON AMOUNT OF REIMBURSEMENT.—The amount of reimbursement under this subsection shall be further limited as follows:

"(A) Performing parties who waive their right to challenge remedy selection at the end of the moratorium following allocation shall be entitled to reimbursement of actual dollars spent by each such performing party in excess of the party's share and attributable by the allocator to the Fund share under subsection (i).

"(B) Performing parties who retain their right to challenge the remedy shall be reimbursed (i) for actual dollars spent by each such performing party, but not to exceed 90 percent of the Fund share, or (ii) an amount equal to 80 percent of the Fund share if the Fund share is less than 20 percent of responsibility at the site.

"(5) REIMBURSEMENT OF SHARES ATTRIBUTABLE TO OTHER PARTIES.—If reimbursement is made under this subsection to a performing party for work in excess of the performing party's allocated share that is not attributable to the Fund share, the performing party shall be entitled to all interest (prejudgment and post judgment, whether recovered from a party or earned in a site account) that has accrued on money recovered by the United States from other parties for such work at the time construction of the remedy is completed.

"(6) REIMBURSEMENT CLAIMS.—The Administrator shall require that all claims for reimbursement be supported by—

"(A) documentation of actual costs incurred; and

"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.

"(7) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.

"(p) POST-SETTLEMENT LITIGATION.—Following expiration of the moratorium periods under subsection (g), the United States may request the court to lift the stay and proceed with an action under this Act against any potentially responsible party that has not resolved its liability to the United States following an allocation, seeking to recover response costs that are not recovered through settlements with other persons. All such actions shall be governed by the principles of liability under this Act as determined by the courts of the United States.

"(q) RESPONSE COSTS.—

"(1) DESCRIPTION.—The following costs shall be considered response costs for purposes of this Act:

"(A) Costs incurred by the United States and the court of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator.

"(B) Costs paid from amounts made available under section 111(a)(1).

"(2) SETTLED PARTIES.—Any costs of allocation described in paragraph (1)(A) and incurred after a party has settled all of its liability with respect to the response action or actions that are the subject of the allocation may not be recovered from such party.

"(r) FEDERAL, STATE, AND LOCAL AGENCIES.—All Federal, State, and local governmental departments, agencies, or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination provided by this section to the same extent as any other party.

"(s) SOURCE OF FUNDS.—Payments made by the Trust Fund, or work performed on behalf of the Trust Fund, to meet obligations incurred by the President under this section to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under subsections (e), (m), (n), or (o) shall be funded from amounts made available by section 111(a)(1).

"(t) SAVINGS PROVISIONS.—Except as otherwise expressly provided, nothing in this section shall limit or affect the following:

"(1) The President's—

"(A) authority to exercise the powers conferred by sections 103, 104, 105, 106, 107, or 122;

"(B) authority to commence an action against a party where there is a contemporaneous filing of a judicial consent decree resolving that party's liability;

"(C) authority to file a proof of claim or take other action in a proceeding under title 11, United States Code;

"(D) authority to file a petition to preserve testimony under Rule 27 of the Federal Rules of Civil Procedure; or

"(E) authority to take action to prevent dissipation of assets, including actions under chapter 176 of title 28, United States Code.

"(2) The ability of any person to resolve its liability at a facility to any other person at any time before or during the allocation process.

"(3) The validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree issued, signed, lodged, or entered, before the date of enactment of this paragraph with respect to liability under this Act, or authority to modify any such order, judgment, or decree with regard to the response action addressed in the order, judgment or decree.

"(4) The validity, enforceability, finality, or merits of any pre-existing contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.".

TITLE IV—REMEDY SELECTION

SEC. 401. REMEDY SELECTION.

(a) GENERAL RULES.—Section 121(b)(1) (42 U.S.C. 9621(b)(1)) is amended—

(1) by inserting after the first sentence the following: "The preference referred to in the preceding sentence may be implemented in accordance with the November 1991, Environmental Protection Agency, Office of Solid Waste and Emergency Response Publication No. 9380.3–06FS, 'A Guide to Principal Threat and Low Level Threat Waste'.";

(2) by striking "and" at the end of subparagraph (F);

(3) by striking the period at the end of subparagraph (G) and inserting "; and"; and

(4) by inserting after subparagraph (G) the following:

"(H) the effectiveness of the remedial action in making contaminated property available for beneficial use.".

(b) SITE REVIEW REQUIREMENT.—Section 121(c) (42 U.S.C. 9621(c)) is amended—

(1) in the first sentence by striking "the initiation of" and inserting "construction and installation of equipment and structures to be used for"; and

(2) by inserting after the first sentence the following: "The President shall review the effectiveness of and compliance with any institutional controls related to the remedial action during the review.".

(c) DEGREE OF CLEANUP.—Section 121(d) (42 U.S.C. 9621(d)) is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (4), (5), and (6), respectively;

(2) by inserting after paragraph (1) the following:

"(2) HEALTH AND ENVIRONMENTAL STANDARDS.—

"(A) EXPOSURE INFORMATION.—In any case in which an exposure assessment is conducted, such assessment shall be consistent with the current and reasonably anticipated future uses of land, water, and other resources as identified under paragraph (3). Information used by the President to determine potential exposures shall include information made available to the President on actual exposure to hazardous substances or pollutants or contaminants that the President determines is valid and reliable and any other relevant information.

"(B) PLANTS AND ANIMALS.—In determining what is protective of plants and animals for purposes of this section, the President shall base such determinations on the significance of impacts from a release or releases of hazardous substances from a facility to local populations or communities of plants and animals or ecosystems. If a species is listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) impacts to individual plants or animals may be considered to be impacts to populations of plants or animals.

"(3) ANTICIPATED USE OF LAND, WATER, AND OTHER RESOURCES.—

"(A) IN GENERAL.—To assist in selecting the method or methods of remediation appropriate for a given facility, the President shall identify the current and reasonably anticipated uses of land, water, and other resources at and around the facility and the timing of such uses.

"(B) REASONABLY ANTICIPATED USES OF LAND.—In identifying reasonably anticipated uses of land and the timing of such uses, the President shall consider relevant information identified through a process that includes solicitation of the views of interested parties, including the affected local government and the affected local community. The President may meet this requirement though the process outlined in the May 25, 1995, Environmental Protection Agency, Office of Solid Waste and Emergency Response Directive No. 9355.7–04, pertaining to 'Land Use in the CERCLA Remedy Selection Process'.

"(C) REASONABLY ANTICIPATED USES OF WATER.—In identifying reasonably anticipated uses of water and the timing of such uses, the President shall consider relevant information identified through a process that includes solicitation of the views of interested parties, including the affected State, the affected local government, the affected local community, and affected local water suppliers.

"(D) SPECIAL RULES FOR GROUND WATER.—The President shall meet the requirements of subparagraph (C) for ground water as follows:

"(i) If a State has a comprehensive State ground water protection program that has provisions for making site-specific determinations of use and timing of use and that has received a written endorsement by the President, the President shall use the State determinations of use and timing of use that are based on such program.

"(ii) If a State does not have a program described in clause (i), the President shall identify the reasonably anticipated uses of ground water and the timing of such uses as provided in subparagraph (C). In conducting the analysis, the President shall begin with the presumption that ground water is drinking water, if the ground water is within an aquifer that is classified by a State or the Administrator as a drinking water aquifer or if the ground water is within an aquifer that has not been classified. The presumption may be rebutted through site-spe-

cific information identified through the analysis of relevant factors under subparagraph (C).

"(iii) Unless the State has made a specific determination otherwise under clause (i), a current or reasonably anticipated beneficial use of ground water shall not be identified as drinking water if—

"(I) the ground water contains more than 10,000 milligrams per liter total dissolved solids;

"(II) the ground water is so contaminated by naturally occurring conditions or by the effects of broad-scale human activity unrelated to a specific activity that restoration to drinking water quality is impracticable; or

"(III) the potential source of drinking water is physically incapable of yielding a quantity of 150 gallons per day of water to a well or spring without adverse environmental consequences, unless available information indicates that such source is used as a source of drinking water.

"(iv) Following identification of the reasonably anticipated uses of ground water, the President may utilize the phased approach to ground water remediation identified in October 1996 Environmental Protection Agency, Office of Solid Waste and Emergency Response Directive No. 9283.1–12, pertaining to 'Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites'.

"(E) INSTITUTIONAL CONTROLS.—Assumptions restricting future uses can be used in evaluating remedial alternatives only to the extent that institutional controls meeting the criteria of subsection (g) are identified.

"(F) INCLUSION IN ADMINISTRATIVE RECORD.—All information considered by the President in evaluating current and reasonably anticipated future land or water uses under this subsection shall be included in the administrative record under section 113(k).";

(3) in paragraph (4) (as redesignated by paragraph (1) of this subsection) by inserting "LEGALLY APPLICABLE STANDARDS.—" before "With respect to";

(4) in paragraph (4)(A) (as redesignated by paragraph (1) of this subsection)—

(A) by inserting "that is generally applicable, that is consistently applied to response actions in the State," after "subparagraph (A),";

(B) by striking "or is relevant and appropriate";

(C) by striking "or relevant and appropriate";

(D) by striking "Level Goals" and inserting "Levels";

(E) by striking "goals or" and inserting "levels or"; and

(F) by adding at the end the following:

"The President shall closely examine whether a requirement is of general applicability under clause (ii) if, in practice, the requirement only applies to one facility in the State or if the requirement only applies to facilities owned or operated by the United States.";

(5) in paragraph (5) (as redesignated by paragraph (1) of this subsection) by inserting "LIMITATION ON TRANSFERS.—" before "In the case of";

(6) in paragraph (6) (as redesignated by paragraph (1) of this subsection)—

(A) by inserting "WAIVERS.—" before "The President"; and

(B) by striking "(2)" and inserting "(4)";

(7) by adding at the end the following:

"(7) EXCLUSIONS.—The standards, requirements, criteria, and limitations referred to in paragraph (4) shall not include any requirement for a reduction in concentrations of contaminants below background levels."; and

(8) by aligning paragraphs (4), (5), and (6) (as so redesignated) with paragraph (7) (as added by paragraph (7) of this subsection) and the subparagraphs, clauses, and subclauses in such paragraphs accordingly.

(d) STATES ADJOINING CERTAIN FACILITIES.—Section 121(f) (42 U.S.C. 9621(f)) is amended by adding at the end the following new paragraph:

"(4) STATES ADJOINING CERTAIN FACILITIES.—The President shall modify regulations promulgated pursuant to paragraph (1) to provide to any adjoining State within a 50-mile radius of a facility owned or operated by the Department of Energy the same rights as are provided by this subsection to the State in which such facility is located.".

(e) INSTITUTIONAL CONTROLS.—Section 121 (42 U.S.C. 9621) is amended by adding at the end the following:

"(g) INSTITUTIONAL CONTROLS.—

"(1) USE AND IMPLEMENTATION.—In any case in which the President selects a remedial action that allows hazardous substances to remain on-site at a facil-

ity above concentration levels that would be protective for unrestricted use, the President—

"(A) shall include, as a component of the remedy, restrictions on the use of land, water, or other resources necessary to provide long-term protection of human health and the environment;

"(B) shall require, as a component of the remedy, ongoing monitoring and operation and maintenance of the remedy and such remedy shall not be determined to be complete until such monitoring and operation and maintenance are established;

"(C) shall require, as a component of the remedy, that any necessary institutional controls are effective, implemented, and subject to appropriate monitoring and enforcement;

"(D) shall ensure through authorities provided under this Act, including the reviews conducted under subsection (c), that any necessary institutional controls remain in effect as long as necessary to protect human health and the environment, including ensuring that the enforceability of such institutional controls will not be adversely affected by any transfer of the property subject to the controls.

"(2) RESTRICTIONS ON USE.—The President may use institutional controls as a supplement to, but not as a substitute for, other response measures at a facility, except in extraordinary circumstances.

"(3) NOTICE.—Whenever the President selects, in accordance with paragraph (1), a remedy at a facility that relies on institutional controls as an integral component of the remedy, the President shall—

"(A) clearly specify in the record of decision the anticipated restrictions on uses of land, water, or other resources or activities at the facility and the terms of anticipated institutional controls to implement those restrictions;

"(B) specify such restrictions and controls in all other appropriate remedy decision documents and other public information regarding the site, along with identification of the unit of government primarily responsible for monitoring and enforcement of the institutional controls;

"(C) provide public notice of such controls and, in the case of a deed restriction, easement, or other similar measure, incorporate the measure in the public land records for the jurisdiction in which the affected property is located;

"(D) to the extent that institutional controls will be implemented pursuant to an order under section 106, record, in accordance with State law, a notation on the deed to the facility property, or on some other instrument which is normally examined during a title search, that will notify any potential purchaser that use restrictions are or will be placed on the facility property pursuant to an order issued under section 106; and

"(E) undertake any change in the nature or form of institutional controls at the facility in a manner consistent with section 117 and give notice pursuant to the requirements of section 104.

"(4) REGISTRY.—The President shall establish and maintain a registry of restrictions on the use of land, water, or other resources through institutional controls that are included in final records of decision as a component of the remedy at facilities that are, or have been, on the National Priorities List. The registry shall identify the property and the nature or form of the institution controls, including any subsequent changes in the nature or form of such controls.

"(5) ANNUAL REPORT.—On or before March 1, 2000, and annually thereafter, the Administrator shall transmit to the Committee on Commerce and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on each record of decision signed during the previous fiscal year, the type of institutional controls and media affected, and the unit of government designated to monitor, enforce, and ensure compliance with the institutional controls.".

(f) REMEDIAL DESIGN.—Section 121 is further amended by adding at the end the following:

"(h) REMEDIAL DESIGN.—Where appropriate and practicable, remedial designs for remedies selected under this section shall seek to accommodate existing beneficial uses of the contaminated property and shall seek to expedite the return of contaminated property to beneficial use, including the return to beneficial use of separate areas within a facility prior to completion of the remedial action for an entire facility.".

SEC. 402. HAZARDOUS SUBSTANCE PROPERTY USE.

Section 104 (42 U.S.C. 9604) is amended by adding at the end the following:

"(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

"(1) AUTHORITY OF PRESIDENT TO ACQUIRE EASEMENTS.—In connection with any remedial action under this Act, in order to prevent exposure to, reduce the likelihood of, or otherwise respond to a release or threatened release of a hazardous substance, pollutant, or contaminant, the President may acquire, at fair market value, or for other consideration as agreed to by the parties, a hazardous substance easement which restricts, limits, or controls the use of land or other natural resources, including specifying permissible or impermissible uses of land, prohibiting specified activities upon property, prohibiting the drilling of wells or use of ground water, or restricting the use of surface water.

"(2) USE OF EASEMENTS.—A hazardous substance easement under this subsection may be used wherever institutional controls have been selected as a component of a remedial action under this Act and the National Contingency Plan.

"(3) PERSONS SUBJECT TO EASEMENTS.—A hazardous substance easement shall be enforceable in perpetuity (unless terminated and released as provided for in this section) against any owner of the affected property and all persons who subsequently acquire an interest in the property or rights to use the property, including lessees, licensees, and any other person with an interest in the property, without respect to privity or lack of privity of estate or contract, lack of benefit running to any other property, assignment of the easement to another party or sale or other transfer of the burdened property, or any other circumstance which might otherwise affect the enforceability of easements or similar deed restrictions under the laws of the State. The easement shall be binding upon holders of any other interests in the property regardless of whether such interests are recorded or whether they were recorded prior or subsequent to the easement, and shall remain in effect notwithstanding any foreclosure or other assertion of such interests.

"(4) CONTENTS OF EASEMENTS.—A hazardous substance easement shall contain, at a minimum—

"(A) a legal description of the property affected;

"(B) the name or names of all current owner or owners of the property as reflected in public land records;

"(C) a description of the release or threatened release; and

"(D) a statement as to the nature of the restriction, limitation, or control created by the easement.

"(5) RECORDING AND FILING OF EASEMENT.—Whenever the President acquires a hazardous substance easement or assigns a hazardous substance easement to another party, the President shall record the easement in the public land records for the jurisdiction in which the affected property is located. If the State has not by law designated an office for the recording of interests in real property or claims or rights burdening real property, the easement shall be filed in the office of the clerk of the United States district court for the district in which the affected property is located and added to the registry established under section 121(g)(4).

"(6) METHODS OF ACQUIRING EASEMENTS.—The President may acquire a hazardous substance easement by purchase or other agreement, by condemnation, or by any other means permitted by law. Compensation for such easement shall be at fair market value, or for other consideration as agreed to by the parties, for the interest acquired.

"(7) ASSIGNMENT OF EASEMENTS TO PARTIES OTHER THAN THE PRESIDENT.—

"(A) AUTHORITY TO ASSIGN.—The President may, where appropriate and with the consent of the State or other governmental entity, assign an easement acquired under this subsection to a State or other governmental entity that has the capability of effectively enforcing the easement over the period of time necessary to achieve the purposes of the easement. In the case of any assignment, the easement shall also be fully enforceable by the assignee. Any assignment of such an easement by the President may be made by following the same procedures as are used for the transfer of an interest in real property to a State under subsection (j).

"(B) EASEMENTS HELD BY OTHER PERSONS.—

"(i) DESIGNATION AS HAZARDOUS SUBSTANCE EASEMENTS.—Subject to clause (ii), in a case in which an institutional control is a component of a remedy selected under section 121 at a facility listed on the National Priorities List, the owner of property and the potential holder of a restrictive easement may expressly designate, in writing, any interest

in property as a hazardous substance easement for the purpose of restricting or limiting the use of land, water, or other resources in order to prevent exposure to, reduce the likelihood of, or otherwise respond to a release or threatened release of a hazardous substance, pollutant, or contaminant from such a facility.

"(ii) CONDITIONS.—An interest in property may be designated as a hazardous substance easement under clause (i) only if such interest is granted to a State, an Indian Tribe, another governmental entity, or other person that has the capability of effectively enforcing the easement over the period of time necessary to achieve the purpose of the easement, and such State, Tribe, governmental entity, or person consents to the transfer.

"(iii) EFFECT OF DESIGNATION.—When properly recorded or filed under paragraph (5), a hazardous substance easement designated under clause (i) shall create the same rights, have the same legal effect, and be enforceable in the same manner as a hazardous substance easement acquired by the President regardless of whether the interest in property is otherwise denominated as an easement, covenant, or any other form of property right.

"(8) PUBLIC NOTICE.—Not later than 180 days after the date of the enactment of this subsection, the President shall issue regulations regarding the procedures to be used for public notice of proposed property use restrictions. Such regulations shall ensure that before acquiring a hazardous substance easement, before recording any notice of such easement, and before terminating or modifying a hazardous substance easement, the President will give notice and an opportunity to comment to the owner of the affected property, all other persons with recorded interests in the property, any lessees or other authorized occupants of the property known to the President, the State and any municipalities in which the property is located, any relevant community advisory group, the affected community, and the general public.

"(9) TERMINATION OR MODIFICATION OF EASEMENTS.—An easement acquired under this subsection shall remain in force until the Administrator approves a modification or termination and release of the easement and, following such approval, the holder of the easement executes and records such modification or termination and release in accordance with the terms of the easement. Such modification or termination shall be recorded in the same manner as the easement. A person may conduct additional response actions at a facility to allow for unrestricted use of the facility and may subsequently request termination of the easement. Such a request shall be granted by the holder of the easement and approved by the President, in the discretion of the holder and the President, if the holder and the President determine that the easement is no longer necessary to protect human health and the environment.

"(10) ENFORCEMENT.—

"(A) EFFECT OF VIOLATIONS.—Violation of any restriction, limitation, or control imposed under a hazardous substance easement shall have the same effect as failure to comply with an order issued under section 106 and relief may be sought either in enforcement actions under section 106(b)(1) or section 120(g), by States under section 121(e)(2), or in citizens suits under section 310. No citizens suit under section 310 to enforce such a notice may be commenced if the holder of the easement has commenced and is diligently prosecuting an action in court to enforce the easement.

"(B) ENFORCEMENT ACTIONS.—The President may take appropriate enforcement actions to ensure compliance with the terms of the easement whenever the President determines that the terms set forth in the easement are being violated. If the easement is held by a party other than the President and that party has not taken appropriate enforcement actions, the President may notify the party of the violation. If the party does not take appropriate enforcement actions within 30 days of such notification, or sooner in the case of an imminent hazard, the President may initiate such enforcement actions.

"(C) SAVINGS CLAUSE.—Nothing in this section shall limit rights or remedies available under other laws.

"(11) APPLICABILITY OF OTHER PROVISIONS.—Holding a hazardous substance easement shall not in itself subject either the holder thereof or the owner of the affected property to liability under section 107. Any such easement acquired by the President shall not be subject to the requirements of subsection (j)(2) or section 120(h). Nothing in this subsection limits or modifies the authority of the President pursuant to subsection (j)(1).".

SEC. 403. RISK ASSESSMENT STANDARDS.

Title I (42 U.S.C. 9601–9626) is amended by adding at the end the following:

"SEC. 132. RISK ASSESSMENT PRINCIPLES, GUIDELINES, AND REVIEWS.

"Risk assessments and characterizations conducted under this Act shall—

"(1) provide objective assessments, estimates, and characterizations which neither minimize nor exaggerate the nature and magnitude of risks to human health and the environment;

"(2) distinguish scientific findings from other considerations;

"(3) be based on all reasonably available, relevant, and reliable scientific and technical information and shall describe the process for selecting such information; and

"(4) be based on an analysis of the weight of scientific evidence that supports conclusions about a problem's potential risk to human health and the environment.".

TITLE V—GENERAL PROVISIONS

SEC. 501. TRUST FUND DEFINED.

Section 101(11) (42 U.S.C. 9601(11)) is amended to read as follows:

"(11) The term 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.".

SEC. 502. INDIAN TRIBES.

(a) TREATMENT GENERALLY.—Section 126(a) (42 U.S.C. 9626(a)) is amended—

(1) by striking "and section 105" and inserting ", section 105";

(2) by inserting before the period at the end the following: ", section 117 (regarding public participation), section 121 (regarding selection of remedies), and section 128 (regarding State voluntary cleanup programs)"; and

(3) by adding at the end the following: "In applying this subsection, any reference contained in a section identified in the preceding sentence to a facility located in a State shall include a facility located on lands within the jurisdiction of a Federal Indian reservation under the jurisdiction of the United States government.".

(b) STUDY.—Section 126(c) (42 U.S.C. 9626(c)) is amended to read as follows:

"(c) HEALTH IMPACTS.—

"(1) STUDY.—The President shall conduct a study of the health impacts on Indian tribes of pollutants, contaminants, and hazardous substances released from facilities that have been listed or proposed for listing on the National Priorities List.

"(2) REPORT.—Not later than 2 years after the date of the enactment of the Recycle America's Land Act of 1999, the President shall transmit to Congress a report on the results of the study conducted under this subsection.".

SEC. 503. GRANTS FOR TRAINING AND EDUCATION OF WORKERS.

Section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a) is amended—

(1) by inserting "from the Fund" after "Grants" in each of paragraphs (1), (2), and (3); and

(2) by adding at the end the following:

"(4) ALLOCATION OF AMOUNTS.—Of the amounts made available under section 111 to carry out this subsection in a fiscal year, at least 20 percent shall be allocated to non-profit organizations described in paragraph (3) for training minority and other community-based workers who are or may be directly engaged in hazardous waste removal or containment or emergency response actions.".

SEC. 504. STATE COST SHARE.

Section 104(c)(3) (42 U.S.C. 9604(c)(3)) is amended to read as follows:

"(3) STATE COST SHARE.—The President shall not provide any remedial actions pursuant to this section unless the State in which the release or threatened release occurs has entered into a contract or cooperative agreement with the President that provides assurances, deemed adequate by the President, that the State will pay or assure payment, in cash or through in-kind contribution, of 10 percent of the cost of such remedial action (other than any cost paid by the Fund under section 111(a)(1)) and 10 percent of the cost of operation and maintenance.".

SEC. 505. STATE AND LOCAL REIMBURSEMENT FOR RESPONSE ACTIONS.

Section 123 (42 U.S.C. 9623) is amended to read as follows:

"SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any State or general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

"(b) REIMBURSEMENT.—

"(1) EMERGENCY RESPONSE.—The President is authorized to reimburse a State or general purpose unit of local government for expenses incurred in carrying out emergency response actions necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such actions may include, where appropriate, security fencing to limit access, response to fires and explosions, and other activities which require immediate response at the State or local level.

"(2) STATE OR LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant State or local funds normally provided for response.

"(c) AMOUNT.—

"(1) REIMBURSEMENT TO STATES AND GENERAL PURPOSE UNITS OF LOCAL GOVERNMENT.—The amount of any reimbursement to a State or general purpose unit of local government under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the State or general purpose unit of local government having jurisdiction over the political subdivision in which the facility is located.

"(2) LIMITATION.—The amounts allowed for the State and general purpose units of local government may not be combined for any single response action.

"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within 1 year after the date of the enactment of the Recycle America's Land Act of 1999.".

SEC. 506. STATE ROLE AT FEDERAL FACILITIES.

Section 120(g) (42 U.S.C. 9620(g)) is amended to read as follows:

"(g) STATE ROLE AT FEDERAL FACILITIES.—

"(1) ENFORCEMENT AND DISPUTE RESOLUTION.—

"(A) IN GENERAL.—An interagency agreement under this section between a State and any department, agency, or instrumentality of the United States shall be enforceable by the State or the Federal department, agency, or instrumentality in the United States district court for the district in which the facility is located. The district court shall have the jurisdiction to enforce compliance with any provision, standard, regulation, condition, requirement, order, or final determination which has become effective under such agreement, and to impose any appropriate civil penalty provided for any violation of the agreement, not to exceed $25,000 per day.

"(B) NONCONCURRENCE BY STATE.—At a Federal facility in a State to which the President's authorities under subsection (e)(4) have been transferred pursuant to a cooperative agreement, if the State does not concur in the remedy selection proposed by the Federal department, agency, or instrumentality that owns or operates the facility, the parties shall enter into dispute resolution as provided in the interagency agreement. If there is no interagency agreement, the State shall, not later than 120 days after the transfer of authorities under a cooperative agreement, enter into an agreement with the head of the department, agency, or instrumentality on a process for resolving disputes regarding remedy selection for the facility. If a dispute is unresolved after using the process under the interagency agreement or dispute resolution agreement, the head of the Federal department, agency, or instrumentality that owns the Federal facility and the Governor of the State shall attempt to resolve such dispute by consensus. If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor, the State may issue the final determination. In order to compel implementation of the State's selected remedy, the State must bring a civil action in the appropriate United States district court. The district court shall have jurisdiction as provided in subparagraph (A) to issue any relief that may be necessary to implement the remedial action, to impose appropriate civil penalties not to exceed $25,000 per day from the date the selected remedy becomes final, and to review any challenges to the State's final determination consistent with the standards set forth in section 113(j) of this Act.

"(2) LIMITATION.—Except as necessary to implement the transfer of the Administrator's authorities to a State under a cooperative agreement, nothing in this subsection shall be construed as altering, modifying, or impairing in any

manner, or authorizing the unilateral modification of, any terms of any agreement, permit, administrative or judicial order, decree, or interagency agreement existing on the effective date of the Recycle America's Land Act of 1999. Any other modifications or revisions of an interagency agreement entered into under this section shall require the consent of all parties to such agreement, and absent such consent the agreement shall remain unchanged.

"(3) EFFECT ON OTHER AUTHORITIES.—Nothing in this subsection shall affect the exercise by a State of any other authorities that may be applicable to Federal facilities in the State.".

SEC. 507. FEDERAL COST STUDY.

(a) IN GENERAL.—Within 18 months after the date of enactment of this Act, the Congressional Budget Office shall conduct, and submit to Congress the results of, a study of the potential costs to the Federal Government over the next 20 years from Federal liability for natural resource damages under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(b) METHODOLOGY.—In conducting the study, the Congressional Budget Office shall review pleadings filed by the Department of Justice on behalf of Federal natural resource trustees seeking damages for restoration of natural resources and shall apply the same statutory interpretations and methods of calculating damages employed by the United States, as plaintiff, in determining the potential liability of the United States, as defendant, in actions seeking recovery for natural resource damages.

SEC. 508. NO PREEMPTION OF STATE LAW CLAIMS.

Section 302 (42 U.S.C. 9652) is amended by adding at the end the following:

"(e) NO PREEMPTION OF STATE LAW CLAIMS.—Section 107 shall not be construed to preempt any claims under State law for contribution to or recovery of costs of responding to releases or threatened releases of hazardous substances.".

SEC. 509. PURCHASE OF AMERICAN-MADE EQUIPMENT, PRODUCTS, AND TECHNOLOGIES.

(a) IN GENERAL.—If an entity that receives financial assistance under this Act or any law amended by this Act is using all or any part of such assistance to purchase 1 or more pieces of equipment, products, or technologies, the entity may only purchase, to the greatest extent practicable, American-made equipment, products, and technologies with such assistance.

(b) AMERICAN-MADE DEFINED.—In this section, the term "American-made" as used with respect to a piece of equipment, a product, or a technology means that the Federal Trade Commission has determined that the piece of equipment, product, or technology can display a "Made in the USA" or "Made in America" inscription or label or any inscription or label with the same meaning.

SEC. 510. DEVELOPMENT OF NEW TECHNOLOGIES AND METHODS.

Not later than 1 year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall develop and submit to Congress a plan to encourage United States companies to develop new technologies and methods to clean-up sites on the National Priorities List and other hazardous waste sites. The plan shall be designed to ensure that the United States is the world leader in the development of such technologies and methods.

TITLE VI—EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND

SEC. 601. EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXPENDITURES.—Section 111 (42 U.S.C. 9611) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by striking subsections (a), (b), (c), (d), and (e) and inserting the following:

"(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE SUPERFUND.—

"(1) SUBSECTION (b) EXPENDITURES.—The following amounts of amounts appropriated to the Hazardous Substance Superfund after January 1, 2000, pursuant to section 9507(b) of the Internal Revenue Code of 1986, and of amounts credited under section 9602(b) of such Code with respect to those appropriated amounts, shall be available for the purposes specified in subsection (b):

"(A) $300,000,000 for each of fiscal years 2000 through 2004.

"(B) $200,000,000 for each of fiscal years 2005 through 2007.

Such funds shall remain available until expended.

"(2) SUBSECTIONS (c) AND (d) EXPENDITURES.—There is authorized to be appropriated from the Hazardous Substance Superfund established pursuant to section 9507(b) of the Internal Revenue Code of 1986 for the purposes specified in subsections (c) and (d) of this section not more than—

"(A) $1,500,000,000 for each of fiscal years 2000 through 2003;

"(B) $1,400,000,000 for fiscal year 2004;

"(C) $1,300,000,000 for fiscal year 2005;

"(D) $1,200,000,000 for fiscal year 2006; and

"(E) $975,000,000 for fiscal year 2007.

"(b) PAYMENTS RELATED TO CERTAIN REDUCTIONS, LIMITATIONS, AND EXEMPTIONS.—

"(1) FUNDING OF EXEMPT PARTY AND FUND SHARE.—The President may use amounts in the Fund made available by subsection (a)(1) for funding the equitable share of liability attributable to exempt parties under section 107(t) and obligations incurred by the President to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under section 131.

"(2) LIMITATIONS.—

"(A) FUNDING.—Amounts made available by subsection (a)(1) for the purposes of this subsection shall not exceed the following:

"(i) $300,000,000 for each of fiscal years 2000 through 2004.

"(ii) $200,000,000 for each of fiscal years 2005 through 2007.

"(B) ELIGIBLE COSTS.—No funds made available under paragraph (1) may be used for payment of, or reimbursement for, any portion of attorneys' fees that do not constitute necessary costs of response consistent with the national contingency plan.

"(C) ADDITIONAL PURPOSES.—

"(i) IN GENERAL.—If, in any of fiscal years 2000 through 2004, the Administrator does not have available for obligation for the purposes of subsections (c) and (d) the amount specified for the fiscal year in clause (iii), the Administrator, subject to clause (ii), may use funds provided under subsection (a)(1) for such purposes.

"(ii) LIMITATION.—The total amount of funds provided under subsection (a)(1) that the Administrator may use for the purposes of subsections (c) and (d) may not exceed the amount specified for the fiscal year in clause (iii) less the amount which (but for this subparagraph) would be available to the Administrator in such fiscal year for such purposes.

"(iii) AMOUNTS.—The amounts specified in this clause are $1,500,000,000 for each of fiscal years 2000 through 2003 and $1,400,000,000 for fiscal year 2004.

"(c) RESPONSE, REMOVAL, AND REMEDIATION.—The President may use amounts in the Fund appropriated under subsection (a)(2) for costs of response, removal, and remediation (and administrative costs directly related to such costs), including the following:

"(1) GOVERNMENT RESPONSE COSTS.—Payment of governmental response costs incurred pursuant to section 104, including costs incurred pursuant to the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

"(2) PRIVATE RESPONSE COST CLAIMS.—Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 105, if such costs are approved under such plan, are reasonable in amount based on open and free competition or fair market value for similar available goods and services, and are certified by the responsible Federal official.

"(3) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

"(4) STATE AND LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursement to States and local governments under section 123; except that during any fiscal year not more than 0.1 percent of the total amount appropriated under subsection (a)(2) may be used for such reimbursements.

"(5) CONTRACTS AND COOPERATIVE AGREEMENTS.—Payment for the implementation of any contract or cooperative agreement under section 104(d).

"(6) NATURAL RESOURCE DAMAGE ASSESSMENTS.—The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

"(d) ADMINISTRATION, OVERSIGHT, RESEARCH, AND OTHER COSTS.—The President may use amounts in the Fund appropriated under subsection (a)(2) for the following costs (and administrative costs directly related to such costs):

"(1) INVESTIGATION AND ENFORCEMENT.—The costs of identifying, investigating, and taking enforcement action against releases of hazardous substances.

"(2) OVERHEAD.—

"(A) IN GENERAL.—The costs of providing services, equipment, and other overhead related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act and needed to supplement equipment and services available through contractors and other non-Federal entities.

"(B) DAMAGE ASSESSMENT CAPABILITY.—The costs of establishing and maintaining damage assessment capability for any Federal agency involved in strike forces, emergency task forces, or other response teams under the National Contingency Plan.

"(3) EMPLOYEE SAFETY PROGRAMS.—The cost of maintaining programs otherwise authorized by this Act to protect the health and safety of employees involved in response to hazardous substance releases.

"(4) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

"(5) WORKER TRAINING AND EDUCATION GRANTS.—The cost of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $40,000,000 for each of fiscal years 2000 through 2007.

"(6) ATSDR ACTIVITIES.—Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, public health assessments, and other activities authorized by section 104(i).

"(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluation facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

"(8) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

"(9) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration).

"(10) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d) (relating to providing information concerning violations).

"(11) COMPREHENSIVE STATE GROUND WATER PROTECTION PLANS.—Costs of providing assistance to States to develop comprehensive State ground water protection plans to the extent such costs do not exceed $3,000,000 in a fiscal year.

"(e) LIMITATIONS ON NATURAL RESOURCES CLAIMS.—No money in the Fund may be used for the payment of any claim under subsection (c)(6) where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

"(f) OTHER LIMITATIONS.—

"(1) LIMITATIONS ON PAYMENTS OF CLAIMS.—Claims against or presented to the Fund shall not be valid or paid in excess of the total unobligated balance in the Fund at any one time. Such claims become valid and are payable only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

"(2) REMEDIAL ACTIONS AT FEDERALLY OWNED FACILITIES.—No money in the Fund shall be available for costs of remedial action, other than costs specified in subsection (d), with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving ground water contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

"(3) REMEDIAL ACTIONS AT FACILITIES NOT LISTED ON NPL.—No money in the Fund shall be available for response actions that are not removal actions under

section 101(23) with respect to any facility that is not listed on the National Priorities List.''.

(b) ADDITIONAL AMENDMENTS.—

(1) SECTION 111.—Section 111 (42 U.S.C. 9611) is further amended by striking subsections (j) and (n).

(2) SECTION 107.—Section 107 (42 U.S.C. 9607) is amended by striking subsection (k).

(c) CONFORMING AMENDMENTS.—Section 112 (42 U.S.C. 9612) is amended—

(1) in subsection (a) by striking "111(a)" and inserting "'111(c)"; and

(2) in subsection (f) by striking "111(c)(1) or (2)" and inserting "111(c)(6)".

SEC. 602. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

(a) AUTHORIZATION.—Section 111(p)(1) (42 U.S.C. 9611(p)(1)) is amended to read as follows:

"(1) IN GENERAL.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund $250,000,000 for each of fiscal years 2000 through 2007. In addition, there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved.''.

(b) REPEAL OF DUPLICATIVE AUTHORIZATION.—Subsection (b) of section 517 of the Superfund Amendments and Reauthorization Act of 1986 (26 U.S.C. 9507 note) is hereby repealed.

(c) CONFORMING AMENDMENT.—Section 9507(a)(2) of the Internal Revenue Code of 1986 is amended by striking "section 517(b) of the Superfund Revenue Act of 1986" and inserting "section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p))".

SEC. 603. COMPLETION OF NATIONAL PRIORITIES LIST.

(a) STUDY OF 10-YEAR FUNDING NEEDS FOR IMPLEMENTING CERCLA.—There is authorized to be appropriated $1,000,000 for an independent analysis of the projected 10-year costs to the Environmental Protection Agency of implementing the programs authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such analysis shall include estimates of annual and cumulative costs over the next 10 years associated with administering such Act by the Environmental Protection Agency, shall identify sources of uncertainty in the estimates, and shall be completed by January 1, 2001.

(b) BREAKDOWN OF COSTS.—The study referred to in subsection (a) shall include estimates of the following:

(1) Costs for completion of all non-Federal facilities currently on the National Priorities List.

(2) Costs for completion of all Federal facilities currently on the National Priorities List.

(3) Costs associated with those non-Federal sites which the Administrator of the Environmental Protection Agency expects to be added to the National Priorities List over the next 10 years.

(4) Costs associated with those Federal facilities which the Administrator expects to be added to the National Priorities List over the next 10 years.

(5) Costs for operations and maintenance at facilities currently on, or anticipated to be added over the next 10 years to, the National Priorities List.

(6) Costs associated with reviews of remedies under section 121(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any follow-up activities.

(7) Costs for removal activities.

The study shall not include costs associated with implementing section 127 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(c) ORGANIZATIONS TO CONDUCT STUDY.—The cost analysis under subsection (a) shall be conducted by a neutral, nongovernmental organization with expertise in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. In conducting the analysis, the nongovernmental organization shall collect relevant information from experts and other interested persons, including experts in public budgeting and accounting.

TITLE VII—REVENUES

SEC. 701. SENSE OF COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE.

It is the sense of the Committee on Transportation and Infrastructure of the House of Representatives that—

(1) the environmental taxes, taxes on chemicals, and taxes on petroleum that provide revenues to the Hazardous Substance Superfund be reinstated for the period beginning January 1, 2000, and ending December 31, 2007;

(2) the rate of tax and combination of taxes referred to in paragraph (1) be commensurate with the revenue needs, based on the amounts made available from the Hazardous Substance Superfund pursuant to section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by this Act; and

(3) the taxes that provide revenues to the Hazardous Substance Superfund may be reauthorized at a lower rate, and may decline over time, subject to meeting the requirements of paragraph (2).

PURPOSE AND SUMMARY

The purpose of H.R. 1300, the "Recycle America's Land Act," is to amend the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") to encourage the redevelopment of brownfields; to provide liability defenses for certain parties who did not cause or contribute to environmental contamination; to provide exemptions from, and limitations on, Superfund liability for small businesses, generators and transporters of municipal solid waste and sewage sludge, and persons who send certain recyclable materials to legitimate recycling facilities; and to give statutory support for the remedy selection process currently in use by the Environmental Protection Agency (EPA).

BACKGROUND AND NEED FOR LEGISLATION

1. EXISTING LAW

To address uncontrolled releases of hazardous substances, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The law established a $1.6 billion trust fund (largely financed by a tax on chemical and petroleum products); provided strict, joint and several liability for "potentially responsible parties" (PRPs); and gave the Environmental Protection Agency (EPA) authority to clean up sites and sue to recover its costs for having done so.

In 1986, with the Superfund Amendments and Reauthorization Act (SARA), Congress established detailed rules for the selection of remedies, including a preference for treatment and a mandate that remedies comply with "applicable or relevant and appropriate requirements" incorporated from other Federal or more stringent state laws.

In 1990, Congress extended Superfund's authorization and taxing authorities (an additional $5.1 billion) in the final hours of debate on the Omnibus Budget Reconciliation Act of 1990. Authorization of appropriations was extended through September 30, 1994 and taxes through December 31, 1995. Notwithstanding the expiration of these authorizations, Congress has continued to fund the Superfund program out of the excess revenues that had built up in the Superfund Trust Fund. Through fiscal year 1999, Congress has appropriated $20.6 billion for Superfund.

2. CURRENT PROGRAM

The Superfund program has a long and sometimes stormy history. Following the 1986 amendments, both the Bush and Clinton Administrations improved the implementation of the program. However, the program was not fulfilling Congressional expectations and attempts to legislatively reform the program were made in the 103rd, 104th, and 105th Congresses. When Congress failed to enact statutory reforms, the Environmental Protection Agency tried to reform the program administratively. Many of these administrative reforms have improved the program significantly, particularly the administrative reforms to remedy selection. In addition, building on the progress that has been made over the 19-year history of the program, the construction of remedies is now complete at 443 (35%) of the 1281 sites currently on or proposed to the National Priorities List. In addition, 189 sites have been deleted from the National Priorities List, 180 because they were cleaned up (12% of all sites), and 9 because they were deferred to other cleanup programs. Despite this progress, Superfund remains controversial to many. There is concern that current law can deter the redevelopment of property that is or may be contaminated, and that Superfund's liability scheme has caused excessive litigation. There also are continuing concerns as to whether EPA is selecting remedies that go beyond what is necessary to protect human health or the environment, or whether EPA is allowing too much contamination to remain at the site.

a. Brownfields Redevelopment

According to the General Accounting Office, there may be over 500,000 sites in the United States with an industrial past that could be considered to be brownfield sites. A brownfield site is generally considered to be an unused or underused industrial or commercial site, the redevelopment of which is impaired by the presence, or suspected presence, of contamination. In an April 1999 survey conducted by the U.S. Conference of Mayors, cities identified that lack of cleanup funds and concerns over liability as the top two impediments to redeveloping brownfield facilities. Availability of cleanup funds and liability issues are closely related. Although brownfield facilities are not on the Superfund National Priorities List, they may be subject to the Federal Superfund law. According to testimony from the U.S. Conference of Mayors at the May 12, 1999, hearing on H.R. 1300 held by the Water Resources and Environment Subcommittee, many of these sites are not being cleaned up because people are afraid that cleaning up these sites and redeveloping them will make them the target of Superfund liability, even at those sites where Superfund does not apply or enforcement action is unlikely. As a result, investment dollars are spend elsewhere, and many new projects are sited in areas that have no industrial past, contributing to urban sprawl.

To address this concern, since 1989, EPA has had a policy of entering into "prospective purchaser agreements" with persons who acquire property with existing contamination if the new owner did not cause or contribute to that contamination. These agreements provide a covenant not to sue from EPA, protecting a new pur-

chaser from a lawsuit by EPA for existing contamination. However, through 1998, EPA had finalized only 90 of these agreements, each of which had to be reviewed and approved by the Department of Justice. Moreover, these agreements do not protect new property owners from third-party litigation. Thus, a statutory change to address prospective purchaser liability is warranted.

Moreover, prospective purchaser agreements do not address the problem identified by the U.S. Conference of Mayors during the May 12, 1999, hearing on H.R. 1300—the problem of owners refusing to transfer contaminated property. Mayor Marshall of Macon, Georgia told the Subcommittee that many owners of abandoned or underutilized industrial facilities are unwilling to even investigate their property for fear of liability. As a result, former industrial property remains idle, and possibly contaminated, while sprawl continues.

To provide additional incentives for brownfields redevelopment, in 1995 EPA began providing grants to local governments for brownfield site assessments. The purpose of these grants is to investigate property for potential contamination to facilitate its reuse. In 1997, EPA also began providing grants for establishing revolving loan funds to fund site cleanup. While EPA clearly has the authority to provide funding for site investigations, EPA has relied upon less specific authority in providing Superfund Trust Fund dollars for cleanup of brownfield sites. Moreover, because EPA is using section 104 of CERCLA (EPA's own response authority) as its authority for providing brownfield remediation grants and the Superfund Trust Fund is the source of the funding, brownfield remediation grant recipients are prohibited by statute from using the funding for removal of asbestos, lead paint, or petroleum products. These constraints greatly reduce the usefulness of this funding.

b. Liability

Under current law, Superfund liability is strict and (in most cases) joint and several. To hold someone liable for cleanup costs, all that the government must show is that a person falls in one of the categories of liable parties under Superfund (owner, operator, generator, or transporter) at a facility at which there has been a release of hazardous substances. If you are an owner or operator, you are liable if hazardous substances have been released on the property. If you are a generator or transporter, you are liable if you sent any amount of material that meets the definition of a hazardous substance to a facility. Citing the Superfund statute's remedial purpose, courts have applied Superfund liability broadly. Most courts have not required a causal link between a person's activities and the harm alleged. In addition, unless the harm can be shown to be divisible, EPA can hold any one person liable for all of the costs of cleaning up a site.

In 1986, Congress gave EPA additional tools to increase equity in enforcement. Specifically, Congress allowed EPA to pay a portion of the costs of cleaning up a site out of the Superfund Trust Fund ("mixed funding"), and gave EPA the authority to establish non-binding allocations of responsibility. EPA was slow to use these tools, in part because of lack of separate funding for these initia-

tives and fear of criticism for using public money for cleanups where private parties were liable.

In addition, in 1989, to advance its goal of increasing the number of cleanups conducted by private parties, EPA adopted an "enforcement first" policy. Under this policy, EPA, through an agreement or an order, seeks to compel private parties to conduct cleanups. This policy has resulted in more potentially responsible party (PRP) lead cleanups and a notable increase in the number of cleanups overall, but also has contributed to a great deal of contentious third-party litigation (i.e., lawsuits by the private parties against other potentially liable private parties).

Recently, as an administrative reform, EPA has tried to reduce third-party litigation by providing separate de minimis settlements for parties who contributed one percent or less of the volume of waste to a site. According to EPA's Superfund Reforms Annual Report for FY 1998, EPA has completed settlements with 18,000 de minimis parties, of which 12,000 received settlements in the past 6 years.

However, this reform has not addressed all of the concerns of small parties with the Superfund program. Under this reform, EPA contacts de minimis parties directly, informs them of their potential liability, and offers them a settlement. These small parties are often confused by the Superfund statute and process and do not understand why they may be responsible for cleanup costs. In testimony before the Water Resources and Environment Subcommittee, the National Federation of Independent Business described this process, as utilized at the Quincy Landfill Superfund Site, as an "ongoing nightmare for small businesses, their families, friends, and neighbors in Quincy, Illinois."

c. Remedy

In recent years, in response to concern that remedies selected for particular sites did not adequately consider the expected future use of that site, EPA policies have allowed for remedies to be tailored to expected future uses. This allows EPA to select a remedial option that relies less on treatment and more on restricting uses of the property to ensure protectiveness. For example, because exposure to hazardous substances will be less, higher concentrations of hazardous substances may be left on-site at future industrial property than future residential property. In many instances, this has resulted in less expensive cleanup options not involving treatment. Currently, only about 1/3 of Superfund cleanups involve active treatment of the hazardous substances at the site. Both EPA Administrator Carol Browner and Assistant Administrator Timothy Fields have testified before Congressional committees that the cost of cleaning up a Superfund site has been reduced by approximately 20%, on average, as a result of EPA's administrative reforms concerning remedy. EPA's Superfund Reforms Annual Report for FY 1998 also reports that by updating older remedies, and by providing for headquarters review of high cost remedies, EPA has been able to save over $1 billion in estimated cleanup costs.

These cost savings are particularly significant because EPA has determined that, in many instances, experience with the program indicates that lower cost remedies may provide long term protec-

tion of human health and the environment, eliminating the need for many high cost remedies that had been selected before EPA's remedy reforms were put in place. As Mr. Fields testified before the Water Resources and Environment Subcommittee on April 10, 1997, EPA has achieved these cost reductions by using reasonable assumptions about current and future land use, and by implementing "smart ground water cleanup." According to Mr. Fields "smart ground water cleanup" means "phasing response actions, controlling and reducing contamination sources to facilitate more effective cleanup of dissolved contamination, increased use of monitored natural attenuation, better coordination with States on defining beneficial uses, and making proper adjustments during cleanup implementation." Mr. Fields, at the April 10, 1997, hearing, testified that it would be helpful for Congress to codify EPA's administrative remedy reforms.

3. STATUS AND FUTURE OF THE NATIONAL PRIORITIES LIST

As of September 1999, the National Priorities List (NPL) consisted of 1223 facilities. In addition, 58 facilities have been proposed and are awaiting final listing, for a total of 1281 proposed and final facilities. Over the 19-year period of the Superfund program, 189 sites have been deleted from the NPL (180 because they were cleaned up and 9 because they were deferred to other cleanup programs). At least 50 of the deleted sites required no remedial action. Of the sites currently on the NPL, 443 have completed construction of the remedy. In addition, 459 sites on the NPL have cleanup construction underway, and an additional 214 have had some on-site activity, in the form of a removal action. This means that 107 sites, approximately 9% of sites listed on the current NPL, have seen no cleanup activity at all.

The number of sites that will be added to the NPL in the future is uncertain. The trend in recent years has been downward and the Committee expects that trend to continue. In November 1998, the General Accounting Office reported that, of the 3036 sites currently in EPA's database of sites where there has been a release of a hazardous substance (CERCLIS), EPA and State officials expect only 232 of these sites to be added to the Superfund National Priorities List.

4. CONCLUSION

H.R. 1300, the Recycle America's Land Act, addresses barriers to brownfields redevelopment caused by CERCLA by protecting cleanup volunteers and brownfield redevelopers from Federal liability, and by providing grants for site assessment and cleanup revolving loan funds. H.R. 1300 addresses CERCLA liability through liability defenses for innocent landowners (including brownfields redevelopers), and liability exemptions and limitations for small businesses, recyclers, and persons who send garbage to Superfund sites. H.R. 1300 encourages continued use of EPA's administrative remedy reforms by requiring EPA to determine future land use and groundwater use, and by giving statutory approval to EPA's policy of applying the preference for treatment only to principal threats. The Committee expects these reforms to reduce litigation and expe-

dite cleanup, thereby increasing the protection of human health and the environment.

H.R. 1300 also addresses the future of the Superfund program by providing an eight-year authorization of the Superfund program, with declining authorization levels beginning in fiscal year 2004. The bill also calls for an eight-year reauthorization of the taxes that fund the Superfund Trust Fund, at levels that match the revenue needs, to avoid building up a surplus in the Trust Fund.

DISCUSSION OF COMMITTEE BILL (H.R. 1300) AND SECTION-BY-SECTION ANALYSIS

TITLE I—BROWNFIELDS REVITALIZATION

Section 101. Savings provision

Section 101 is a savings provision that expressly preserves the President's authority to respond to any release of a hazardous substance under section 104 of CERCLA at any site, including brownfield sites. This section makes clear that nothing in Title I of H.R. 1300 removes the Federal response authority following a brownfield cleanup. The President always retains authority to take action to protect human health and the environment. The limitations placed upon the President only address a person's Federal liability for additional cleanup activities after that person has already performed a cleanup under State law, and EPA decides to use its response authority at the site.

Section 102. Brownfields

Section 102 adds new section 127 to title I of CERCLA to address brownfield facilities. This section addresses the major impediments to brownfields redevelopment identified by an April 1999 survey conducted by the U.S. Conference of Mayors by providing Federal assistance for site assessments and cleanups, and by addressing the CERCLA liability issues that have deterred redevelopment. New section 127 includes:

(a) Definitions.—New section 127(a) defines brownfield facilities, identifies the entities eligible to receive grants (including States and local governments), and provides other definitions. The definition of brownfield facility defines what facilities are eligible for assistance under this section. The Committee notes that pilot projects funded under the Brownfields Redevelopment Initiative, established by the Environmental Protection Agency (EPA), excluded many brownfield facilities, due to statutory restrictions on the use of money from the Superfund Trust Fund. In particular, Trust Fund money may not be used to clean up asbestos, lead-based paint, or petroleum. These restrictions are not applicable to grants provided under this section. First, new section 127 is separate from section 104 of CERCLA and does not include any of the restrictions on response found in section 104. Second, new section 127 is funded from general revenues and not from the Superfund Trust Fund, and is not limited by the restrictions on the uses of the Fund found in section 111 of CERCLA and in the Internal Revenue Code.

(b) Brownfield Assessment Grant Program.—New section 127(b) requires the President to establish a program to provide grants for inventory and assessment of brownfield facilities. This subsection

includes application requirements and criteria for the President to use to evaluate the applications. Each grant may not provide more than $200,000 for a single brownfield facility.

(c) Brownfield Remediation Grant Program.—New section 127(c) requires the President to establish a program to provide grants for capitalization of revolving loan funds. After establishing a revolving loan fund, an eligible entity may make loans for the purpose of carrying out remedial actions at one or more brownfield facilities to a State, a site owner or a site developer (including the eligible entity itself, as long as that entity follows the same rules applicable to other loan recipients, such as repayment of the loan in a timely manner). This section gives the eligible entity the flexibility to structure the terms and conditions of loans to best meet the purpose of brownfield redevelopment. For example, such funds may provide low and, where necessary, even zero interest loans.

If the entity receiving a grant under this section is a local government, that local government may set aside 10% of the grant for the purpose of developing and implementing a brownfields remediation program, including health monitoring and monitoring and enforcement of institutional controls. This set aside addresses two issues. The first issue was raised by the EPA Inspector General in a March 27, 1998, audit report on EPA's Brownfields Redevelopment Initiative. In this report, the Inspector General noted that to sustain brownfield redevelopment efforts cities will need to develop their own expertise in redevelopment and environmental matters. For example, one city that received funding under EPA's brownfields assessment pilot program used this funding to hire a contractor to complete site assessments, but when those assessments were completed, the city did not have technical staff to review them. The 10% set aside allows cities to use some of the grant money to develop their own brownfield programs, including inhouse staff. This set aside should be considered "seed money" to encourage cities to develop their own in-house expertise and should not be considered a continuing source of funding for city employees.

The second issue was raised by the National Association of County and City Health Officials (NACCHO) in testimony on H.R. 1300 during the May 12, 1999, hearing of the Water Resources and Environment Subcommittee. At that hearing, NACCHO brought the role of local public health officials in brownfields redevelopment to the attention of the Subcommittee and requested that the purposes of the brownfields grants be expanded to include funding for that role. The Water Resources and Environment Subcommittee responded by adopting an amendment adding the 10% set-aside.

New section 127(c) also includes application requirements and ranking criteria for the President to use to evaluate the applications. Under the ranking criteria, the President evaluates an eligible entity's proposed program for establishing a remediation revolving loan fund, and does not evaluate individual remediation projects. This section caps the maximum grant per eligible entity at $1,000,000. This is an annual limitation.

(d) General Provisions.—New section 127(d) establishes general provisions applicable to both the brownfield assessment grant program and the brownfield remediation grant program. Under this subsection, the President is authorized to require grant recipients

to meet certain terms and conditions. For brownfields remediation grants, these terms and conditions relate to the eligible entity's proposed program for establishing a remediation revolving loan fund. The authority to include terms and conditions necessary to ensure proper administration of the grants does not give the President authority to condition receipt of a grant on an agreement to allow the President to approve which sites are selected for remediation or to oversee remediation activities.

The Committee does not anticipate that EPA, or any other Federal entity administering the brownfields grant program authorized by this section, will monitor individual projects, develop scopes of work, or oversee operational matters. The Committee intends the President to ensure that brownfields programs receiving assistance under this section meet the requirements of this section, including the requirement to comply with all applicable Federal and State laws, by auditing an appropriate number of grants, as provided in new section 127(d)(2). Because these cleanups are not being conducted under the Federal program, the requirements of the National Contingency Plan relating to response actions are not applicable to grants funded under new section 127.

(e) Approval.—New section 127(e) requires the President to evaluate and approve grants based on ranking criteria. Grants under this section are provided in a particular fiscal year. Nothing in new section 127 prevents an eligible entity from seeking an additional grant in a subsequent fiscal year. However, such a grant application would be evaluated with all other grant applications, based on the ranking criteria, which can take prior funding into account under the criteria related to need for financial assistance.

(f) Authorization of Appropriations.—New section 127(f) authorizes such sums as may be necessary out of the General Fund to carry out this section.

Section 103. Assistance for voluntary cleanup programs

Section 103 adds new section 128 to title I of the Act to authorize $25,000,000 a year for eight years for assistance to State voluntary cleanup programs. A State may seek funding for one or more of the eligible purposes set forth in new section 128(b). The President may not place conditions on this funding that are unrelated to the purposes for which the funding is provided. If a State receives assistance for site inventories and assessments under this section in a fiscal year, that State is not eligible for a brownfields assessment grant under new section 127(b) for that fiscal year.

Section 104. Enforcement in cases of a release subject to a State response action

Section 104 adds new section 129 to title I of the Act to prohibit the use of enforcement authorities under CERCLA by any person other than a State at a facility at which a cleanup is being conducted or has been completed in compliance with a State law that specifically governs response actions for the protection of public health and the environment. However, as the following provisions of this section make clear, this prohibition is not absolute:

(a) Enforcement.—Under new section 129(a), the prohibition on Federal enforcement applies only to facilities that are not listed or

proposed for listing on the National Priorities List. As a result, there is no bar on Federal enforcement under CERCLA at facilities that the President determines present a significant enough risk to identify as a national priority. Moreover, under new section 129(a), this prohibition applies only to enforcement actions against the person who is conducting or has conducted the cleanup under State law. Persons who do not step forward and conduct a cleanup are afforded no protections under this section.

(b) Exceptions.—Under new section 129(b), the President retains the authority to use CERCLA enforcement authorities under any one of four circumstances: (1) the State requests the President to take enforcement action, (2) the President determines that response actions are immediately required to prevent, limit, or mitigate an emergency and the State will not take action in a timely manner, (3) the Agency for Toxic Substances and Disease Registry issues a public health advisory with respect to the facility, or (4) the President determines that contamination has migrated across a State line, resulting in the need for further response action and the affected States will not take action in a timely manner.

(c) Report to Congress.—Under new section 129(c), if the President does use CERCLA enforcement authorities under the authority retained under subsection (b), the President must submit a report to Congress describing the legal and factual basis for this action.

To encourage more cleanups at brownfield sites, this section gives cleanup volunteers some certainty about the risk that they take when they step forward and agree to clean up a site. Under this section, these cleanup volunteers know that their liability will be limited to the actions required by the State cleanup officials, unless one of the specific exceptions set forth in subsection (b) is met. The Committee expects this section to address the concern raised by the U.S. Conference of Mayors at the May 12, 1999, hearing on H.R. 1300, that, if faced with open-ended potential liability, site owners will “moth-ball” brownfield property, and will not allow it to be redeveloped. The Committee does not expect this provision to result in an increase in EPA-financed removal actions at brownfield facilities. Neither EPA nor any other person brought to the Committee’s attention an example of a facility where EPA took a response or enforcement action after completion of a cleanup under a State response program.

Section 105. Additions to National Priorities List

Many communities seek to avoid listing a facility within the community on the Superfund National Priorities List because of the negative impact such a designation can have on property values and the local economy. Many communities also fear that listing their facility on the National Priorities List could delay cleanup.

This section amends section 105 of CERCLA to add a new subsection (h) to address when the listing of a facility on the National Priorities List should be deferred.

(a) NPL Deferrals

Under new subsection (h)(1), the President is expected to defer listing a facility on the National Priorities List if long-term reme-

dial action is being conducted under other Federal authorities. This provision codifies EPA's existing policies of deferring facilities to other Federal remedial authorities where such other authorities are applicable.

Under new subsection (h)(2), the President is expected to defer listing a facility on the National Priorities List if remedial action that will provide long-term protection of human health and the environment is underway under a State response program.

Under new subsection (h)(3), the President is directed to defer final listing of a facility on the National Priorities List if a State is attempting to obtain an agreement from parties to perform a remedial action that will provide long-term protection of human health and the environment. The Committee believes that this provision will create a strong incentive for parties to agree to work with State authorities to clean up a site.

Under new subsection (h)(3), the President may propose the facility to the National Priorities List, but may not place the facility on the final list unless one year has passed from the date of proposal, and the President determines that the State is not making reasonable progress toward obtaining a cleanup agreement. EPA presented data to the Water Resources and Environment Subcommittee during a hearing on March 12, 1997, that suggests that it takes EPA over two years, on average, from the time EPA proposes a facility to the National Priorities List to the time a remedial investigation and feasibility study is completed. Based on EPA's own data, the deferral required under this paragraph should not lead to any delay in cleanup. When determining what constitutes reasonable progress, the President should include reasonable time spent studying a site and evaluating remedial options, prior to the selection of a remedy.

(b) Cross reference

The subsection makes a technical change to section 105(a) to add a cross-reference to new section 105(h).

TITLE II—COMMUNITY PARTICIPATION AND PUBLIC HEALTH

Subtitle A—Community Participation

Section 201. Improving citizen and community participation in decisionmaking

Section 201 amends section 117 of CERCLA to enhance the opportunities for citizens and communities to participate in remedial actions at Superfund sites.

(a) Technical Amendments.—Section 201(a) makes technical amendments, redesignating existing provisions of section 117.

(b) Participation in Decisionmaking.—Section 201(b) amends section 117(a) to provide for meaningful public participation in and notice of every significant phase of a response action at a covered facility.

(c) Alternatives, Selecting Appropriate Activities; Providing Information.—Section 201(c) amends section 117(a) to require consideration of remedial alternatives proffered by the community, and to provide affected parties with information about every significant phase of a response action.

Section 202. Additional information requirements

Section 202 adds a new subsection (b) to section 117 of CERCLA to place additional requirements for information on the President, including making information regarding the response action publicly available and informing the general public about the risks posed by the site. The Committee expects EPA to be very careful and accurate when it informs communities affected by the release of hazardous substances of the risks posed by those hazardous substances. It undermines EPA's credibility when the Agency informs a community that a site poses a serious risk, and later tells the community that the risk posed by the site is low.

New section 117(b) also requires the President to provide information to the public on releases of hazardous substances from Superfund sites at every significant phase of the response action. This requirement does not place any additional burdens on any party that is performing a response action. The source of this information is intended to be data that is already collected as part of the response action. If data is not readily available, the President is to make best estimates.

Section 203. Technical assistance grants

Section 203 redesignates section 117(e) of CERCLA as section 117(d) and expands this provision to authorize technical assistance grants at facilities that have been proposed to the National Priorities List and significant Federal removal actions, as well as final National Priorities List facilities. New section 117(d) eliminates the requirement in current law that a grant recipient provide 20% matching funds. New section 117(d) also expands authorized grant activities.

Section 204. Understandable presentation of materials

Section 204 amends section 117 of CERCLA to add a new subsection (e) to require the President to ensure that information distributed to the public is easily understood by the community. This includes providing information both orally and in writing in languages other than English.

Section 205. Public participation in removal actions

Section 205 amends section 117 of CERCLA to add a new subsection (f) to specify the requirements for public participation at removal actions.

Section 206. Community study

Section 206 amends section 117 of CERCLA to add a new subsection (g) to require EPA to prepare and submit to Congress a study on Superfund activities in communities, the characteristics of the communities in which the Superfund activities take place, and the relative risks being addressed. The purpose of this study is to determine if listing decisions are being made, and EPA resources are being spent, in a fair and equitable manner, regardless of the population, race, ethnicity, and income characteristics of the community affected by a facility that is listed or proposed for listing on the National Priorities List.

Section 207. Definitions

Section 207 amends section 117 of CERCLA to add a new subsection (h) to provide definitions of "covered facility" and "affected community." These terms are used in the community participation and public health provisions as amended by H.R. 1300.

Subtitle B—Human Health

Section 221. Public health authorities

(a) Disease Registry and Medical Care Providers.—Section 221(a) amends section 104(i)(1) of CERCLA regarding the requirement in current law to establish a disease registry and makes technical amendments regarding referral to health care providers.

(b) Substance Profiles.—Section 221(b) amends section 104(i)(3) to require that toxicological profiles of hazardous substances be based on scientific development and peer reviewed data. This amendment also requires public distribution of such profiles.

(c) Determining Health Effects.—Section 221(c) revises aspects of health effects research under section 104(i)(5).

(d) Public Health at NPL Facilities.—Section 221(d) revises section 104(i)(6) to allow preliminary health assessments or health consultations before ATSDR commits to full public health assessments at facilities and requires that such assessments take into account the needs and conditions of the affected community and increase community involvement. This amendment also requires EPA to place the highest priority on facilities with releases of hazardous substances, which result in actual ongoing human exposures at levels of public health concern, as identified by ATSDR.

(e) Health Studies.—Section 221(e) amends section 104(i)(7)(A) to broaden the information ATSDR may consider before deciding to conduct a health study.

(f) Distribution of Materials to Health Professionals and Medical Centers.—Section 221(f) amends section 104(i)(14) to expand the distribution of health and risk information to the public.

(g) Grants, Contracts, and Community Assistance Activities.—Section 221(g) amends 104(i)(15) to increase the ability of ATSDR to fund, work with, and serve public or private non-profit entities and communities affected by the release of hazardous substances.

(h) Peer Review Committee.—Section 221(h) amends section 104(i) to add a new paragraph 19 to require ATSDR to establish an external peer review committee.

(i) Conforming Amendments.—Section 221(i) makes technical conforming amendments.

Section 222. Indian health provisions

Section 222 amends section 104(i) of CERCLA to include reference to the Indian Health Service and to require consideration of subsistence activities in public health assessments.

Section 223. Hazard ranking system

Section 223 amends section 105(c) of CERCLA to require the President to place the highest priority on facilities with actual human exposure to releases. This amendment is consistent with the amendment to section 104(i)(6)(a)(iii) made by section 221(d).

This section also requires EPA to take prior response actions into account when determining whether or not to list a facility on the National Priorities List.

Section 224. Facility scoring

Section 224 amends section 105(h) of CERCLA to require EPA to identify and evaluate facilities on Indian reservations or in poor rural or urban areas as possible facilities for listing on the National Priorities List.

TITLE III—LIABILITY REFORM

Section 301. Amendments to section 106

(a) Sufficient cause.—Section 301(a) amends section 106(b)(1) of CERCLA to allow EPA to issue an administrative order to a person, even if another person is complying with the terms of the same order or another order pertaining to the same release, as long as the elements of section 106 are met. This subsection also defines what constitutes "sufficient cause" for establishing a defense for noncompliance with an order.

(b) Limitation on Liable Parties.—Section 301(b) adds a new subsection (d) to section 106 to preclude a Federal agency or department that is itself liable for the costs of a response action at a facility from using section 106 authority to order other parties to perform that response action. In August 1996, Executive Order 13016 gave the Department of Defense, the Department of Energy, the Department of Commerce, the Department of Agriculture, and the Department of the Interior authority to issue cleanup orders under section 106 of CERCLA. In 1998, these departments signed a memorandum of agreement stating that a department will not use this authority if a release of hazardous substances is "directly and primarily attributable to [its] operations and activities." The standard established by this memorandum of agreement is not a legal standard applicable to all parties at a facility. Under current law, these departments remain 100% liable for costs of responding to releases at the facilities they own and operate and the Committee does not believe that it is appropriate to allow one liable party to order another liable party to perform a response action.

Section 302 of the bill establishes a defense to liability applicable to some parties who do not cause or contribute to contamination at a site. If a Federal agency or department can demonstrate that it is an innocent landowner under the amendments to section 107(b) made by section 302 of this Act, then the Federal agency or department would retain the authority to order a response action under section 106. If it cannot demonstrate that it is are an innocent landowner, it remains liable for all costs of responding to a release of hazardous substances at the Federal facility, including any release that may present an imminent and substantial endangerment. At Federal facilities where Department of Defense, the Department of Energy, the Department of Commerce, the Department of Agriculture, and the Department of the Interior may be liable parties and unable to issue cleanup orders under section 106, the Environmental Protection Agency retains its authority, and may use it to order any potentially liable party, including the

Federal agency, to respond to a release that may present an imminent and substantial endangerment.

Section 302. Innocent parties

(a) Liability Relief For Innocent Parties.—Section 302(a) amends the defenses to CERCLA liability under section 107(b) of CERCLA to provide certain defenses for some persons who did not cause or contribute to the contamination of a facility, as follows:

(1) In General.—New section 107(b)(1) retains the defenses to CERCLA liability found in current law, which includes the "third-party" defense under which a potentially liable party may demonstrate that a release is caused solely by the act or omission of an unrelated third-party. New section 107(b)(1) also makes a technical amendment to section 107(b) with respect to the ability of railroad common carriers to assert the third-party defense. Under current law, railroad common carriers may assert the third-party defense if their only contractual relationship to the person who caused the release of hazardous substances is the carriage of goods under a published tariff. However, following enactment of the Staggers Rail Act, most rail shipments move under contracts filed with the Surface Transportation Board, not published tariffs. As common carriers, railroads are obligated to accept goods, including hazardous substances, for transport. There is no reason to differentiate whether the railroad transported such materials under a tariff or a contract.

(2) Liability Relief for Innocent Parties.—New section 107(b)(2) establishes a new affirmative defense for certain innocent parties. Subparagraph (A) of new section 107(b)(2) replaces the innocent landowner defense currently found in the definition of "contractual relationship" in section 101(35) of CERCLA, making the innocent landowner defense a separate defense from the "third-party" defense.

Because CERCLA is a strict liability statute, courts hold persons liable simply because of their status as an owner or operator of contaminated property, regardless of whether that person had anything to do with the contamination. The existing "third-party" defense applies only if the owner or operator had no contractual relationship with the person who caused the contamination, or if the owner or operator purchased the property and was unaware that the property was contaminated. As a result, the existing "third-party" defense does not apply to brownfield redevelopment and a person may become liable under CERCLA simply because they invest in property that has an industrial past and is or may be contaminated. To avoid this potential liability, much development takes place in areas with no industrial past, increasing urban sprawl. CERCLA, a remedial statute that is intended to protect human health and the environment, may lead to a different and unintended environmental harm by creating incentives for the destruction of open green space.

Recognizing this unintended consequence, EPA, as well as many State and local governments, have instituted programs to encourage the redevelopment of property that is or may be contaminated. As early as 1989, EPA began to encourage redevelopment by offering "prospective purchaser" agreements. Under these agreements,

a person who acquires property after all disposal takes place and who did not cause or contribute to the contamination, is given a covenant not to sue from EPA, even though these "prospective purchasers" acquired property with full knowledge that it is or may be contaminated. Many States have enacted voluntary cleanup programs that provide covenants not to sue under State law. In addition, many cities have programs to encourage investment in distressed properties. These Federal, State, and local programs are often called brownfield redevelopment programs. Despite the efforts of Federal, State, and local brownfield redevelopment programs, only a statutory change can affect legal standards of Federal liability. To remove this unintended consequence of CERCLA, new section 107(b)(2)(A) provides an innocent landowner defense applicable to brownfield redevelopers and prospective purchasers.

Under new section 107(b)(2)(A), a person who is a potentially liable party under CERCLA solely based on the person's status as an owner or operator may establish a defense to that liability by demonstrating that the person acquired the facility after all disposal or placement of hazardous substances for which liability is alleged. As used in this section, the Committee intends "disposal or placement" to mean active measures taken by the owner or operator. The Committee intends the issue of what actions must be taken to address any spread of contamination to be addressed through the requirement to undertake "appropriate care," not through the definition of "disposal or placement."

Releases of hazardous substances for which no CERCLA liability is alleged will not preclude an owner or operator from establishing a defense to liability under section 107(b)(2)(A). Thus, a facility may operate and release hazardous substances under a Clean Air Act permit, or a Clean Water Act permit and still assert a defense to liability. Similarly, a facility may have hazardous substances that have been released, but require no response.

To establish an innocent landowner defense, a person also must demonstrate that the person exercised "appropriate care" with respect to the hazardous substances. And, if the person acquired ownership of a facility after the date of enactment of CERCLA, the person must demonstrate that prior to the acquisition, the person made "all appropriate inquiry" into the previous ownership and uses of the facility. These two requirements are addressed in paragraphs (3) and (4) of new section 107(b)(2), discussed below.

If the person acquired the facility before the date of introduction of H.R. 1300 (March 25, 1999), the person also must demonstrate that the person did not know and had no reason to know that hazardous substances had been released at the facility, unless the person expanded, developed, or redeveloped a commercial or industrial facility under a Federal, State or local program for the redevelopment of property that is or may be contaminated. This exception would apply to all brownfields redevelopment activity undertaken by a Federal, State or local government itself as well as to other persons who participate in brownfield redevelopment programs under the auspices of such governmental entities.

Under new section 107(b)(2)(B) a person who is a potentially liable party under CERCLA solely based on the person's status as an owner or operator may establish a defense to that liability by dem-

onstrating that the person acquired the facility by inheritance or bequest after all disposal or placement of hazardous substances had taken place, did not cause or contribute to the contamination, and exercised appropriate care with respect to any hazardous substances on the property.

Under new section 107(b)(2)(C) a person who is a potentially liable party under CERCLA based solely on the person's status as an owner or operator may limit that liability to the actual proceeds of the sale of the facility if the person can demonstrate that the person is a non-profit organization that received title to the property as a charitable donation, did not cause or contribute to the contamination, and exercised appropriate care with respect to any hazardous substances on the property.

Under new section 107(b)(2)(D), a governmental entity who is a potentially liable party under CERCLA based solely on the entity's status as an owner or operator of a facility through escheat or other involuntary transfer, eminent domain, or by granting a license or permit to conduct business, may establish a defense to that liability by demonstrating that the governmental entity acquired the facility after all disposal or placement of hazardous substances had taken place, did not cause or contribute to the contamination, and exercised appropriate care with respect to any hazardous substances on the property. Under section 101(20) of CERCLA, governments who acquire property involuntarily are excluded from the definition of owner or operator. Under section 107(b)(2)(D), the exercise of eminent domain authority or merely granting a license or permit, which are not involuntary actions, do not subject a governmental entity to CERCLA liability if the governmental entity can establish the conditions of the defense.

Under new section 107(b)(2)(E), an owner or operator of a sewage treatment works may establish a defense to liability under CERCLA by demonstrating that the treatment works was subject to and in compliance with the pretreatment requirements of section 307 of the Clean Water Act applicable to the hazardous substances, pollutants, and contaminants that are the subject of the response action, and the release or threatened release was not caused by failure to maintain the treatment works, or by other conduct that constitutes gross negligence or intentional misconduct. New section 107(b)(2)(E) applies a negligence standard to certain sewage treatment works because these entities have limited control over what enters the treatment system. Moreover, for toxic pollutants, the levels of hazardous substances entering a sewage treatment system are governed by the General Pretreatment Regulations, first promulgated under section 307 of the Clean Water Act in 1981. If an indirect discharger violates Federal pretreatment requirements or the pretreatment requirements developed by the sewage treatment works in compliance with section 307, and illegally disposes of other pollutants through the sewers, an owner or operator of a sewage treatment works may not even be aware of it. Under this subparagraph, the owner or operator of a sewage treatment works with a pretreatment program meeting the requirements of section 307 of the Clean Water Act would not be held liable under CERCLA under such circumstances, as long as they did not con-

tribute to the release by failure to maintain the sewage treatment works.

To demonstrate that it did not fail to properly operate and maintain the treatment works the Committee intends sewage treatment works to have operation and maintenance plans that encompass best management practices at the time of the release or threat of release, and to comply with the provisions of those plans.

Nothing in this bill reverses the outcome of any adjudicated case or opens any settlement. Accordingly, any settlement of CERCLA liability by any sanitary sewer commission, is not overturned by this provision.

Under new section 107(b)(2)(F), a person who is a potentially liable party under CERCLA based solely on the person's status as an owner or operator of a public right-of-way (other than a railroad right-of-way or railroad property) may have a defense to liability if the person can demonstrate that the person did not cause or contribute to the threatened release. Under this subparagraph, for example, if a truck carrying hazardous substances overturns due to driver error, the owner or operator of the road may have a defense to liability. On the other hand, if the road was not properly maintained and this factor contributed to the accident that resulted in the release, the owner or operator of the road may not be able to establish this defense.

Under new section 107(b)(2)(G), a person who is a potentially liable party under CERCLA as an owner based solely on the person's status as a railroad that owns or operates a railroad spur track that crosses a facility that is owned and operated by someone else, may assert a defense to liability if the spur track provides access to a main or branch railroad line, is not more than 10 miles long, and the railroad did not cause or contribute to the release or threatened release of a hazardous substance. It is common for railroads to deliver raw materials and pick up finished products from manufacturing facilities via a rail spur that crosses the property on which the manufacturing facility is located. That manufacturing facility may have released hazardous substances from its operations. The mere fact that a railroad crosses a manufacturing facility with a spur track should not in and of itself create the possibility that the railroad is liable for the contamination at that manufacturing facility. Under this subparagraph, the railroad would have the opportunity to demonstrate that it did not cause or contribute to the release, and thereby avoid such liability.

Under new section 107(b)(2)(H), a construction contractor may have a defense to CERCLA liability if the contractor can demonstrate that the contractor's liability is based solely on construction activities specifically directed by and carried out in accordance with a contract with an owner or operator of a facility, the contractor did not know of the presence of hazardous substances, and the contractor exercised appropriate care with respect to any hazardous substances found during the construction activity. A typical construction project may include digging or other earth-moving operations. In the course of constructing a project, it is possible that a construction contractor may discover buried tanks or drums that may contain hazardous substances. Some courts have held that, under a strict reading of CERCLA, a plaintiff may seek to hold a

construction contractor strictly liable for cleaning up any tanks or drums it may find while performing a construction job. Under this subparagraph, a construction contractor can defend itself from such liability, if it can demonstrate that it meets the conditions of the defense.

(3) Appropriate Care.—New section 107(b)(3) provides that a determination whether a party treats hazardous substances with "appropriate care," to meet the innocent party defenses provided under new section 107(b)(2), be made on a case-by-case basis. The existing "third-party" defense requires a person to exercise "due care." The Committee intentionally used the term "appropriate care" rather than "due care" to establish a different standard of care for those parties whose association with a facility begins only after all disposal or placement of hazardous substances has occurred. This standard should be sufficiently flexible based upon the nature of the contamination, the characteristics of the site, and the risks to human health and the environment that the contamination poses.

Under paragraph (3), if a party takes reasonable steps to stop continuing releases, prevent future releases, and prevent or limit human or natural resource exposure to any previously released substance, the party will be deemed to have exercised appropriate care. Finally, if another person is already responding to the release, a person may be deemed to have exercised appropriate care by cooperating with the responding party and providing facility access.

(4) All Appropriate Inquiry.—New section 107(b)(4) provides that a determination whether a party makes all appropriate inquiry into the previous ownership and uses of a facility, be made on a case-by-case basis, consistent with the "all appropriate inquiry" requirement under current law in section 101(35) of CERCLA. New section 107(b)(4) also provides that persons who conduct an environmental assessment in accordance with standards set forth in American Society for Testing and Materials Standards (ASTM) E1527–94 are deemed to have met the "all appropriate inquiry" requirement. Of course, conducting additional investigation beyond what is called for in the ASTM standards will not remove someone from this "safe harbor," as long as the minimum requirements of the ASTM standards are met. No purchaser need fear losing the benefit of the "safe harbor" of compliance with the ASTM standard by doing more than is required by that standard. In addition, if a State or Federal environmental or health agency with jurisdiction over response actions has itself conducted an investigation of the facility, and, based on the level of risk posed by the facility, has determined that no further response action is needed, a person who is acquiring the facility need not duplicate the efforts of the governmental agency and may rely upon the governmental agency's investigation. A governmental determination of no further response action based upon a deferral to activities under some other State or Federal cleanup program is insufficient to meet the requirement of "all appropriate inquiry."

(5) Limitations.—New section 107(b)(5) provides that a defense under section 107(b) is not available to persons who obtain actual knowledge of a release of a hazardous substance and transfer the property without disclosing the release, persons who knowingly and willingly impede a response action or natural resource restoration,

persons who do not provide all legally required notices with respect to any releases of hazardous substances, and persons (other than a person who acquires property by inheritance or bequest) who are affiliated with another liable party.

(6) Windfall Liens.—New section 107(b)(6) gives the United States a lien on property where the United States incurs response costs that are not recovered from another party, and the owner or operator of the facility successfully raises an innocent party defense to liability under section 107(b)(2).

(b) Rendering Care or Advice.—Section 302(b) amends the exclusion from liability for State and local governments that respond to emergencies created by releases or threatened releases of hazardous substances found at section 107(d)(2) of CERCLA to include Tribal governments, and to include actions by such governments to improve water quality protection at abandoned mine sites.

This amendment addresses situations like that faced by the East Bay Municipal Utility District in California. For years, acid mine drainage from Penn Mine discharged into creeks which flowed into the Mokelumne River, and ultimately to the East Bay Municipal Utility District's Camanche Reservoir. In 1978, the utility district, working with the State regional water quality control board, built a series of dams and ponds to reduce the discharge of toxic pollutants from the mine. Even though its actions were taken to protect the municipal water supply, East Bay Municipal Utility District was sued by an environmental group and was held liable as an operator of the mine under the Clean Water Act. Under this amendment, the utility district is protected from any additional liability under CERCLA.

(c) Clarification of Liability for Contiguous Property Owners.—Section 302(c) amends the definition of "owner or operator" found at section 101(20) of CERCLA to exclude contiguous property owners from this definition. Under this amendment, a person is not liable under CERCLA for the migration of hazardous substances on to the person's property from a facility that is under separate ownership or operation, as long as the person did not cause or contribute to the release or threatened release, and is not affiliated with another liable party.

(d) Conforming Amendments.—Section 302(d) makes a technical conforming amendment by striking paragraph (35) of section 101, because the innocent landowner defense is now found in section 107(b) of CERCLA, not in a definition.

Section 303. Statutory construction

Section 303 amends section 107(f) of CERCLA to make any brief or motion of the United States regarding the interpretation of section 107(f), when acting as a defendant in an action under CERCLA, admissible in an action brought by the United States, when acting as a plaintiff.

Section 304. Livestock treatment

Section 304 amends section 107(i) of CERCLA to add a new paragraph to encourage the reuse of certain agricultural lands where "cattle vats" were formerly located, without fear of CERCLA liability. Under new paragraph (2) of section 107(i), there is no liability

under section 107 for the application of a pesticide product where that application is in compliance with a State or Federal law to prevent, suppress, control, or eradicate any dangerous, contagious, or infectious disease or any vector organism for such disease.

Section 305. Liability relief for small business, municipal solid waste, sewage sludge, municipal owners and operators, and de micromis contributors

Section 305 streamlines CERCLA liability and reduces litigation by eliminating or capping liability for certain categories of parties and for certain types of waste.

(a) Limitation on Liability for Small Business.—Section 305(a) amends section 107 of CERCLA to add new subsection (o) to exempt small business concerns from CERCLA liability for generator and transporter activities occurring before the date of introduction (March 25, 1999). Small business concern is defined as a business with, on average over the 3 years preceding the date the small business concern is notified by the President that the entity is a potentially responsible party, not more than 75 full-time employees (or the equivalent thereof) and no more than $3,000,000 in gross revenues. The exemption does not apply to a small business concern if its hazardous substances have contributed, or contribute, significantly to the costs of the response action. This new subsection recognizes that small businesses typically have not paid significant cleanup costs because of a limited ability to pay. The cost of pursuing a settlement with these small businesses can often exceed the share of response costs that may be recovered. Rather than spend resources pursuing such parties, it is more efficient to remove these parties from the liability system and have their share of response costs paid by the Superfund Trust Fund.

(b) Liability Relief for Municipal Solid Waste and Sewage Sludge.—Section 305(b) amends section 107 of CERCLA to add new subsections (p) and (q) to establish exemptions from and limitations on liability with respect to municipal solid waste and sewage sludge.

New subsection (p) provides exemptions and limitations for generators and transporters of municipal solid waste or municipal sewage sludge at landfill facilities. For municipal solid waste and sewage sludge that was disposed of before the date of enactment of this Act, new subsection (p) provides most generators and transporters with an exemption from liability. However, subsection (p) allows the President to hold a person liable under section 107(a)(4) if the person is in the business of transporting municipal solid waste or sewage sludge for disposal and that person transported material containing hazardous substances that has contributed, or contributes, significantly to the costs of response at the facility. As provided in new section 107(t) (added by this section of the bill), the liability of exempted parties is transferred to the Superfund Trust Fund. Moreover, the aggregate liability of all municipal solid waste and sewage sludge generators and transporters at a facility is capped at 10% of the response costs. As a result, in any allocation under new section 131 (added by section 310 of this bill), or in any contribution claim against the Trust Fund under new section 107(t), the commercial hauler's equitable share of response costs

due to transporting municipal solid waste or sewage sludge shall be based on its equitable share of up to 10% of the aggregate response costs.

For municipal solid waste and sewage sludge that is disposed of after the date of enactment of this Act, only certain small municipal solid waste generators and transporters are exempted from liability. The aggregate liability of all other generators and transporters of municipal solid waste and sewage sludge is capped at 10% of response costs. After 3 years from the date of enactment, this liability cap will not apply unless the landfill facility that receives these materials is located within a municipality that has instituted or participates in a qualified household hazardous waste collection program. The small municipal solid waste generators and transporters who remain exempt from liability are owners, operators, or lessees of residential property, businesses that meet the definition of a small business concern under the Small Business Act and employ no more than 100 individuals at the relevant location, and non-profit organizations described in 501(c)(3) of the Internal Revenue Code with no more than 100 paid individuals at the relevant location. Notwithstanding new subsection (p), the President retains the prosecutorial discretion to offer settlements to liable parties based on other factors, including the factors outlined in EPA's "Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites" (Feb. 1998).

New section 107(p) applies only to the portion of a person's waste stream that meets the definition of municipal solid waste and sewage sludge. A person remains subject to liability under section 107(a) for any portion of the person's waste stream that does not meet these definitions. If wastes meeting the definition of municipal solid waste or municipal sewage sludge are collected and disposed of with wastes not meeting these definitions, a person's liability under section 107(a) for the wastes that do not meet these definitions, and any equitable allocation of that liability under this Act, shall be based on such wastes only. For example, if a person disposed of 100 cubic yards of material meeting the definition of municipal solid waste and 3 drums of hazardous waste, the exemptions or limitations on liability under subsection (p) would apply to the portion of the waste stream that consisted of municipal solid waste, even if the 3 drums of hazardous waste were placed in the same dumpster. Similarly, the liability for the 3 drums of hazardous waste would be unaffected by having been mixed with the municipal solid waste.

Municipal solid waste is defined in new subsection (p) as waste generated by households (including single and multi-family residences, and hotels and motels) and waste materials generated by commercial, institutional, and industrial sources, to the extent that such materials (i) are essentially the same as waste materials normally generated by households, or (ii) are collected and disposed with municipal solid waste and contain no more hazardous substances than would qualify for the de micromis exemption under new section 107(r). For example, an industrial source could dispose of a de micromis amount of hazardous substances along with material that is essentially the same as waste materials generated by

households, and all of the wastes would meet the definition of municipal solid waste.

The definition of municipal solid waste specifically includes certain items such as food, packaging, containers, and household hazardous waste. This definition specifically excludes waste from manufacturing or processing operations, unless such waste is essentially the same as waste normally generated by households. The Committee intends food wastes from the manufacture or processing of food items to be covered by the definition of municipal solid waste where such waste is essentially the same as waste normally generated by households, regardless of volume.

New section 107(q) limits the aggregate liability of all municipal owners and operators of co-disposal landfills for response costs incurred after the date of introduction of H.R. 1300 (March 25, 1999), to the lesser of 10% of the total amount of response costs at the facility (for municipalities with populations under 100,000) and 20% of the total amount of response costs (for municipalities with populations of 100,000 or more), or the costs of complying with Subtitle D of the Solid Waste Disposal Act.

(c) De Micromis Exemption.—Section 305(c) amends section 107 of CERCLA to add new subsection (r) to exempt generators and transporters from liability if they contribute no more than 110 gallons or 200 pounds of material containing hazardous substances, unless the President determines that such material has contributed, or contributes, significantly to response costs.

(d) Ineligibility for Exemptions or Limitations.—Section 305(d) amends section 107 to add new subsection (s) to make persons who impede response actions or natural resource restorations, fail to respond to information requests, or fail to provide cooperation and facility access ineligible for the exemptions from and limitations on liability under new subsections (o), (p), (q), and (r) of section 107, section 114(c), and section 130.

(e) Exempt Party Funding; Concluded Actions; Oversight Costs.—Section 305(e) amends section 107 to add new subsections (t), (u), and (v) to section 107.

New section 107(t) establishes a mechanism to provide Trust Fund funding to pay for liability exemptions or limitations. Under subsection (t), the equitable share of liability that is extinguished through an exemption or limitation on liability under new subsections (o), (p), (q), and (r) of section 107, new section 114(c), and new section 130 is generally transferred to and assumed by the Trust Fund. There is an exception to this general rule for the liability of small municipal solid waste generators and transporters whose liability is extinguished under new section 107(p)(3). No liability is transferred based on that exemption. This subsection makes the Trust Fund a potentially liable party, subject to a claim for contribution to response costs filed by other potentially responsible parties under section 113 of CERCLA. The Trust Fund's share can be established by settlement, by an allocator (at facilities subject to an allocation under new section 131), or by a court. The Trust Fund's share may be paid only from the separate account established under new section 111(a)(1).

New section 107(u) specifies that exemptions and limitations on liability do not apply to concluded actions, including settlements or

judgments that are approved, or administrative action that becomes effective, not later than 30 days after the date of enactment.

New section 107(v) limits recovery of EPA's oversight costs to 10 percent of the costs of the response action at sites where the parties disclose their costs to the Administrator. New subsection (v) provides incentives for EPA to increase its efficiency. It also provides an incentive for private parties to share data with EPA on the costs of response actions.

(f) Small Business Ombudsman.—Section 305(f) requires EPA to establish a small business Superfund assistance section within the small business ombudsman office of EPA.

Section 306. Amendments to section 113

Section 306 amends section 113(f) of CERCLA to clarify the scope of authority to bring a contribution claim under section 113(f) and to require a plaintiff that brings an action against a person who is exempt from liability or who is determined to be covered by the contribution protection under section 113 to pay that person's attorney's fees.

Section 307. Liability of response action contractors

Section 307 clarifies the liability of Response Action Contractors (RACs) under CERCLA to facilitate the prompt cleanup of hazardous waste sites, including sites on the National Priorities List, brownfield facilities, and voluntary cleanup actions, in an expeditious, innovative, and cost-effective manner.

(a) Extension of Negligence Standard.—Section 307(a) amends Section 119(a) of CERCLA by extending the preexisting negligence standard for RACs under Federal law to State law claims. This language ensures that State laws are respected, and not preempted, by these RAC liability clarifications by making section 119 inapplicable in States where the State has enacted a law determining the liability of a response action contractor.

(b) Clarification of Liability.—Section 307(b) amends section 119(a) to clarify the relation of section 119 of CERCLA, governing the liability of RACs, to CERCLA's other liability provisions. Section 119 is intended to be the sole basis for determining the liability of RACs for their activities as response action contractors.

(c) Extension of Indemnification Authority.—Section 307(c) amend section 119(c) to enhance EPA's discretionary authority to provide indemnification for claims brought against RACs. Contractual indemnification of RACs by EPA has generally not been provided in recent years unless the risks involved affect both the market for insurance coverage for the work and the willingness of firms to perform cleanup services.

(d) Indemnification for Threatened Releases.—Section 307(d) amends section 119(d) to clarify that the indemnities provided under this section apply to threatened releases, as well as actual releases, consistent with the scope of potential liability under CERCLA.

(e) Extension of Coverage to All Response Actions.—Section 307(e) amends section 119(e) of CERCLA to modify the definition of response action contract to specify that Section 119 applies to any response action as defined under CERCLA. This is particularly im-

portant with the increase in brownfields remediation and voluntary cleanup activities under State law.

(f) Limitation on Actions.—Section 307(f) amends section 119 to add a new subsection (h) to establish a uniform statute of repose for RACs. This new subsection specifies that a RAC's legal exposure for CERCLA liability remains for six years after completion of work at any facility. This statute of repose does not apply to claims for gross negligence or intentional misconduct or claims in States that have adopted a separate statute of repose for response action contractor liability.

Section 308. Amendments to section 122

(a) Administrative Settlements.—Section 308(a) amends section 122 of CERCLA by adding new subsection (n), which allows a private party to challenge an administrative settlement that would include contribution protection if that settlement would curtail that party's claim against the settling party. To keep EPA from entering into inequitable settlements with any party, large or small, parties that are affected by proposed settlements have the right to intervene when EPA files a settlement with the court. Under current law, this right of intervention is absent when EPA chooses to settle using its administrative authority, rather than through a judicial consent decree. This section provides additional protection against inequitable settlements by giving affected parties the right to object to administrative settlements as well.

(b) Final Covenants.—Under current law, the President has a limited ability to issue final covenants not to sue to settling parties. Section 308(b) amends section 122(f) of CERCLA to require the President to issue final covenants not to sue settling parties if such parties perform response actions, there are reasonable assurances for the performance of a response action, and the settling party pays a premium. This amendment gives the President discretionary authority to provide final covenants not to sue in other circumstances. This amendment also expands the authority of the President to omit reopener provisions in consent decrees if the settlement premium (which may be waived or reduced based on ability to pay) adequately addresses unknown future conditions or remedy failure.

(c) Expedited Final Settlements.—Section 308(c) amends section 122(g) of CERCLA to allow expedited final settlements for parties whose contribution to the release of hazardous substances at the facility is de minimis, and for natural persons, small businesses, and municipalities who can demonstrate a limited ability to pay. This amendment also clarifies the respective roles of the Administrator and the Department of Justice in entering into settlements of fines, civil penalties, punitive damages, and response costs. Under new section 122(g), the liability of a small business is extinguished if EPA fails to offer a de minimis settlement to the small business within 180 days of determining that its contributions are de minimis, unless the delay was beyond the control of the President. New section 122(g) also precludes EPA from requiring a small business (with 100 employees or fewer) from paying a liability premium.

(d) Municipality Defined.—Section 308(d) amends section 101 of CERLCA to add a definition of the term "municipality" to the Act.

Section 309. Clarification of liability for recycling transactions

(a) Recycling Transactions.— Section 309(a) adds new section 130 to CERCLA to address certain recycling transactions, as follows:

(a) Liability Clarification.—Under new section 130(a), a person who arranges for the recycling of a recyclable material, as defined in this section, by means of a transaction that is covered by this section, is not liable as a generator or transporter under CERCLA. The requirements of section 130 establish a safe harbor for certain recycling transactions. If a person meets the conditions set forth in this section, the person will not be liable as a generator or transporter of a hazardous substance under CERCLA. However, persons who do not meet the requirements of section 130 are not per se liable under CERCLA. For all transactions that do not fall within the scope of the liability protections provided under new section 130, the Committee intends that determinations of liability be made under section 107(a), on a case-by-case basis applying the individual facts and circumstances of each transaction, without regard to the requirements of new section 130.

(b) Recyclable Material Defined.—New section 130(b) defines recyclable material as scrap paper, plastic, glass, textiles, rubber, metal, spent batteries, and used oil. This definition excludes certain shipping containers and materials with PCB concentrations in excess of 50 ppm.

(c) Transactions Involving Scrap Paper, Plastic, Glass, Textiles, or Rubber.—New section 130(c) sets forth the conditions under which transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber will be deemed arranging for recycling.

(d) Transactions Involving Scrap Metal.—New section 130(d) sets forth the conditions under which transactions involving scrap metal are deemed arranging for recycling. Scrap metal is defined as pieces of metal parts, or metal pieces that may be combined together with bolts or solders, as well as certain metal byproducts from the production of copper and copper based alloys. Scrap metal does not include materials that the Administrator excludes by regulation.

(e) Transactions Involving Batteries.—New section 130(e) sets forth the conditions under which transactions involving batteries are deemed to be arranging for recycling. For lead-acid batteries, a person must have been in compliance with applicable Federal environmental regulations or standards regarding the recycling of lead-acid batteries. For nickel-cadmium and other spent batteries, a person who arranges for the recycling of batteries is potentially covered by the liability protections of new section 130 only if the arrangement took place after the effective date of Federal environmental regulations regarding the storage, transport, management, or other activities associated with recycling such batteries and the person was in compliance with such regulations. Such regulations were promulgated by EPA on May 11, 1995, as part of the

"Universal Waste Rule," and went into effect on the date of promulgation. As a result, for nickel-cadmium and other spent batteries (other than lead-acid batteries), only transactions occurring on or after May 11, 1995, are potentially covered by the liability protections of new section 130.

(f) Transactions Involving Used Oil.—New section 130(f) sets forth the conditions under which transactions involving used oil are deemed to be arranging for recycling. As with batteries, a person who arranges for the recycling of used oil is potentially covered by the liability protections of new section 130 only if the arrangement took place after the effective date of Federal environmental regulations regarding the management of used oil and the person was in compliance with such regulations. EPA promulgated its "Used Oil Management Standards" on September 10, 1992, with an effective date of March 8, 1993. As a result, only used oil recycling transactions occurring on or after March 8, 1993, are potentially covered by the liability protections of new section 130.

In its used oil rulemaking, EPA determined that where used oils are properly managed it is unnecessary to list used oils as hazardous wastes. The Used Oil Management standards are designed to address the potential mismanagement of used oil that had caused problems in the past. New section 130(f) provides liability protections only for recycling of used oil in compliance with these management standards. As a result, the Committee does not expect this provision to result in any cost to the Trust Fund. Instead, the Committee expects this provision to increase protection of the environment by providing incentives for proper management of used oil.

One deterrent to oil recycling is the lack of convenient locations for collecting used oil. According to a 1997 survey conduced by the Commonwealth of Massachusetts, only 33% of those surveyed said they would be willing to return used oil if they had to travel more than 15 minutes. At present, service station dealers are provided with an incentive to collect "do-it-your-selfer" used oil for recycling through an exemption from CERCLA liability under section 114 of CERCLA. However, other potential collectors, including States, municipalities and many retail outlets that sell oil, do not enjoy the same protections. If more collection programs were established, hopefully less oil would be disposed of improperly. Under new section 130(f), a State or other entity could establish a collection program without fear of CERCLA liability, as long as that entity complied with the Used Oil Management Standards, and met the other requirements of this section.

The requirements of this section include a prohibition on mixing the oil with any hazardous substances after the oil is removed from service. This requirement ensures that persons who engage in improper disposal of hazardous substances by mixing them with used oil do not benefit from this provision. This requirement does not remove the protections provided to the operator of a used oil collection system who receives used oil from a "do-it-your-selfer," even if that oil has been mixed with other hazardous substances. Under new section

130(g)(1)(B), a person who collects used oil for recycling from the "do-it-your-selfer," could receive contaminated oil and remain eligible for the liability protections of this section as long as the person did not have an objectively reasonable basis to believe that hazardous substances had been added to the used oil, and the person continues to meet all the other requirements of this section and the Used Oil Management Standards.

Used oil is defined as any oil refined from crude oil, or any synthetic oil that has been used or stored. Oils containing PCBs are excluded from the definition.

(g) Exclusions.—New section 130(g) provides exclusions from the liability protections of section 130. A person is not protected from liability under this section if the person had an objectively reasonable belief that the recyclable material would not be recycled, the recyclable material (other than used oil meeting used oil specifications) would be burned, or the recycling facility was not in compliance with the law. A person also is ineligible if the person has reason to believe hazardous substances were added to the recyclable material for reasons other than processing for recycling, or failed to exercise reasonable care.

(h) Effect on Owner Liability.—New section 130(h) confirms that this section does not affect the liability of owners and operators.

(i) Relationship to Liability Under Other Laws.—New section 130(i) clarifies that this section does not affect any person's liability under any law other than CERCLA.

(j) Limitation on Statutory Construction.—New section 130(j) clarifies that this section does not affect any rights, defenses or liabilities with respect to any transaction involving a material that is not a recyclable material, as defined in this section. A person who engages in recycling transactions not covered by new section 130 may nonetheless be able to establish a defense to CERCLA liability. Moreover, new section 130 does not relieve any plaintiff of the burden of proof that elements of liability are met in any action under this Act.

(b) Service Station Dealers.—Section 309(b) amends section 114(c) of CERCLA to broaden the exemption from liability for service station dealers who collect used oil for recycling to include used oil recycling by such persons before the March 8, 1993, effective date of the Used Oil Management Standards. The purpose of this provision is to protect service station dealers from liability for the service they have provided by collecting and recycling used oil. This amendment also provides a service station dealer that itself removes oil from engines with the same rebuttable presumption that such oil is not mixed with other hazardous substances as applies to oil received from "do-it-your-selfers."

Section 310. Allocation

Section 310 adds new section 131 to CERCLA. This section is intended to reduce third-party litigation by requiring all parties to halt their lawsuits and participate in a neutral allocation of re-

sponse costs. This section also increases the fairness of CERCLA liability by providing parties with the opportunity to settle their liability under CERCLA based on their fair share of response costs.

(a) Purpose of Allocation.—New section 131(a) defines the purpose of allocation as the determination of the equitable shares of response costs, including the equitable share to be borne by the Trust Fund, at facilities on the National Priorities List.

(b) Eligible Response Action.—New section 131(b) makes removal or remedial actions at facilities on the National Priorities List eligible for an allocation if the performance of the action is not the subject of a decree or administrative order, there are unrecovered costs of over $2 million, and there are response costs attributable to the Trust Fund. The unrecovered response costs for a removal or remedial action exceed $2 million if the difference between any cash out settlements at facility attributable to that removal or remedial action, and the President's estimate of total cost of the removal or remedial action is greater than $2 million. There are response costs attributable to the Trust Fund if (1) there are there are potentially responsible parties who are insolvent or defunct, (2) the United States has entered into any "ability to pay" settlements with respect to the removal or remedial action, or (3) any potentially responsible parties are exempted from liability or have their liability limited under subsection (o), (p), or (q) of section 107, or section 114(c), or section 130.

The President may not exclude removal or remedial actions from the allocation process, thereby undermining the purpose of reducing litigation and increasing fairness, by simply declaring that there is no Fund share. Such a determination should be based on a review of all existing information, including information provided by other potentially responsible parties. In practice, most response actions at disposal or treatment facilities with multiple parties are likely to involve at least some costs attributable to parties that are insolvent or defunct, or eligible for an exemption or limitation on liability. For such sites, the Committee expects the President will be fair and reasonable in predicting whether there is a Fund share.

In contrast, there will not always be a Fund share at facilities where all of the potentially responsible parties are owners or operators ("chain-of-title" facilities). In fact, removal or remedial actions at chain-of-title sites are not eligible for an allocation (and therefore a Fund share under new section 131(i)) unless the current owner is insolvent or defunct. The President may include the assets of parties affiliated with the current owner for the purpose of determining whether the current owner is insolvent or defunct. The purpose of this provision is to prevent a person from making a fraudulent conveyance for the purpose of creating an insolvent owner, therefore making a response action eligible for an allocation.

(c) Discretionary Allocation Process.—New section 131(c) allows the President to initiate an allocation for any removal or remedial action at a facility on the National Priorities List. This authority includes the authority to provide a Fund Share under section 131(i) for such actions.

(d) Allocation Process.—New section 131(d) requires the President ensure that a fair and equitable allocation of response costs is undertaken for eligible removal or remedial actions at an appro-

priate time by a neutral allocator under a process agreed to by the parties. This requirement places a nondiscretionary duty on the President. The President may not refuse to initiate an allocation for an eligible removal or remedial action. The Committee expects the President will initiate an allocation as early as practicable at a site.

The details of the allocation process are to be governed by agreement among the parties. The Committee expects the parties, by consensus, to address time frames, nomination of additional parties, confidentiality, and procedures for issuing an allocation report in the procedures agreed to by the parties.

(e) Early Offer of Settlement.—Where there will likely be a Fund share, new section 131(e) requires the President to make an early offer of settlement that includes a Fund share. Experience with the allocation pilot projects conducted by EPA and the Department of Justice demonstrated that offering a Fund share may be sufficient to reach a settlement.

(f) Representation of the United States and Affected States.—New section 131(f) allows the Department of Justice and EPA to participate in the allocation as a representative of the Fund, and allows any State that may be responsible for response costs as part of a State cost share to participate as well.

(g) Moratorium on Litigation.—New section 131(g) provides a moratorium on litigation with respect to the response action for which an allocation has been initiated. This moratorium prevents all parties from filing new actions and stays all pending cost recovery and contribution actions until 150 days after issuance of the allocator's report.

(h) Effect on Principles of Liability.—New section 131(h) clarifies that the allocation process does not modify principles of liability under CERCLA.

(i) Fund Share.—New section 131(i) requires the allocator to determine the share of response costs to be allocated to the Fund consisting of costs attributable to parties who are not affiliated with any other potentially responsible party and whom the President determines are insolvent or defunct, parties with whom the United States has settled for less than their equitable share based on ability to pay considerations, exempt parties, and the amount attributable to parties whose liability is capped, to the extent that their equitable share exceeds that cap. The Committee intends the President to apply the relevant State corporation law when determining which parties are insolvent or defunct.

(j) Certain MSW Generators.—New section 131(j) precludes the allocator from attributing response costs to households, small business and small non-profit municipal solid waste generators who are protected from liability under new section 107(p)(3).

(k) Unattributable Share.—New section 131(k) allows the equitable share of response costs that cannot be attributed to any party to be spread among all parties. A response cost is not unattributable if a party responsible for such costs can be identified. For example, a generator of wastes may not be identified, but the transporter may be known. In that case, the costs of responding to such wastes can be attributed to the transporter, and are not unattributable.

(l) Expedited Allocation.—New section 131(l) allows the allocator, at the request of the allocation parties, to provide an estimate of the aggregate Fund share, to assist the parties in reaching settlement with the United States, without completing the entire allocation process.

(m) Other Settlements.—New section 131(m) ends the allocation process if the parties come forward with a private allocation that covers at least 80% of the response costs. This amendment also affirms the President's authority under section 122(g) to enter into expedited settlements at any time during an allocation.

(n) Settlements Based on Allocations.—New section 131(n) allows a party to settle based on its equitable share in the allocation report, if the Administrator and Attorney General do not reject the allocation report. To fulfill the goal of reducing litigation and increasing fairness, the Committee expects that rejection of an allocation will be extremely rare.

The availability of Federal funding for the Fund share should not be a basis for rejecting an allocation. If, at the time the allocation is complete, the President does not have sufficient money to obligate the full Fund share established by an allocation, the Committee expects the President to proceed in a manner that preserves the equitable results of the allocation.

(o) Reimbursement of UAO Performance.—New section 131(o) provides reimbursement where performing parties expend more than their allocated share of response costs when complying with an administrative order. This provision serves two purposes. First, it ensures that the President does not use authority to issue cleanup orders under section 106 of CERCLA to circumvent the President's obligation to provide for a fair and equitable allocation of response costs. Second, it ensures that the President does not attempt to make orphan share funding available only if a party waives its rights to challenge a remedy.

(p) Post-Settlement Litigation.—New section 131(p) allows the United States to proceed with litigation against non-settling parties. This provision provides a significant incentive for parties who might otherwise be recalcitrant to agree to conduct a cleanup. Under current law, once EPA obtains the agreement from one or more parties to perform a cleanup, EPA plays no role in getting additional parties to contribute their fair share. Instead, the performing parties must file contribution claims against the recalcitrant parties. However, a contribution claim is not a joint and several claim, so the recalcitrant parties are given an advantage over the performing party, because they cannot be held liable for more than their share of response costs. Under new section 131 this situation is reversed. It is the settling party who pays its fair share and the recalcitrant party who is vulnerable to joint and several liability, because EPA, bringing a cost recovery action under section 107, is responsible for pursuing recalcitrant parties.

(q) Response Costs.—New section 131(q) states that costs of the allocation process and costs incurred for the Fund share are response costs. These costs will be allocated to the parties of the allocation, including the Fund share. This also ensures that EPA can seek recovery of any unrecovered costs in any post-settlement litigation against recalcitrant parties.

(r) Federal, State, and Local Agencies.—New section 131(r) clarifies that Federal, State, and local agencies are subject to and entitled to the benefits of an allocation to the same extent as any other party.

(s) Source of Funds.—New section 131(s) provides that payments by the Trust Fund or work performed on behalf of the Trust Fund to meet obligations under this section are funded from amounts made available under section 111(a)(1). This provision ensures that funding for the orphan share and liability exemptions and limitations does not compete with funding for the base Superfund program.

(t) Savings Provisions.—New section 131(t) clarifies the President's retained authorities, notwithstanding the moratorium on litigation during an allocation.

TITLE IV—REMEDY SELECTION AND ENVIRONMENTAL STANDARDS

Section 401. Remedy selection

Title IV amends section 121 of CERCLA to give statutory support to EPA's successful administrative reforms of Superfund remedy selection. Otherwise, the amendments to section 121 do not alter the basic structure of remedy selection under section 121(b) of CERCLA, pertaining to the selection of appropriate remedial actions.

(a) General Rules.—Section 401(a) amends section 121(b), relating to the statutory preference for treatment, to state that EPA may implement this requirement through EPA's "Guide to Principal Threat and Low Level Threat Wastes." Although this guidance was issued in November 1991, Remedial Project Managers have not always followed it at Superfund sites. For example, as pointed out by EPA's Remedy Review Board, Region 3 failed to properly apply this guidance at the Jack's Creek Superfund site when the Region developed the proposed remedial action plan for that site. The Committee encourages EPA to continue to use its "Guide to Principal Threat and Low Level Threat Wastes" and to continue to review and update remedy decisions to ensure implementation by EPA Regions of EPA's administrative remedy reforms.

This amendment also amends section 121(b) to add the effectiveness of a remedy in making contaminated property available for beneficial use as a factor to be taken into account in remedy selection.

(b) Site Review Requirement.—Section 401(b) amends section 121(c) to include a requirement to review the effectiveness of and compliance with any institutional controls during any 5-year review.

(c) Degree of Cleanup.—Section 401(c) amends section 121(d) as follows:

New paragraph (2) provides direction to the President on how to determine levels of human exposure to hazardous substances by requiring that exposure assessments be based on current and reasonably anticipated future uses. This provision also requires the President to use information on actual exposures to hazardous substances at a facility when conducting an exposure assessment,

where such information is made available to the President and the President determines that it is valid and reliable. This requirement is consistent with the requirements of title II of this bill that EPA and ATSDR obtain actual exposure data from the community. New paragraph (2) also provides direction to the President on how to evaluate impacts of releases of hazardous substances on plants and animals. These provisions do not establish what levels of exposure to hazardous substances are protective of human health and the environment. That determination is left to EPA.

New paragraph (3) requires the President to identify the reasonably anticipated uses of land, water, and other resources at and around the facility. For land uses, the President must solicit the views of interested parties, including the affected local community and the affected local government. This paragraph also gives Congressional approval to existing EPA guidance on identifying reasonably anticipated land uses. For water, this paragraph requires the President to identify water uses through a process that includes the solicitation of views of interested parties, including the affected State, the affected local government, the affected local community, and affected local water suppliers.

In addition, new section 121(d)(3)(D) establishes a special set of rules for determining the reasonably anticipated uses of ground water. If the ground water is located in a State that has a comprehensive State ground water protection program that has provisions for making site-specific determinations of use and timing of use that has received the written endorsement of the President, the President is to use the State's determinations on use and timing that are based on such a program. This is consistent with EPA's guidance on "The Role of CSGWPPs [Comprehensive State Ground Water Protection Programs] in EPA Remediation Programs," (OSWER Directive 9283.1–09, Apr. 1997).

If the ground water is located in a State that does not have such a ground water protection program, the Committee intends the President to identify ground water uses through a process that includes the solicitation of views of interested parties, including the affected State, the affected local government, the affected local community, and affected local water suppliers. The process utilized by EPA Region I pursuant to "Groundwater Use and Value Determination Guidance, A Resource-Based Approach to Decision Making," (Apr. 1996), is a model for meeting this requirement. In addition, in conducting an analysis of groundwater uses, the President is directed to begin with the rebuttable presumption that ground water is drinking water if it is located in an aquifer that has been classified as a drinking water aquifer, or in an aquifer that has not been classified. Following the criteria used under the Safe Drinking Water Act, certain types of ground water are not considered to be drinking water. The provisions of this bill on identifying reasonably anticipated uses of ground water supercede EPA's 1986 "Guidelines for Ground-Water Classification."

This amendment also gives Congressional approval to the phased approach to ground water remediation under EPA's presumptive ground water response strategy. As described in that guidance, "[i]n a phased response approach, site response activities are implemented in a sequence of steps, or phases, such that information

gained from earlier phases is used to refine subsequent investigations, objectives, or actions." Unless facts or circumstances indicate that other approaches are more appropriate for protection of human health and the environment, the Committee intends the President to continue to employ this phased approach to ground water remediation.

Finally, this amendment requires the President to identify possible institutional controls that meet the requirements of new section 121(g) when considering remedial alternatives that assume a restriction on future uses. It is critical that any expected institutional controls be identified early and not as an afterthought. This allows for full public disclosure and comment concerning those situations where there will be contamination left on site and uses of the site will be restricted.

New paragraph (4) deletes the requirement in current law that remedies meet "relevant and appropriate" standards. However, the requirements to meet Maximum Contaminant Levels established under the Safe Drinking Water Act and water quality criteria under the Clean Water Act are retained, where relevant and appropriate under the circumstances of the release.

New paragraph (7) states that there is no requirement to comply with standards that are below background levels.

(d) States Adjoining Certain Facilities.—Section 401(d) amends section 121(f) of CERCLA to increase State involvement in remedy selection at certain DOE facilities by giving adjoining States the same rights in remedy selection as the State in which a facility is located.

(e) Institutional Controls.—Section 401(e) amends section 121 to add a new subsection (g) to establish minimum requirements for institutional controls. This new subsection also requires the President to maintain a registry of institutional controls and requires EPA to issue an annual report on the use of institutional controls in Superfund remedies.

(f) Remedial Design.—Section 401(f) amends section 121 to add a new subsection (h) that requires, where appropriate and practicable, that the design of a remedy accommodate existing beneficial uses and expedite the return of contaminated property to beneficial use. The Committee intends this amendment to encourage EPA to be sensitive to issues surrounding existing beneficial uses, as well as potential redevelopment, at Superfund sites. With the enactment of this provision, the Committee does not expect the circumstance that arose at the Operating Industries Superfund site in California, where, until 1997, EPA had blocked redevelopment of an uncontaminated parcel, will repeat itself.

Section 402. Hazardous substance property use

Section 402 amends section 104 of CERCLA to add new subsection (k) to provide the President with the authority to acquire, at fair market value, a hazardous substance easement where necessary as a component of the remedy to restrict the use of land or other resources at a Superfund site. Such easements may be used to establish the enforceability and long-term reliability of institutional controls. The cost of acquiring an easement is a cost of response.

Section 403. Risk assessment standards

Section 403 adds new section 132 to title I of CERCLA to require that risk assessments meet certain general principles. These principles are intended to be consistent with the recommendations of the President's Commission on Risk Assessment and Risk Management, in its 1997 Final Report in Risk Assessment and Risk Management in Regulatory Decision-Making. Scientific and technical information and scientific evidence to be considered in risk assessments and characterizations under this section include the actual exposure information that the President must consider under new section 121(d)(2), as well as information obtained from the affected community by EPA and ATSDR under sections 117 and 104(i) of CERCLA (as amended by title II of this Act), where such information is reasonably available, relevant, reliable, and valid.

TITLE V—GENERAL PROVISIONS

Section 501. Trust fund defined

Section 501 makes a technical correction to section 101(11) of CERCLA to clarify the section reference of the Superfund Trust Fund in the Internal Revenue Code.

Section 502. Indian tribes

Section 502 amends section 126(a) of CERCLA to increases the role of Indian tribes in Superfund. This provision codifies EPA's "Indian Policy" (Nov. 8, 1984).

Section 502 also amends section 126(c) to require the President to carry out a study of health impacts on Indian tribes from facilities on the National Priorities List located within the jurisdiction of a Federal Indian reservation.

Section 503. Grants for training and education of workers

Section 503 amends section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 to require that at least 20% of amounts made available for worker training and education grants be allocated to nonprofit organizations to train minority and community-based workers who are engaged in cleanup and response activities. In section 601(d) of the bill, the annual authorization for worker training and education grants is increased to $40 million.

Section 504. State cost share

Section 504 amends section 104(c) of CERCLA to set the State cost share for Fund-financed cleanups at 10% of costs of a remedial action, and 10% of operation and maintenance costs.

Section 505. State and local reimbursement for response actions

Section 505 amends section 123 of CERCLA to authorize reimbursement of States, as well as local governments, for removal actions, not to exceed $25,000 for a single response by a local government or $25,000 for a single response by a State. States and local governments may be reimbursed for their costs of responding to emergencies, including emergencies created by illicit drug laboratories, fires and explosions, or other situations that require an immediate response.

Section 506. State role at Federal facilities

Section 506 amends section 120(g) of CERCLA to make interagency agreements enforceable and to provide for dispute resolution if a State and the Federal agency cannot agree on a remedy.

Section 507. Federal cost study

Section 507 requires the Congressional Budget Office to conduct a study of the potential costs to the Federal Government for natural resources damages.

Section 508. No preemption of State law claims

Section 508 amends section 302 to clearly establish that section 107 does not preempt claims under State law. (See the contrary holding of *PMC, Inc.* v. *Sherwin-Williams Co.*, 151 F.3d 610 (7th Cir. 1998)).

Section 509. Purchase of American-made equipment, products, and technologies

Section 509 requires entities that receive funding under CERCLA to use such funding to purchase, to the greatest extent practicable, American-made equipment, products, and technologies.

Section 510. Development of new technologies and methods

Section 510 requires EPA to develop and submit to Congress a plan to encourage United States companies to develop new technologies and methods to clean up hazardous waste sites.

TITLE VI—EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND

Section 601. Expenditures from the hazardous substance superfund

Section 601 amends subsections 111(a) through (f) of CERCLA as follows:

(a) Expenditures from Hazardous Substance Superfund.—New section 111(a) authorizes no more than $300,000,000 per year for fiscal years 2000 through 2004, and no more than $200,000,000 per year for fiscal years 2005 through 2007, in direct spending for the purposes described in new section 111(b). This section also authorizes $1,500,000,000 per year in fiscal years 2000 through 2003, $1,400,000,000 in fiscal year 2004, $1,300,000,000 in fiscal year 2005, $1,200,000,000 in fiscal year 2006, and $975,000,000 in fiscal year 2007 in discretionary spending for the purposes described in new section 111(c) and new section 111(d).

(b) Payments Related to Certain Reductions, Limitations, and Exemptions.—New section 111(b) limits total expenditures from amounts made available to fund shares of liability attributable to exemptions under new section 107(t) and obligations incurred by the President under new section 131 to $300,000,000 in fiscal years 2000 through 2004, and $200,000,000 each year in fiscal years 2005 through 2007.

In addition, for fiscal years 2000 through 2004, this section allows the President to use funds made available under subsection (a)(1) (the direct spending) for the purposes allowed under subsections (c) and (d) if the President does not have available for obli-

gation the total amount authorized for such purposes in such fiscal years. The President may use this authority only to the extent necessary to bring the amounts available for authorization up to the authorized levels in such fiscal years. In using this authority, the President should consider any adverse impacts on the pace of cleaning up facilities on the National Priorities List that may result. The Committee expects the President to use this authority in a manner that maximizes the pace of cleanup.

(c) Response, Removal, and Remediation.—New section 111(c) authorizes funding, subject to appropriation, for (1) government response costs; (2) private response cost claims; (3) acquisition of real estate under section 104(j); (4) state and local government reimbursement under section 123; (5) contracts and cooperative agreements under section 104(d); and (6) natural resource damage assessments.

(d) Administration, Oversight, Research, and Other Costs.—New section 111(d) authorizes funding, subject to appropriation, for (1) investigation and enforcement; (2) overhead; (3) employee safety programs; (4) grants for technical assistance; (5) worker training and education (not to exceed $40,000,000 for each of fiscal years 2000 through 2007); (6) ATSDR activities; (7) evaluation costs under section 105(d); (8) contract costs under section 104(a)(1); (9) research and development under section 311; (10) awards under section 109(d); and (11) grants to States to develop comprehensive State ground water protection plans (not to exceed $3,000,000).

(e) Limitation on Natural Resources Claims.—New section 111(e) reiterates section 111(d)(2) of CERCLA and prohibits use of Superfund money in connection with any natural resource damage claim related to the long-term exposure to air pollutants from multiple or diffuse sources. This provision restates a provision of current law.

(f) Other Limitations.—New section 111(f) reiterates sections 111(e)(1) and 111(e)(3) of CERCLA. Under this section, claims against the Fund shall only be paid if there is a positive unobligated balance in the Fund. This section also places a limitation on the use of the Fund at Federal facilities, and clarifies that Trust Fund money may not be used for remedial actions at facilities that are not on the National Priorities List.

Section 602. Authorization of appropriations from general revenues

(a) Authorization.—Section 602(a) amends section 111(p) to authorize the appropriation of $250,000,000 for each of fiscal years 2000 through 2007 from general revenues to the Fund (plus any budget authority that may remain from previous years).

(b) Repeal of Duplicative Authorization.—Section 602(b) repeals section 517 of the Superfund Amendments and Reauthorization Act which is duplicative of section 111(p) of CERCLA.

(c) Conforming Amendment.—Section 602(c) makes a conforming amendment to reflect the amendment made by section 602(b).

Section 603. Completion of National Priorities List

Section 603 authorizes $1 million for a study of EPA's 10-year funding needs for the Superfund program.

TITLE VII—REVENUES

Section 701. Sense of Committee on Transportation and Infrastructure

Section 701 provides that it is the sense of the Committee that the taxes that support the Superfund program be reinstated for the period beginning January 1, 2000, and ending December 31, 2007; that the rate of tax and combination of taxes be commensurate with the revenue needs; and that such taxes may be reauthorized at a lower rate, and may decline over time, to avoid creating any surplus in the Trust Fund.

The Committee adopted a "Sense of the Committee" rather than formal legislative language amending the Internal Revenue Code because the Committee cannot exercise jurisdiction over the tax code. The Committee expects that the Committee on Ways and Means will reinstate revenues for 8 years. Based upon the authorization levels of the bill, over that 8–year period new revenues to the Trust Fund from all sources (including taxes, general revenues, interest, and cost recoveries) should provide approximately $11.5 billion.

MISCELLANEOUS ISSUES

H.R. 1300 primarily addresses the role of the Environmental Protection Agency in the cleanup, redevelopment and reuse of property. However, other Federal agencies are involved in these issues. For example, the Department of Defense has a large role in bringing facilities back to productive use at formerly used defense sites and BRAC (Base Realignment and Closure) facilities. To help the Federal government return its closed facilities to productive use, in 1996 Congress amended section 120 of CERCLA in section 334 of H.R. 3230, the National Defense Authorization Act for Fiscal Year 1997.

This amendment allowed a Federal agency to transfer property prior to completion of a cleanup, as long as there were assurances that human health and the environment would be protected and the cleanup would be completed by the Federal agency. This mechanism, however, is not the only method of returning contaminated Federal property to productive use. It also is possible for a Federal agency to structure a real estate transaction under which an uncontaminated portion of a facility is conveyed, such as the surface estate, while the Federal agency retains ownership of the contaminated portion, such as the subsurface estate. This option is consistent with EPA's policy of allowing partial deletion of facilities listed on the National Priorities List. Under this policy, to encourage the return of property to productive use, EPA will delete a clean portion of a site from the National Priorities List, when no further response is appropriate for that portion. Moreover, under this policy "[s]uch a portion may be a defined geographic unit of the site, perhaps as small as a residential unit, or may be a specific medium of the site, e.g., groundwater, depending on the nature or extent of the release(s)." 60 Fed. Reg. 55466, 55467 (Nov. 1, 1995). If EPA can divide a facility into a surface portion and a groundwater portion, and make a finding for the surface that "no further response action is appropriate," there is no reason that a Federal

agency cannot do the same, and offer a covenant under section 120(h)(3)(A) that all remedial action necessary to protect human health and the environment has taken place before the transfer of the surface portion of the facility.

The Corps of Engineers also is playing an increasing role in helping to return contaminated property to productive use. Under its "support for others" program, the Corps acts as a contractor to EPA at Superfund sites. The Corps also assists States and local governments in the clean up of brownfields property. The Corps played a significant role in the remediation of contaminated sediments in the Ashtabula River. Further, the Water Resources Development Act of 1999 (P.L. 106–53) authorizes the Corps to conduct activities with respect to contaminated sediments in the Passaic River, which is an operable unit of the Diamond Alkali Superfund Site. The Committee has granted the Corps the authority to undertake these activities, and others, in various Water Resources Development Acts. In granting such authority, the Committee does not intend the Corps to make distinctions between facilities that are listed on the National Priorities List, and facilities that are not. This distinction has no relevance to the applicability of the liability provisions of CERCLA, therefore has no relevance to a determination whether there is a need for Corps participation in remediation projects. Accordingly, the Committee reaffirms its intent that the Corps perform its authorized activities, notwithstanding Policy Guidance Letter No. 49 or any other guidance that mistakenly interprets the relationship between CERCLA liability and the role of the Corps in remediation projects. Through various authorizations, the Committee has created a partnership between the Corps and EPA, with the expectation that the Corps' authority would supplement EPA CERCLA actions.

Hearings

On Wednesday, May 12, 1999, the Subcommittee on Water Resources and Environment held a hearing on H.R. 1300, the "Recycle America's Land Act," and issues related to brownfields redevelopment and reform and reauthorization of the Superfund program. Witnesses included the Administrator of the Environmental Protection Agency, State and local officials, representatives of business and development interests, and an environmental organization.

Committee Consideration

On August 5, 1999, the Full Committee met in open session and marked up H.R. 1300, as well as other pending legislation. The Committee adopted an amendment in the nature of a substitute offered by Representative Boehlert and Representative Borski by voice vote. The Committee also adopted by voice vote two amendments offered by Representative Traficant. One would require recipients of federal funding to purchase American-made products to the greatest extent practicable. The other would require EPA to submit a plan to Congress to ensure that the United States is a world leader in the development of cleanup technologies. Subsequently, the Full Committee ordered reported H.R. 1300, as amended by a vote of 69 ayes and 2 nays.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There was one recorded vote taken, on final passage.

FINAL PASSAGE OF H.R. 1300, AS AMENDED (69–2)

AYES	NAYS
Mr. Bachus	Mr. Nadler
Mr. Baird	Mr. Simpson
Mr. Baker	
Mr. Baldacci	
Mr. Barcia	
Mr. Bass	
Mr. Bateman	
Mr. Bereuter	
Mr. Berry	
Mr. Blumenauer	
Mr. Boehlert	
Mr. Borski	
Mr. Boswell	
Mr. Clement	
Mr. Coble	
Mr. Cook	
Mr. Cooksey	
Mr. Costello	
Mr. Cummings	
Ms. Danner	
Mr. DeFazio	
Mr. DeMint	
Mr. Doolittle	
Mr. Duncan	
Mr. Ehlers	
Mr. Ewing	
Mr. Filner	
Mr. Franks	
Mr. Gilchrest	
Mr. Holden	
Mr. Horn	
Mr. Hutchinson	
Mr. Isakson	
Ms. Johnson	
Mrs. Kelly	
Mr. Kuykendall	
Mr. LaHood	
Mr. Lampson	
Mr. LaTourette	
Mr. Lipinski	
Mr. LoBiondo	
Mr. McGovern	
Mr. Mascara	

Mr. Menendez
Mr. Metcalf
Ms. Millender-McDonald
Mr. Miller
Mr. Moran
Mr. Ney
Ms. Norton
Mr. Oberstar
Mr. Pascrell
Mr. Pease
Mr. Petri
Mr. Quinn
Mr. Rahall
Mr. Sandlin
Mr. Sherwood
Mr. Shows
Mr. Sweeney
Ms. Tauscher
Mr. Taylor
Mr. Terry
Mr. Thune
Mr. Traficant
Mr. Vitter
Mr. Wise
Mr. Young
Mr. Shuster

Committee Oversight Findings

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

Cost of Legislation

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

Compliance with House rule XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.
2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on the subject of H.R. 1300.
3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the

following cost estimate for H.R. 1300 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1999.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1300, the Recycle America's Land Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for federal costs are Kim Cawley, and Perry Beider. The contact for the state and local impact is Shelley Finlayson, and the contacts for the private-sector impact are Patrice Gordon and Perry Beider.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1300—Recycle America's Land Act of 1999

Summary

H.R. 1300 would amend and reauthorize spending for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as the Superfund Act, which governs the cleanup of sites contaminated with hazardous substances. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

The Superfund program is administered by the Environmental Protection Agency (EPA), which evaluates the need for cleanup at sites brought to its attention, identifies parties liable for the costs of cleanup, and oversees cleanups conducted either by its own contractors or by the liable parties. These EPA activities are currently funded by appropriations from the Hazardous Substance Superfund Trust Fund and from the general fund of the Treasury.

CBO estimates that the bill would authorize appropriations of $7.9 billion over the 2000–2004 period for the Superfund program. H.R. 1300 would establish a new method of determining the extent of liability of potentially responsible parties (PRPs) at Superfund sites, and a portion of this liability would usually be assigned to EPA.

The bill also would provide direct spending authority of $2.1 billion over the next eight years for EPA to compensate certain private parties for completing cleanup activities for which they are not entirely liable and where some amount of liability has been assigned to EPA. Finally, enacting the bill would result in a decrease in the amount of money recovered by EPA from private parties who remain liable for cleanup expenses incurred by the agency. We estimate that these forgone recoveries would total $347 million over the 2000–2009 period. Overall, CBO estimates that enacting H.R.

1300 would increase direct spending by $2.4 billion over the 2000–2009 period.

H.R. 1300 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs of complying with these mandates would not be significant and would not exceed the threshold established in the law ($50 million in 1996, adjusted annually for inflation). In general, the bill would benefit state, local, and tribal governments.

H.R. 1300 also would impose private-sector mandates, as defined in UMRA, by setting a temporary moratorium on certain lawsuits and putting a time limit on certain other lawsuits under CERCLA. CBO estimates that the direct costs of complying with those mandates would be well below the statutory threshold specified in UMRA ($100 million in 1996, adjusted annually for inflation). Overall, the bill would tend to lower the costs to the private sector of cleaning up certain Superfund sites under CERCLA.

Estimated cost to the Federal Government

The estimated budgetary impact of H.R. 1300 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of estimate

For purposes of this estimate, CBO assumes that H.R. 1300 will be enacted by or near the start of fiscal year 2000, and that all funds authorized by the bill will be appropriated. Estimated outlays are based on the historical spending patterns of the Superfund program.

	By fiscal year, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Superfund spending under current law:						
Budget authority	1,500	0	0	0	0	0
Estimated outlays	1,435	1,063	536	233	87	0
Proposed changes:						
Estimated authorization level	0	1,600	1,600	1,600	1,600	1,500
Estimated outlays	0	405	981	1,300	1,450	1,500
Superfund spending under H.R. 1300:						
Estimated authorization level	1,500	1,601	1,600	1,600	1,600	1,500
Estimated outlays	1,435	1,468	1,517	1,533	1,537	1,500
CHANGES IN DIRECT SPENDING						
Reimbursement for Superfund liability:						
Estimated budget authority	0	300	300	300	300	300
Estimated outlays	0	300	300	300	300	300
Changes to Superfund recoveries:						
Estimated budget authority	0	15	45	45	38	38
Estimated outlays	0	15	45	45	38	38
Total changes in direct spending:						
Estimated budget authority	0	315	345	345	338	338
Estimated outlays	0	315	345	345	338	338

[1] The 1999 level is the amount appropriated for that year.

Spending Subject to Appropriation

Superfund Program.—CBO estimates that implementing H.R. 1300 would require the appropriation of $7.9 billion over the next five years for the Superfund program and related grant programs.

Title VI would authorize appropriations totaling $7.4 billion over the 2000–2004 period for EPA activities in support of the Superfund program. Title I would authorize the appropriation of such funds as may be necessary for grants to be used for site characterization, assessment, and cleanup actions at brownfield facilities. (Brownfield facilities are properties where the presence or potential presence of hazardous substance complicates the expansion or redevelopment of the property.) Based on information from EPA, we estimate that implementing this provision would require the appropriation of $75 million annually over the next five years. These funds could also be used by states and local governments to establish revolving loan funds to provide money for eligible work at brownfield facilities. Finally, title I would authorize the appropriation of $25 million annually over the 2000–2004 period for grants to states to establish programs to facilitate the voluntary cleanup of properties contaminated with hazardous materials, and title VI would authorize the appropriation of $1 million for an independent analysis of the projected 10-year costs to EPA of implementing the Superfund program.

Superfund Cleanup Costs At Federal Sites.—H.R. 1300 would amend the procedures EPA uses to select appropriate cleanup solutions (known as remedies) at each Superfund site. Title IV would require EPA to consider future land use at a site, and authorize purchase of property easements when selecting an appropriate remedy. These changes in the remedy selection procedures could change the cost of future cleanup projects at federal facilities. However, any savings would be small over the next five years because the changes would not significantly affect spending at sites where remediation has begun.

Direct Spending

Provisiions of H.R. 1300 would affect direct spending primarily by providing $2.1 billion over the next eight years to reimburse certain PRPs for some future cleanup costs and for specified past and ongoing cleanup costs. Such funds could also be used for other authorized Superfund expenses, depending on the amounts provided to the program in appropriations acts. In addition, enactment of H.R. 1300 would result in a decrease in the amount of money EPA is able to recover from PRPs who are currently liable for cleanup expenses.

Reimbursement for Superfund Share of Liability.—Title VI would provide $300 million annually over the 2000–2004 period and $200 million annually over the 2005–2007 period to reimburse private parties for certain expenditures made during a Superfund cleanup project that the bill would make the responsibility of EPA. CBO estimates that all of these funds would be spent over the 2000–2007 period. We estimate EPA would spend about $150 million annually to reimburse PRPs for cleanup projects that have not yet begun, and about the same amount to reimburse PRPs for past and ongoing cleanup costs.

Title III would make several changes to current law concerning Superfund liabilities of private parties and the procedures for allocating cleanup responsibilities equitably among the multiple PRPs (site owners and operators, and off-site parties that contributed

hazardous substances) involved in a cleanup project. For new cleanup projects that meet certain requirements, section 310 would define how an independent "allocator," chosen by EPA and the PRPs at a site, would determine the share of cleanup costs that each PRP must contribute and what share of the liability belongs to EPA (if any). Under H.R. 1300, EPA's liability at a Superfund site would consist primarily of two components: any liability assigned to defunct or insolvent PRPs and any liability that is eliminated, limited, or reduced by the provisions of the bill. The legislation would eliminate, limit, or reduce the cleanup liability for some PRPs—notably small businesses, municipal governments that owned or operated landfills, and generators and transporters of municipal solid waste or recyclable materials. The difference between the cleanup cost attributed to a private party by the allocator and a smaller amount actually paid by the PRP—because of a liability exemption, reduction, or limitation resulting from enactment of the bill—would become the responsibility of EPA.

Liability for Future Costs. Based on the characteristics of sites currently in the Superfund program, CBO estimates that approximately one-third of the costs of new cleanup projects would be allocated to the Superfund. Assuming that the pace of cleanups conducted by PRPs continues at current rates, reimbursements to PRPs from the Superfund for cleanup projects would be about $150 million annually. Such spending would come from the annual direct spending authority included in title VI of the bill.

Liability for Past Costs. Under H.R. 1300, EPA also would be liable for reimbursing some PRPs for certain cleanup projects that are ongoing or have already been completed. Under current law, PRPs that pay for Superfund cleanup costs can seek reimbursement for their expenses from other PRPs involved with the same site. H.R. 1300 would make PRPs that have incurred such costs eligible for reimbursement from EPA for the share of costs attributable to PRPs whose liability would be reduced or eliminated under the bill. EPA estimates that the total cost of ongoing and completed cleanups conducted by PRPs is over $13 billion. Only a portion of the $13 billion is attributable to the relevant PRPs and much of that share has already been settled. CBO estimates that the Superfund would face declining claims over the next seven years for reimbursement of past and ongoing cleanups with annual costs ranging from $100 million to $200 million. Such amounts also would be paid from the bill's direct spending authority—to the extent that funds are available.

Superfund Program.—This estimate assumes that all of the funds that would be provided by title VI would be spent each year by EPA either for reimbursement of PRPs or on other authorized expenses of the Superfund program. Section 601 would allow H.R. 1300's funding to be used to make up any shortfall between the annual amounts provided for the Superfund program in appropriations acts and the amounts that H.R. 1300 would authorize to be appropriated for the program. The actual amount of funds (if any) that would be spent for purposes other than reimbursement of private parties would depend on the amounts provided to the Superfund program in future appropriation acts.

Superfund Recoveries.—EPA's enforcement program attempts to recover costs the agency incurs at cleanup projects that are the responsibility of private parties. Spending of the amounts recovered is subject to annual appropriation action. Under current law, CBO estimates such recoveries will gradually decline from the current level of $300 million annually, and will average $250 million annually over the next 10 years. Under H.R. 1300, however, such recoveries would decline further because the Superfund liability of some PRPs would be eliminated, limited, or reduced. We expect that enacting the bill would lead to an average annual decrease in offsetting receipts to the Treasury of $35 million over the 2000–2009 period.

Pay-as-you-go-considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	315	345	345	338	338	238	238	230	30	30
Changes in receipts	Not applicable										

Estimated impact on State, local, and tribal governments

By preempting state liability laws, H.R. 1300 would impose intergovernmental mandates as defined in UMRA. CBO estimates that the costs of complying with these mandates would not be significant and would not exceed the threshold established in the law ($50 million in 1996, adjusted annually for inflation). As described below, the bill would also have other impacts—nearly all of them benefits—on state, local, and tribal governments.

Intergovernmental Mandates

Title III of the bill would limit or eliminate the liability of certain parties under federal and state laws for future cleanup costs at Superfund sites. Parties receiving some liability relief would include generators and transporters of municipal solid waste and municipal owners and operators of certain landfills. Currently, states can sue PRPs at a Superfund site under their own hazardous waste cleanup laws. These preemptions of state laws would constitute intergovernmental mandates as defined in UMRA. However, according to EPA and state officials, states rarely take action against PRPs at a Superfund site under their own laws. In addition, those states whose cleanup laws establish joint and several liability could in many cases recover their costs from other PRPs at the site. Therefore, CBO estimates that the costs to states to comply with the mandates would not be significant.

Other Impacts on State, Local, and Tribal Governments

In general, enactment of H.R. 1300 would benefit state, local, and tribal governments. These benefits include creating new grant programs for states, affording states greater participation and authority over cleanups, and relieving state and local governments from certain costs and liability under current law.

New Grant Funding.—Title I of the bill would create three grant programs to fund state voluntary response programs and the assessment and cleanup of brownfield sites. States or localities would have to match some of the funds and pay for administering one of the funds.

Expanded State, Local, and Tribal Roles.—H.R. 1300 would amend the current Superfund program to allow greater authority and participation by the states. Title I would prohibit the EPA from taking action, except under specific circumstances, against anyone who has completed cleanup activities on a nonsuperfund site in compliance with state laws. In addition, the EPA would generally be required to defer listing a facility as a Superfund site if the state is acting under a state response program or is attempting to make an agreement for remedial action and makes reasonable progress to do so within one year.

Title II would require the EPA to solicit views and preferences regarding cleanup from tribes, local governments, and communities, as well as state and local health officials. Title III would allow states to participate in funding allocation under certain circumstances. This title also would specify that federal, state, and local agencies are subject to, and entitled to, the benefits of an allocation to the same extent as any other party including reimbursement when performing parties pay more than their allocated share and that the EPA may sue non-settling parties.

Title IV would increase local and state involvement in deciding how cleanups should be conducted. Title V would increase the role of Indian tribes in Superfund programs and would require a study of the health effects of Superfund sites on or near Indian reservations on tribal members.

Lower Cost Share for Cleanups.—H.R. 1300 would lower the share of cleanup costs that state governments pay. Under current law, when the federal government conducts a site cleanup, the state in which the site is located must pay 10 percent of the costs. If the site was owned or operated by the state or local government, the state's share of the costs rise to at least 50 percent. States must also pay all operation and maintenance costs at the sites. H.R. 1300 would amend the current arrangement to require states to pay only 10 percent of all costs at all sites, including those for operation and maintenance. H.R. 1300 also would allow states to apply for reimbursement from EPA of up to $25,000 in emergency response costs per site.

Liability Relief for State, Local, and Tribal Governments.—H.R. 1300 would limit or eliminate various parties' liability for cleanup costs, including local governments. The bill would cap the liability of parties (including local governments) that generated or transported municipal solid waste or sewage sludge to a Superfund site that is a "codisposal" landfill (a landfill that also accepted other wastes and that became a Superfund site). If they are not other-

wise exempted from liability by the bill, these parties would have a total aggregate liability of 10 percent of cleanup costs.

The bill would also cap the liability of municipalities that owned or operated codisposal landfills that are Superfund sites. Roughly two-thirds (160) of the approximately 250 codisposal landfills in the program have at least one municipal owner or operator. With some exceptions, large municipalities would be held liable for no more than 20 percent of future cleanup costs, and small municipalities would be responsible for no more than 10 percent of the costs. Under current EPA guidance, municipalities are eligible for settlements of 20 percent of estimated cleanup costs, although the percentage can be adjusted up or down for site-specific factors. This bill would also limit the liability of various local entities for cleanup costs at certain Superfund sites and would create an expedited settlement process for certain parties, including municipalities with a limited ability to pay.

In addition, the bill would establish an affirmative defense for innocent parties including innocent governmental entities that: (1) issue permits or licenses, (2) acquire property by involuntary transfer or eminent domain, (3) own and operate sewage treatment works, and (4) own and operate rights of way. The bill also would provide liability protection to state, tribal, and local governments that undertake cleanups to improve water quality at abandoned mine sites or own property of land contiguous to contaminated sites.

Estimated impact on the private sector

H.R. 1300 would impose private-sector mandates, as defined in UMRA, by setting a temporary moratorium on certain lawsuits and putting a time limit on certain other lawsuits under CERCLA. CBO estimates that the direct costs of complying with those mandates would be well below the statutory threshold specified in UMRA ($100 million in 1996, adjusted annually for inflation).

Under current law, the liability standard for a Superfund site, which can affect who pays to clean it up, is retroactive, strict, and generally joint and several. Liability is retroactive because it applies to contamination caused by activities that took place before CERCLA was enacted in 1980. Liability is strict because a responsible party is liable even if it was not negligent. Liability is joint and several in cases where the responsibility for contamination at a site is not easily divisible. In such cases, the government can hold one or more parties liable for the full costs of cleanup, even if other parties at the site are liable. Current law also permits third-party lawsuits, in which parties held responsible by EPA (or by other responsible parties) may sue others who do not settle with the government for contribution.

The bill would direct the President to initiate a new method of allocation for any response action under future settlements and administrative orders. Under the new method, a neutral allocator would be hired to determine liability of potentially responsible parties for an eligible site. The bill would impose a private-sector mandate by prohibiting civil litigation seeking to recover response costs during the period set aside by the bill to allow the allocator to determine liability under the new method. Specifically, section 310

would prohibit anyone from asserting a claim until 150 days after the release of the allocator's report. In addition, the bill would stay all pending actions or claims during the same period unless the court determines that a stay would result in manifest injustice. CBO expects that the costs of delaying a claim to recover cleanup costs would be negligible, primarily because post-moratorium litigation is likely to be rare in view of the incentives to settle for the allocated share under the new process.

Currently, contractors performing cleanups are not liable under federal law for work they do under CERCLA except in cases of negligence, gross negligence, or willful misconduct. Section 307 would limit actions to recover for injury to persons or property or other claims against such contractors based on negligence to a period of six years after the completion of work at a site. At the same time, the bill would extend the contractor's protection from liability to include any actions meeting the CERCLA definition of response. According to information provided by EPA, lawsuits based on negligence have been rare under CERCLA, and in most such actions the recovery for damages has not been significant. Therefore, CBO expects that the costs of limiting claims based on negligence to six years would be minor. The time limit does not apply to claims for gross negligence or intentional misconduct or claims in states that have adopted a different time limit covering such cases.

Generally, provisions of the bill are meant to reduce some of the burdens of compliance under CERCLA. H.R. 1300 would direct the federal government to cover the costs attributed to insolvent or defunct parties, the costs attributed to responsible parties exempted under the bill, and the balance of costs left over when allocation shares have been capped or limited according to the rules specified in the bill. Consequently, the remaining cleanup costs allocated to the private sector would tend to be lower than under current law.

Estimate prepared by: Federal costs: Kim Cawley and Perry Beider; Impact on State, local and tribal governments: Shelley Finlayson; Impact on the private sector: Patrice Gordon and Perry Beider.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 28, 1999.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As requested by your staff, the Congressional Budget Office is pleased to provide you with additional information regarding the effects on state governments of H.R. 1300, the Recycle America's Land Act of 1999, as ordered reported by the House Transportation and Infrastructure Committee on August 5, 1999. The purpose of this letter is to clarify the extent to which the bill would preempt state law or otherwise affect the budgets of state governments.

The preemptions described in the state and local section of the cost estimate we provided to you on September 23, 1999, are found in section 307 of the bill. Subsection 307(a) would limit the liability of response action contractors (RACs) to cases of negligence, gross negligence, or international misconduct in all states that have not enacted a law specifically addressing the liability of RACs. Subsection 307(f) would require that claims alleging negligence of a RAC be brought within six years after completion of the contractor's work, except in a state that has enacted a different time limit for the liability of these contractors. (Response action contractors are defined in subsection 119(e) of the Comprehensive Environmental Response, Compensation and Liability Act.) These changes could preempt those states' ability to enact laws addressing these issues in the future. As stated in our September 23 estimate, CBO expects that the cost to states of these preemptions would not be significant, and would not exceed the threshold established in the Unfunded Mandates Reform Act ($50 million in 1996, adjusted annually for inflation).

We expect states would be affected in other ways as well. Our statement—in the same paragraph of the September 23 estimate—about eliminating or limiting liability for generators and transporters of municipal solid waste and municipal owners and operators of certain landfills refers to the changes the bill would make to federal liability laws. These changes, while not preemptions of state law, would make it potentially more difficult for any states that currently rely on such laws to recover costs and damages under their own cleanup programs from parties whose liability would be eliminated or limited by the bill.

We hope that you find this additional information useful. The CBO staff contact is Shelley Finlayson.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1.)

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (SUPERFUND)

* * * * * * *

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. For purpose of this title—
(1) * * *

* * * * * * *

⟦(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Response Fund established by section 221 of this Act or, in the case of a hazardous waste disposal facility for which liability has been transferred under section 107(k) of this Act, the Post-closure Liability Fund established by section 232 of this Act.⟧

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

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(20)(A) * * *

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(H) CONTIGUOUS PROPERTY OWNER.—The term "owner or operator" does not include a person who owns or operates real property that is contiguous to, or onto which a release has migrated from, a facility under separate ownership or operation from which there is a release or threatened release of a hazardous substance if—

(i) the person did not, by any act or omission, cause or contribute to the release or threatened release of a hazardous substance; and

(ii) the person is not affiliated with any other person that is potentially liable for any response costs at the facility at which there has been a release or threatened release of a hazardous substance.

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⟦(35)(A) The term "contractual relationship", for the purpose of section 107(b)(3) includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

⟦(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

⟦(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

⟦(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3) (a) and (b).

⟦(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

⟦(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

⟦(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.⟧

(35) The term "municipality" means a political subdivision of a State, including a city, county, village, town, township, borough, parish, school district, sanitation district, water district, or other public entity performing local governmental functions. The term also includes a natural person acting in the capacity of an official, employee, or agent of any entity referred to in the preceding sentence in the performance of governmental functions.

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RESPONSE AUTHORITIES

SEC. 104. (a) * * *

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(c)(1) * * *

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[(3) The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that (A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term "facility" does not include navigable waters or the beds underlying those waters. The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act for cost-eligible response actions and claims for damages compensable under section 111 of this title relating to the specific release in question: *Provided, however,* That in no event shall the amount of the credit granted exceed the total response costs relating to the release. In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not

apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.]

(3) STATE COST SHARE.—The President shall not provide any remedial actions pursuant to this section unless the State in which the release or threatened release occurs has entered into a contract or cooperative agreement with the President that provides assurances, deemed adequate by the President, that the State will pay or assure payment, in cash or through in-kind contribution, of 10 percent of the cost of such remedial action (other than any cost paid by the Fund under section 111(a)(1)) and 10 percent of the cost of operation and maintenance.

* * * * * * *

(i)(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, *the Director of the Indian Health Service,* and appropriate State and local health officials, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;]

(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;

* * * * * * *

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. [In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.] *In cases of public health emergencies, exposed persons shall be eligible for referral to licensed or accredited health care providers.*

* * * * * * *

(3)*(A)* Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Ad-

ministrator of EPA. Such profiles shall include, but not be limited to each of the following:

[(A)] *(i)* An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

[(B)] *(ii)* A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

[(C)] *(iii)* Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

[Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.]

(B) Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the list but which have been found at facilities for which there has been a response action under this Act and which have been determined by ATSDR to be of health concern. Profiles required under this paragraph shall be revised and republished, as appropriate, based on scientific development and shall be provided to the States, including State health departments, tribal health officials, and local health departments, and made available to other interested parties.

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(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA *and the Director of the Indian Health Service* and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the Na-

tional Toxicology Program, shall assure the initiation of a program of research [designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance.] *conducted directly or by means such as cooperative agreements and grants with appropriate public and nonprofit institutions. The research shall be designed to determine the health effects of the substance and techniques for development of methods to determine such health effects.* Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) * * *

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(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; [and]

(iv) laboratory and other studies to develop innovative techniques for predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and

[(iv)] *(v)* where there is a possibility of obtaining human data, the collection of such information.

* * * * * * *

[(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.]

(6)(A)(i) The Administrator of ATSDR shall perform a preliminary public health assessment or health consultation for each facility on the National Priorities List, including those facilities owned by any department, agency, or instrumentality of the United States, and those sites that are the subject of a petition under subparagraph (B). The preliminary public health assessment or health consultation shall be commenced as soon as practicable after each facility is proposed for inclusion on the National Priorities List or the Administrator of ATSDR accepts a petition for a public health assessment. If the Administrator of ATSDR, in consultation with local public health officials, determines that the results of a preliminary public health assessment or health consultation indicate the need for a public health assessment, the Administrator of the ATSDR shall conduct the public health assessment of those sites posing a health hazard. The results of the public health assessment should be considered in selecting the remedial action for the facility.

(ii) The Administrator of ATSDR, in cooperation with States, shall design public health assessments that take into account the needs and conditions of the affected community.

(iii) The Administrator of EPA shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or adverse health effects as identified in a public health assessment conducted by the Administrator of ATSDR or are reasonably anticipated based on currently known facts.

(B) The Administrator of ATSDR may perform *public* health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a *public* health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a *public* health assessment, the Administrator of ATSDR shall provide a written explanation of why a *public* health assessment is not appropriate.

(C) In determining the priority in which to conduct *public* health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest *where low population density is not used as an excluding risk factor*, and for which in the judgment of the Administrator of ATSDR existing *public* health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting *public* health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D)*(i)* Where a *public* health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(ii) The President and the Administrator of ATSDR shall develop strategies to obtain relevant on-site and off-site characterization data for use in the public health assessment. The President shall, to the maximum extent practicable, provide the Administrator of ATSDR with the data and information necessary to make public health assessments sufficiently prior to the choice of remedial actions to allow the Administrator of ATSDR to complete these assessments.

(iii) Where appropriate, the Administrator of ATSDR shall provide to the President as soon as practicable after site discovery, recommendations for sampling environmental media for hazardous substances of public health concern. To the extent feasible, the Presi-

dent shall incorporate such recommendations into the President's site investigation activities.

(iv) In order to improve community involvement in public health assessments, the Administrator of ATSDR shall carry out each of the following duties:

(I) Collect from community advisory groups, from State and local public health authorities, and from other sources in communities affected or potentially affected by releases of hazardous substances data regarding exposure, relevant human activities, and other factors.

(II) Design public health assessments that take into account the needs and conditions of the affected community. Community-based research models, local expertise, and local health resources should be used in designing the public health assessment. In developing such designs, emphasis shall be placed on collection of actual exposure data, and sources of multiple exposure shall be considered.

(E) Any State or political subdivision carrying out a *public* health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection. *If the Administrator of ATSDR or the Administrator of EPA does not act on the recommendations of the State, the Administrator of ATSDR or EPA must respond in writing to the State or tribe as to why the Administrator of ATSDR or EPA has not acted on the recommendations.*

(F) For the purposes of this subsection and section 111(c)(4), the term "*public* health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, 【and】 food chain contamination*, and any other pathways resulting from subsistence activities*), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of *public* health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological

studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of *public* health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question[.]*, and may give special consideration, where appropriate, to any practices of the affected community that may result in increased exposure to hazardous substances, pollutants, or contaminants, such as subsistence hunting, fishing, and gathering.*

(H) At the completion of each *public* health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this Act. In addition, if the *public* health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

[(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a *public* health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.]

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a public health assessment or on the basis of other appropriate information, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epidemiologic or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or *public* health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

(8) In any case in which the results of a *public* health assessment indicate a potential significant risk to human health, the Adminis-

trator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a *public* health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

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(10) Two years after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

(A) *public* health assessments and pilot health effects studies conducted;

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(11) If a *public* health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

* * * * * * *

(12) In any case which is the subject of a petition, a *public* health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

(13) All studies and results of research conducted under this subsection (other than *public* health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested sci-

entific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

【(14) In the implementation of this subsection and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.】

(14) EDUCATIONAL MATERIALS.—In implementing this subsection and other health-related provisions of this Act the Administrator of ATSDR, in cooperation with the States, shall—

(A) assemble, develop as necessary, and distribute to the State and local health officials, tribes, medical colleges, physicians, nursing institutions, nurses, and other health professionals and medical centers appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of prevention, diagnosis, and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed under paragraph (2)) through means the Administrator of ATSDR considers appropriate; and

(B) assemble, develop as necessary, and distribute to the general public and to at-risk populations appropriate educational materials and other information on human health effects of hazardous substances.

【(15)】 *(15) GRANTS, CONTRACTS, AND COMMUNITY ASSISTANCE.—(A)* The activities of the Administrator of ATSDR described in this subsection and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through 【cooperative agreements with States (or political subdivisions thereof)】 *grants, cooperative agreements, or contracts with States (or political subdivisions thereof), other appropriate public authorities, public or private institutions, colleges, universities, and professional associations* which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of *public* health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

(B) When a public health assessment is conducted at a facility on the National Priorities List, or a facility is being evaluated for inclusion on the National Priorities List, the Administrator of ATSDR may provide the assistance specified in this paragraph to public or private nonprofit entities, individuals, and community-based groups that may be affected by the release or threatened release of hazardous substances in the environment.

(C) The Administrator of ATSDR, pursuant to the grants, cooperative agreements, and contracts referred to in this paragraph, is authorized and directed to provide, where appropriate, diagnostic services, health data registries and preventative public health education to communities affected by the release of hazardous substances.

(16) *PERSONNEL.*—The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(17) *AUTHORITIES.*—In accordance with section 120 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) *POLLUTANTS AND CONTAMINANTS.*—If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

(19) PEER REVIEW COMMITTEE.—The Administrator of ATSDR shall establish an external peer review committee of qualified health scientists who serve for fixed periods and meet periodically to—

(A) provide guidance on initiation of studies;

(B) assess the quality of study reports funded by the agency; and

(C) provide guidance on effective and objective risk characterization and communication.

The peer review committee may include additional specific experts representing a balanced group of stakeholders on an ad hoc basis for specific issues. Meetings of the committee should be open to the public.

* * * * * * *

(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

(1) AUTHORITY OF PRESIDENT TO ACQUIRE EASEMENTS.—In connection with any remedial action under this Act, in order to prevent exposure to, reduce the likelihood of, or otherwise respond to a release or threatened release of a hazardous substance, pollutant, or contaminant, the President may acquire, at fair market value, or for other consideration as agreed to by the parties, a hazardous substance easement which restricts, limits, or controls the use of land or other natural resources, including specifying permissible or impermissible uses of land, prohibiting specified activities upon property, prohibiting the drilling of wells or use of ground water, or restricting the use of surface water.

(2) USE OF EASEMENTS.—A hazardous substance easement under this subsection may be used wherever institutional controls have been selected as a component of a remedial action under this Act and the National Contingency Plan.

(3) PERSONS SUBJECT TO EASEMENTS.—A hazardous substance easement shall be enforceable in perpetuity (unless terminated and released as provided for in this section) against any owner of the affected property and all persons who subsequently acquire an interest in the property or rights to use the property, including lessees, licensees, and any other person with an interest in the property, without respect to privity or lack of privity of estate or contract, lack of benefit running to any other property, assignment of the easement to another party or sale or other transfer of the burdened property, or any other circumstance which might otherwise affect the enforceability of easements or similar deed restrictions under the laws of the State. The easement shall be binding upon holders of any other interests in the property regardless of whether such interests are recorded or whether they were recorded prior or subsequent to the easement, and shall remain in effect notwithstanding any foreclosure or other assertion of such interests.

(4) CONTENTS OF EASEMENTS.—A hazardous substance easement shall contain, at a minimum—

(A) a legal description of the property affected;

(B) the name or names of all current owner or owners of the property as reflected in public land records;

(C) a description of the release or threatened release; and

(D) a statement as to the nature of the restriction, limitation, or control created by the easement.

(5) RECORDING AND FILING OF EASEMENT.—Whenever the President acquires a hazardous substance easement or assigns a hazardous substance easement to another party, the President shall record the easement in the public land records for the jurisdiction in which the affected property is located. If the State has not by law designated an office for the recording of interests in real property or claims or rights burdening real property, the easement shall be filed in the office of the clerk of the United States district court for the district in which the affected property is located and added to the registry established under section 121(g)(4).

(6) METHODS OF ACQUIRING EASEMENTS.—The President may acquire a hazardous substance easement by purchase or other agreement, by condemnation, or by any other means permitted by law. Compensation for such easement shall be at fair market value, or for other consideration as agreed to by the parties, for the interest acquired.

(7) ASSIGNMENT OF EASEMENTS TO PARTIES OTHER THAN THE PRESIDENT.—

(A) AUTHORITY TO ASSIGN.—The President may, where appropriate and with the consent of the State or other governmental entity, assign an easement acquired under this subsection to a State or other governmental entity that has the capability of effectively enforcing the easement over the period of time necessary to achieve the purposes of the ease-

ment. In the case of any assignment, the easement shall also be fully enforceable by the assignee. Any assignment of such an easement by the President may be made by following the same procedures as are used for the transfer of an interest in real property to a State under subsection (j).

(B) EASEMENTS HELD BY OTHER PERSONS.—

(i) DESIGNATION AS HAZARDOUS SUBSTANCE EASEMENTS.—Subject to clause (ii), in a case in which an institutional control is a component of a remedy selected under section 121 at a facility listed on the National Priorities List, the owner of property and the potential holder of a restrictive easement may expressly designate, in writing, any interest in property as a hazardous substance easement for the purpose of restricting or limiting the use of land, water, or other resources in order to prevent exposure to, reduce the likelihood of, or otherwise respond to a release or threatened release of a hazardous substance, pollutant, or contaminant from such a facility.

(ii) CONDITIONS.—An interest in property may be designated as a hazardous substance easement under clause (i) only if such interest is granted to a State, an Indian Tribe, another governmental entity, or other person that has the capability of effectively enforcing the easement over the period of time necessary to achieve the purpose of the easement, and such State, Tribe, governmental entity, or person consents to the transfer.

(iii) EFFECT OF DESIGNATION.—When properly recorded or filed under paragraph (5), a hazardous substance easement designated under clause (i) shall create the same rights, have the same legal effect, and be enforceable in the same manner as a hazardous substance easement acquired by the President regardless of whether the interest in property is otherwise denominated as an easement, covenant, or any other form of property right.

(8) PUBLIC NOTICE.—Not later than 180 days after the date of the enactment of this subsection, the President shall issue regulations regarding the procedures to be used for public notice of proposed property use restrictions. Such regulations shall ensure that before acquiring a hazardous substance easement, before recording any notice of such easement, and before terminating or modifying a hazardous substance easement, the President will give notice and an opportunity to comment to the owner of the affected property, all other persons with recorded interests in the property, any lessees or other authorized occupants of the property known to the President, the State and any municipalities in which the property is located, any relevant community advisory group, the affected community, and the general public.

(9) TERMINATION OR MODIFICATION OF EASEMENTS.—An easement acquired under this subsection shall remain in force until the Administrator approves a modification or termination and

release of the easement and, following such approval, the holder of the easement executes and records such modification or termination and release in accordance with the terms of the easement. Such modification or termination shall be recorded in the same manner as the easement. A person may conduct additional response actions at a facility to allow for unrestricted use of the facility and may subsequently request termination of the easement. Such a request shall be granted by the holder of the easement and approved by the President, in the discretion of the holder and the President, if the holder and the President determine that the easement is no longer necessary to protect human health and the environment.

(10) ENFORCEMENT.—

(A) EFFECT OF VIOLATIONS.—Violation of any restriction, limitation, or control imposed under a hazardous substance easement shall have the same effect as failure to comply with an order issued under section 106 and relief may be sought either in enforcement actions under section 106(b)(1) or section 120(g), by States under section 121(e)(2), or in citizens suits under section 310. No citizens suit under section 310 to enforce such a notice may be commenced if the holder of the easement has commenced and is diligently prosecuting an action in court to enforce the easement.

(B) ENFORCEMENT ACTIONS.—The President may take appropriate enforcement actions to ensure compliance with the terms of the easement whenever the President determines that the terms set forth in the easement are being violated. If the easement is held by a party other than the President and that party has not taken appropriate enforcement actions, the President may notify the party of the violation. If the party does not take appropriate enforcement actions within 30 days of such notification, or sooner in the case of an imminent hazard, the President may initiate such enforcement actions.

(C) SAVINGS CLAUSE.—Nothing in this section shall limit rights or remedies available under other laws.

(11) APPLICABILITY OF OTHER PROVISIONS.—Holding a hazardous substance easement shall not in itself subject either the holder thereof or the owner of the affected property to liability under section 107. Any such easement acquired by the President shall not be subject to the requirements of subsection (j)(2) or section 120(h). Nothing in this subsection limits or modifies the authority of the President pursuant to subsection (j)(1).

* * * * * * *

NATIONAL CONTINGENCY PLAN

SEC. 105. (a) REVISION AND REPUBLICATION.—Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act,

in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) * * *

* * * * * * *

(8)(A) * * *

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan national priorities among the known releases or threatened releases throughout the United States and shall revise the list, *subject to subsection (h),* no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

* * * * * * *

(c) HAZARD RANKING SYSTEM.—

(1) * * *

* * * * * * *

(5) RISK PRIORITIZATION.—In setting priorities under subsection (a)(8), the President shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or demonstrated adverse health effects as identified in a public health assessment conducted by the Agency for Toxic Substances and Disease Registry or are reasonably anticipated based on currently known facts.

(6) PRIOR RESPONSE ACTION.—Any evaluation under this section shall take into account all prior response actions taken at a facility.

* * * * * * *

(h) NPL DEFERRALS.—

(1) DEFERRALS TO OTHER FEDERAL AUTHORITY.—The President generally shall defer listing a facility on the National Priorities List if long-term remedial action will be conducted under

other Federal authorities, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), and the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(2) DEFERRAL TO STATE RESPONSE ACTION.—The President generally shall defer listing a facility on the National Priorities List if remedial action that will provide long-term protection of human health and the environment is underway at that facility under a State response program.

(3) ENCOURAGING STATE VOLUNTARY CLEANUPS.—At the request of a State, the President shall defer final listing of a facility on the National Priorities List if the State is attempting to obtain an agreement from a person or persons to perform a remedial action that will provide long-term protection of human health and the environment at such facility under a State response program. If, after the last day of the 1-year period beginning on the date that the President proposes to list the facility on the National Priorities List, the President finds that the State is not making reasonable progress toward obtaining such an agreement, the President may place the facility on the National Priorities List.

(i) FACILITY SCORING.—The Administrator shall evaluate areas, such as Indian reservations or poor rural or urban communities, that warrant special attention and identify up to 5 facilities in each region of the Environmental Protection Agency that are likely to warrant inclusion on the National Priorities List. These facilities shall be accorded a priority in evaluation for National Priorities List listing and scoring and shall be evaluated for listing within 2 years after the date of enactment of this subsection.

* * * * * * *

ABATEMENT ACTION

SEC. 106. (a) * * *

(b)(1)*(A)* Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court [to enforce such order], be fined not more than $25,000 for each day in which such violation occurs or such failure to comply continues *or be required to comply with such order, or both, even if another person has complied, or is complying, with the terms of the same order or another order pertaining to the same facility and release or threatened release.*

(B) For purposes of this subsection and section 107(c)(3), a "sufficient cause" includes an objectively reasonable belief by the person to whom the order is issued that—

(i) the person is not liable for any response costs under section 107; or

(ii) that the action to be performed pursuant to the order is inconsistent with the national contingency plan.

* * * * * * *

(d) LIMITATION ON LIABLE PARTIES.—No Federal agency or department with authority to use the imminent hazard, enforcement, and emergency response authorities under this section may use such authorities with respect to a release or threatened release for which the agency or department is a responsible party under section 107.

* * * * * * *

LIABILITY

SEC. 107. (a) * * *

* * * * * * *

[(b) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

[(1) an act of God;

[(2) an act of war;

[(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

[(4) any combination of the foregoing paragraphs.]

(b) DEFENSES TO LIABILITY.—

(1) IN GENERAL.—There shall be no liability under subsection (a) for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises exclusively from a contract for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the de-

fendant's acts or omissions, and (ii) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of acts or omissions described in subparagraphs (A), (B), and (C).

(2) LIABILITY RELIEF FOR INNOCENT PARTIES.—

(A) OWNERS OR OPERATORS.—

(i) IN GENERAL.—There shall be no liability under subsection (a) for a person whose liability is based solely on the person's status as an owner or operator of a facility or vessel and who can establish by a preponderance of the evidence that—

(I) the person acquired the facility or vessel after the disposal or placement of the hazardous substances for which liability is alleged under subsection (a);

(II) the person did not, by any act or omission, cause or contribute to the release or threatened release of such hazardous substances; and

(III) the person exercised appropriate care with respect to such hazardous substances.

(ii) SPECIAL RULE FOR PROPERTY ACQUIRED AFTER DATE OF ENACTMENT OF CERCLA.—In addition to the requirements of clause (i), a person who acquired ownership of a facility or vessel after December 11, 1980, must establish by a preponderance of the evidence that the person, prior to such acquisition, made all appropriate inquiry into the previous ownership and uses of the facility or vessel in accordance with the generally accepted commercial and customary standards and practices of the time of acquisition.

(iii) SPECIAL RULE FOR PROPERTY ACQUIRED BEFORE MARCH 25, 1999.—In addition to the requirements of clauses (i) and (ii), a person who acquired a facility or vessel before March 25, 1999, must establish by a preponderance of the evidence that, at the time the person acquired the facility or vessel, the person did not know and had no reason to know that any hazardous substance which is the subject of a release or threatened release was disposed of on, in, or at the facility or vessel. This clause shall not apply to any person who expanded, developed, or redeveloped a commercial or industrial facility, notwithstanding the presence or potential presence of hazardous substances, under a Federal, State, or local program for the redevelopment of property that is or may be contaminated by hazardous substances.

(B) RECIPIENTS OF PROPERTY BY INHERITANCE OR BEQUEST.—There shall be no liability under subsection (a) for a person whose liability is based solely on the person's status as an owner or operator of a facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of subparagraph (A)(i) and

that the person acquired the property by inheritance or bequest.

(C) RECIPIENTS OF PROPERTY BY CHARITABLE DONATION.—Liability under subsection (a) shall be limited to the lesser of the fair market value of the facility or vessel and the actual proceeds of the sale of the facility for a person whose liability is based solely on the person's status as an owner or operator of the facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of subparagraph (A)(i) and that the person holding title, either outright or in trust, to the vessel or facility is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and holds such title as a result of a charitable donation that qualifies under section 170, 2055, or 2522 of such Code.

(D) GOVERNMENTAL ENTITIES.—There shall be no liability under subsection (a) for a person that is a governmental entity, that meets the requirements of subparagraph (A)(i), and that acquired a facility or vessel by escheat or through any other involuntary transfer or by acquisition through the exercise of eminent domain authority if the person's liability is based solely on—

(i) the person's status as an owner or operator of the facility or vessel; or

(ii) the granting of a license or permit to conduct business.

(E) OWNERS AND OPERATORS OF SEWAGE TREATMENT WORKS.—There shall be no liability under subsection (a) for a person who is an owner or operator of a treatment works (as defined in section 212(2) of the Federal Water Pollution Control Act) that is publicly or federally owned or that, without regard to ownership, would be considered a publicly owned treatment works and is principally treating municipal waste water or domestic sewage and who can establish by a preponderance of the evidence that—

(i) the treatment works, at the time of the release or threatened release, was subject to and in compliance with substantive requirements for pretreatment under section 307 of the Federal Water Pollution Control Act applicable to the hazardous substances, pollutants, and contaminants that are the subject of the response action; and

(ii) the release or threatened release was not caused by a failure to properly operate and maintain the treatment works or by conduct that constitutes gross negligence or intentional misconduct.

(F) OWNERS OR OPERATORS OF RIGHTS-OF-WAY.—There shall be no liability under subsection (a) for a person whose liability is based solely on ownership or operation of a road, street, or other right-of-way or public transportation route (other than railroad rights-of-way and railroad property) over which hazardous substances are transported if such person can establish by a preponderance of the evi-

dence that the person did not, by any act or omission, cause or contribute to the release or threatened release.

(G) RAILROAD OWNERS OR OPERATORS OF SPUR TRACK.—There shall be no liability under subsection (a) for a person whose liability is based solely on the status of the person as a railroad owner or railroad operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator if the railroad owner or operator can establish by a preponderance of the evidence that—

(i) the spur track provides access to a main line or branch line track that is owned or operated by the railroad owner or operator;

(ii) the spur track is 10 miles long or less; and

(iii) the railroad owner or operator did not cause or contribute to a release or threatened release of the hazardous substances for which liability is alleged under subsection (a).

(H) CONSTRUCTION CONTRACTORS.—There shall be no liability under subsection (a) for a person who is a construction contractor (other than a response action contractor covered by section 119) if such person can establish by a preponderance of the evidence that—

(i) the person's liability is based solely on construction activities that were specifically directed by and carried out in accordance with a contract with an owner or operator of the facility;

(ii) the person did not know or have reason to know of the presence of hazardous substances at the facility concerned before beginning construction activities; and

(iii) the person exercised appropriate care with respect to the hazardous substances discovered in the course of performing the construction activity, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the person's acts or omissions.

(3) APPROPRIATE CARE.—

(A) SITE-SPECIFIC BASIS.—The determination whether or not a person has exercised appropriate care with respect to hazardous substances within the meaning of paragraph (2)(A)(i)(III) shall be made on a site-specific basis taking into consideration the characteristics of the hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the defendant's acts or omissions.

(B) SAFE HARBOR.—A person shall be deemed to have exercised appropriate care within the meaning of paragraph (2)(A)(i)(III) if—

(i) the person took reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human or natural resource exposure to any previously released hazardous substance, or

(ii) in any case in which the release or threatened release of hazardous substances is the subject of a response action by persons authorized to conduct the response action at the facility or vessel, the person provides access for and all reasonable cooperation with the response action.

(4) ALL APPROPRIATE INQUIRY.—

(A) SITE-SPECIFIC BASIS.—The determination whether or not a person has made all appropriate inquiry into the previous ownership and uses of a facility or vessel within the meaning of paragraph (2)(A)(ii) shall be made on a site-specific basis taking into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if contaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(B) ASTM SAFE HARBOR.—A person who has acquired real property shall be deemed to have made all appropriate inquiry within the meaning of paragraph (2)(A)(ii) if the person—

(i) establishes that an environmental assessment has been conducted in accordance with the standards set forth in the American Society for Testing and Materials Standards E1527–94, entitled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process' or with alternative standards issued by rule by the Administrator or promulgated or developed by others and designated by rule by the Administrator; and

(ii) maintains a compilation of the information reviewed and gathered in the course of the environmental site assessment.

(C) GOVERNMENTAL REVIEW SAFE HARBOR.—A person who has acquired real property shall be deemed to have made all appropriate inquiry within the meaning of paragraph (2)(A)(ii) if, prior to such acquisition, the person reviewed a final determination by a State or Federal environmental or health agency with jurisdiction over response actions at a facility that no further response action was planned at the facility based on the level of risk to human health and the environment.

(5) LIMITATIONS.—No defense shall be available to any of the following:

(A) A person who obtained actual knowledge of a release or threat of release of a hazardous substance at a facility when such person owned the real property and subse-

quently transferred ownership of the property to another person without disclosing such knowledge.

(B) A person who knowingly and willfully impedes the performance of a response action or natural resource restoration at a facility.

(C) A person who did not provide all legally required notices with respect to the discovery or release of any hazardous substances at a facility.

(D) A person (other than a person described in paragraph (2)(B)) who is affiliated with any other person liable for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services.

(6) WINDFALL LIENS.—

(A) IN GENERAL.—In any case in which there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (2), and the conditions described in subparagraph (C) are met, the United States shall have a lien upon such facility for such unrecovered costs.

(B) SPECIAL RULES.—A lien under this paragraph—

(i) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

(ii) shall arise at the time costs are first incurred by the United States with respect to a response action at the facility;

(iii) shall be subject to the requirements for notice and validity established by subsection (l)(3);

(iv) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility; and

(v) shall not arise against a recipient of a grant under section 127(b) or 127(c) with respect to such grant.

(C) CONDITIONS.—The conditions referred to in subparagraph (A) are the following:

(i) A response action for which there are unrecovered costs is carried out at the facility.

(ii) The United States has made reasonable efforts to recover such unrecovered response costs from parties liable under this section.

(iii) Such response action increases the fair market value of the facility above the fair market value of the facility that existed in the 6-month period preceding the date that response action began.

(D) LIMITATIONS.—No lien under this paragraph shall arise—

(i) with respect to property for which the property owner preceding the current owner is not a liable party or has resolved its liability under this Act; or

(ii) in any case in which an environmental assessment gave the owner or operator no reason to know of the release of hazardous substances.

* * * * * * *

(d) RENDERING CARE OR ADVICE.—

(1) * * *

[(2) STATE AND LOCAL GOVERNMENTS.—No State or local government shall be liable under this title for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.]

(2) STATE, TRIBAL, AND LOCAL GOVERNMENTS.—

(A) IN GENERAL.—No State, tribal, or local government, including a municipality or other political subdivision of a State, shall be liable under this title for costs or damages as a result of—

(i) actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person; or

(ii) actions to improve water quality protection at an abandoned mine site and adjacent lands that are owned by a person other than the State, tribal, or local government if such actions are taken in accordance with a response action approved under applicable State or Federal law.

(B) LIMITATION ON STATUTORY CONSTRUCTION.—This paragraph shall not be construed to preclude liability for costs or damages as a result of gross negligence or intentional misconduct by a governmental entity referred to in subparagraph (A). For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(3) SAVINGS PROVISION.—[This] *Except with respect to costs and damages referred to in paragraphs (1) and (2)(A), this* subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.

* * * * * * *

(f) *SPECIAL RULES FOR NATURAL RESOURCES.—*

(1) NATURAL RESOURCES LIABILITY.—In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or apper-

taining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however,* That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a), where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

* * * * * * *

(3) UNITARY EXECUTIVE.—In any judicial action brought under this Act by the United States seeking recovery for damages to natural resources, any brief or motion addressing the interpretation and construction of this subsection filed by the United States in any other judicial action seeking recovery from the United States for damages to natural resources under this Act shall be admissible in the action brought by the United States.

* * * * * * *

(i) *LIMITATION ON LIABILITY FOR APPLICATION OF PESTICIDE PRODUCTS.*—【No person】

(1) IN GENERAL.—No person (including the United States or any State) or Indian tribe may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act. Nothing in

this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(2) APPLICATION IN COMPLIANCE WITH LAW.—For the purposes of paragraph (1), the term "application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act" includes a release of a hazardous substance resulting from the application, before the date of enactment of this paragraph, of any pesticide, insecticide, or similar product in compliance with a Federal or State law (including a regulation) requiring the treatment of livestock to prevent, suppress, control, or eradicate any dangerous, contagious, or infectious disease or any vector organism for such disease.

* * * * * * *

⟦(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

⟦(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

⟦(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

⟦(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative

action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

⟦(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

⟦(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

⟦(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

⟦(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

⟦(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

⟦(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by sec-

tion 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

⟦(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

⟦(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

⟦(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

⟦(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

⟦(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

⟦(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

⟦(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

⟦(i) the current and future financial capabilities of facility owners and operators;

⟦(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

⟦(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

⟦(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

⟦(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to com-

plement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

[(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

[(ii) voluntary risk pooling by owners and operators;

[(iii) legislation to require risk pooling by owners and operators;

[(iv) modification of the Post-Closure Liability Trust Fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

[(v) private insurance;

[(vi) insurance provided by the Federal Government;

[(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

[(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

[(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.]

* * * * * * *

(o) LIMITATION ON LIABILITY FOR SMALL BUSINESSES.—

(1) IN GENERAL.—With respect to actions taken before March 25, 1999, no small business concern shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a facility or vessel on the National Priorities List.

(2) LIMITATION.—Paragraph (1) shall not apply to an action brought by the President against a small business concern if the hazardous substances attributable to the small business concern have contributed, or contribute, significantly to the costs of the response action at the facility.

(3) SMALL BUSINESS CONCERN DEFINED.—In this subsection, the term "small business concern" means a business entity that on average over the previous 3 years preceding the date of notification by the President that the business entity is a potentially responsible party—

(A) has no more than 75 full-time employees or the equivalent thereof; and

(B) has $3,000,000 or less in gross revenues.

(p) LIABILITY EXEMPTIONS AND LIMITATIONS FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—

(1) PRE-ENACTMENT ACTIVITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that the person arranged or transported municipal solid waste or municipal sewage sludge prior to the date of enactment of this paragraph for disposal at the landfill facility.

(B) EXCEPTION.—Notwithstanding subparagraph (A), if the President determines that a person transported material containing hazardous substances to a landfill facility that has contributed, or contributes, significantly to the costs of response at the facility and such person is engaged in the business of transporting waste materials, such person may be liable under subsection (a)(4). The liability of such person shall be subject to the aggregate limits on liability for municipal solid waste set forth in paragraph (2). Any determination of such person's equitable share of response costs shall be determined on the basis of such person's equitable share of the aggregate amount of response costs attributable to municipal solid waste and municipal sewage sludge under paragraph (2).

(2) POST-ENACTMENT ACTIVITIES.—

(A) IN GENERAL.—To the extent that a person or group of persons is liable under subsection (a)(3) or (a)(4) for arranging or transporting municipal solid waste or municipal sewage sludge for disposal at a landfill facility on the National Priorities List on or after the date of enactment of this paragraph and is not exempt from liability under paragraph (3), the total aggregate liability for all such persons or groups of persons for response costs at such a landfill facility shall not exceed 10 percent of such costs. With respect to actions taken on or after the date that is 36 months after the date of enactment of this paragraph this limitation on liability shall apply only at a landfill facility within a municipality that has instituted or participates in a qualified household hazardous waste collection program.

(B) EXPEDITED SETTLEMENTS.—The President may offer a person subject to a limitation on liability under subparagraph (A) an expedited settlement based on the average unit cost of remediating municipal solid waste and municipal sewage sludge in landfills in lieu of the aggregate 10 percent limitation on liability provided by subparagraph (A).

(3) SPECIAL RULE.—No person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that—

(A) the materials that the person arranged or transported for disposal consist of municipal solid waste; and

(B) the person is—

(i) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

(ii) a business entity that employs no more than 100 individuals and is a small business concern as defined under the Small Business Act (15 U.S.C. 631 et seq.) from which was generated all of the entity's municipal solid waste with respect to the facility; or

(iii) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code if such organization employs no more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

(4) MIXED WASTES.—Liability for wastes that do not fall within the definition of municipal solid waste under paragraph (5)(A) and are collected and disposed of with municipal solid wastes and municipal sewage sludge shall be governed by section 107(a) and any applicable exemptions or limitations on liability without regard to the wastes covered by paragraph (5)(A).

(5) DEFINITIONS.—In this section, the following definitions apply:

(A) MUNICIPAL SOLID WASTE.—The term "municipal solid waste" means waste materials generated by households, including single and multifamily residences, and hotels and motels, and waste materials generated by commercial, institutional, and industrial sources, to the extent that such materials (i) are essentially the same as waste materials normally generated by households, or (ii) are collected and disposed of with other municipal solid waste, and contain hazardous substances that would qualify for the de micromis exemption under section 107(r). The term includes food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, wooden pallets, cardboard, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators; solid waste from the extraction, beneficiation, and processing of ores and minerals; or waste from manufacturing or processing operations (including pollution control) that is not essentially the same as waste normally generated by households.

(B) MUNICIPAL SEWAGE SLUDGE.—The term "municipal sewage sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by (i) a publicly owned treatment works, (ii) a federally owned treatment works, or (iii) a treatment works that, without regard to ownership, would be considered to be a publicly owned treatment works and is principally treating municipal waste water or domestic sewage.

(C) QUALIFIED HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.—The term "qualified household hazardous waste collection program" means a program established by

an entity of the Federal Government, a State, a municipality, or an Indian tribe that provides, at a minimum, for semiannual collection of household hazardous waste at accessible, well-publicized collection points within the relevant jurisdiction.

(q) LIMITATION ON LIABILITY FOR MUNICIPAL OWNERS AND OPERATORS.—

(1) AGGREGATE LIABILITY OF SMALL MUNICIPALITIES.—With respect to a facility that received municipal solid waste, that was proposed for listing on the National Priorities List before March 25, 1999, that is or was owned or operated by municipalities with a population of less than 100,000 according to the 1990 census, and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of such municipalities for response costs incurred on or after March 25, 1999, shall be the lesser of—

(A) 10 percent of the total amount of response costs at the facility; or

(B) the costs of compliance with the requirements of such subtitle for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).

(2) AGGREGATE LIABILITY OF LARGE MUNICIPALITIES.—With respect to a facility that received municipal solid waste, that was proposed for listing on the National Priorities List before March 25, 1999, that is or was owned or operated by municipalities with a population of 100,000 or more according to the 1990 census, and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of such municipalities for response costs incurred on or after March 25, 1999, shall be the lesser of—

(A) 20 percent of the total amount of response costs at the facility; or

(B) the costs of compliance with the requirements of such subtitle for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).

(r) DE MICROMIS EXEMPTION.—

(1) IN GENERAL.—In the case of a facility or vessel listed on the National Priorities List, no person shall be liable under subsection (a)(3) or (a)(4) if no more than 110 gallons or 200 pounds of materials containing hazardous substances at the facility or vessel is attributable to such person, and the acts on which liability is based took place before the date of enactment of this paragraph.

(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that the material described in paragraph (1) has contributed, or contributes, significantly to the costs of response at the facility.

(s) INELIGIBILITY FOR EXEMPTIONS OR LIMITATIONS.—

(1) IMPEDING RESPONSE OR RESTORATION.—The exemptions and limitations set forth in subsections (o), (p), (q), and (r) and

sections 114(c) and 130 shall not apply to any person with respect to a facility if such person impedes the performance of a response action or natural resource restoration at the facility.

(2) FAILURE TO RESPOND TO INFORMATION REQUEST.—The exemptions and limitations set forth in subsections (o), (p), (q), and (r) and sections 114(c) and 130 shall not apply to any person who—

(A) willfully fails to submit a complete and timely response to an information request under section 104(e); or

(B) knowingly makes any false or misleading material statement or representation in any such response.

(3) FAILURE TO PROVIDE COOPERATION AND FACILITY ACCESS.—The limitation set forth in subsection (q) shall not apply to any owner or operator of a facility who does not provide all reasonable cooperation and facility access to persons authorized to conduct response actions at the facility.

(t) EXEMPT PARTY FUNDING.—

(1) EXEMPT PARTY FUNDING.—Except as provided in paragraph (2), the equitable share of liability under section 107(a) for any release or threatened release of a hazardous substance from a facility or vessel on the National Priorities List that is extinguished through an exemption or limitation on liability under subsection (o), (p), or (q) of this section, section 114(c), or section 130 shall be transferred to and assumed by the Trust Fund.

(2) CERTAIN MSW GENERATORS.—Paragraph (1) shall not apply to the equitable share of liability of any person who would have been liable under subsection (a)(3) or (a)(4) but for the exemption from liability under subsection (p)(3).

(3) SOURCE OF FUNDS.—Payments made by the Trust Fund or work performed on behalf of the Trust Fund to meet the obligations under paragraph (1) shall be funded from amounts made available by section 111(a)(1).

(u) EFFECT ON CONCLUDED ACTIONS.—The exemptions from and limitations on liability provided under subsections (o), (p), (q), and (r) and sections 114(c) and 130 shall not affect any settlement or judgment approved by a United States District Court not later than 30 days after the date of enactment of this subsection or any administrative action against a person otherwise covered by such exemption or limitation that becomes effective not later than 30 days after such date of enactment.

(v) LIMITATION ON RECOVERY OF OVERSIGHT COSTS.—

(1) IN GENERAL.—Costs of oversight of a response action shall not be recoverable under this section from a person referred to in paragraph (2) to the extent that such costs exceed 10 percent of the costs of the response action.

(2) ACCOUNTING OF RESPONSE COSTS.—Paragraph (1) shall apply only to a person who provides the Administrator with an accounting of the direct and indirect costs that the person incurred in conducting the response action. The Administrator may require an independent audit of the costs from such person.

* * * * * * *

USES OF FUND

SEC. 111. ⟦(a) IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986 not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99–160 (relating to payment to the Hazardous Substances Trust Fund). The President shall use the money in the Fund for the following purposes:

⟦(1) Payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act.

⟦(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official.

⟦(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title.

⟦(4) Payment of costs specified under subsection (c) of this section.

⟦(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

⟦(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

⟦(b)(1) IN GENERAL.—Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources

within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

⟦(2) LIMITATION ON PAYMENT OF NATURAL RESOURCE CLAIMS.—

⟦(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107.

⟦(B) DEFINITION.—As used in this paragraph, the term "natural resource claim" means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.

⟦(c) Uses of the Fund under subsection (a) of this section include—

⟦(1) The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

⟦(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

⟦(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

⟦(4) Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases.

⟦(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams under the national contingency plan.

⟦(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and

Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

⟦(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

⟦(8) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

⟦(9) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

⟦(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

⟦(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 123, except that during the 8-fiscal year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

⟦(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994.

⟦(13) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d).

⟦(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).

⟦(d)(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous substance from which such damages resulted have occurred wholly before the enactment of this Act.

⟦(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to

ambient concentrations of air pollutants from multiple or diffuse sources.

⟦(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

⟦(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.

⟦(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

⟦(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.⟧

(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE SUPERFUND.—

(1) SUBSECTION (b) EXPENDITURES.—The following amounts of amounts appropriated to the Hazardous Substance Superfund after January 1, 2000, pursuant to section 9507(b) of the Internal Revenue Code of 1986, and of amounts credited under section 9602(b) of such Code with respect to those appropriated amounts, shall be available for the purposes specified in subsection (b):

(A) $300,000,000 for each of fiscal years 2000 through 2004.

(B) $200,000,000 for each of fiscal years 2005 through 2007.

Such funds shall remain available until expended.

(2) SUBSECTIONS (c) AND (d) EXPENDITURES.—There is authorized to be appropriated from the Hazardous Substance Superfund established pursuant to section 9507(b) of the Internal Revenue Code of 1986 for the purposes specified in subsections (c) and (d) of this section not more than—

(A) $1,500,000,000 for each of fiscal years 2000 through 2003;

(B) $1,400,000,000 for fiscal year 2004;

(C) $1,300,000,000 for fiscal year 2005;

(D) $1,200,000,000 for fiscal year 2006; and

(E) $975,000,000 for fiscal year 2007.

(b) PAYMENTS RELATED TO CERTAIN REDUCTIONS, LIMITATIONS, AND EXEMPTIONS.—

(1) FUNDING OF EXEMPT PARTY AND FUND SHARE.—The President may use amounts in the Fund made available by subsection (a)(1) for funding the equitable share of liability attributable to exempt parties under section 107(t) and obligations incurred by the President to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under section 131.

(2) LIMITATIONS.—

(A) FUNDING.—Amounts made available by subsection (a)(1) for the purposes of this subsection shall not exceed the following:

(i) $300,000,000 for each of fiscal years 2000 through 2004.

(ii) $200,000,000 for each of fiscal years 2005 through 2007.

(B) ELIGIBLE COSTS.—No funds made available under paragraph (1) may be used for payment of, or reimbursement for, any portion of attorneys' fees that do not constitute necessary costs of response consistent the national contingency plan.

(C) ADDITIONAL PURPOSES.—

(i) IN GENERAL.—If, in any of fiscal years 2000 through 2004, the Administrator does not have available for obligation for the purposes of subsections (c) and (d) the amount specified for the fiscal year in clause (iii), the Administrator, subject to clause (ii), may use funds provided under subsection (a)(1) for such purposes.

(ii) LIMITATION.—The total amount of funds provided under subsection (a)(1) that the Administrator may use for the purposes of subsections (c) and (d) may not exceed the amount specified for the fiscal year in clause (iii) less the amount which (but for this subparagraph) would be available to the Administrator in such fiscal year for such purposes.

(iii) AMOUNTS.—The amounts specified in this clause are $1,500,000,000 for each of fiscal years 2000 through 2003 and $1,400,000,000 for fiscal year 2004.

(c) RESPONSE, REMOVAL, AND REMEDIATION.—The President may use amounts in the Fund appropriated under subsection (a)(2) for costs of response, removal, and remediation (and administrative costs directly related to such costs), including the following:

(1) GOVERNMENT RESPONSE COSTS.—Payment of governmental response costs incurred pursuant to section 104, including costs incurred pursuant to the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(2) PRIVATE RESPONSE COST CLAIMS.—Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 105, if such costs are approved under such plan, are reasonable in amount based on open and free competition

or fair market value for similar available goods and services, and are certified by the responsible Federal official.

(3) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

(4) STATE AND LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursement to States and local governments under section 123; except that during any fiscal year not more than 0.1 percent of the total amount appropriated under subsection (a)(2) may be used for such reimbursements.

(5) CONTRACTS AND COOPERATIVE AGREEMENTS.—Payment for the implementation of any contract or cooperative agreement under section 104(d).

(6) NATURAL RESOURCE DAMAGE ASSESSMENTS.—The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

(d) ADMINISTRATION, OVERSIGHT, RESEARCH, AND OTHER COSTS.—The President may use amounts in the Fund appropriated under subsection (a)(2) for the following costs (and administrative costs directly related to such costs):

(1) INVESTIGATION AND ENFORCEMENT.—The costs of identifying, investigating, and taking enforcement action against releases of hazardous substances.

(2) OVERHEAD.—

(A) IN GENERAL.—The costs of providing services, equipment, and other overhead related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act and needed to supplement equipment and services available through contractors and other non-Federal entities.

(B) DAMAGE ASSESSMENT CAPABILITY.—The costs of establishing and maintaining damage assessment capability for any Federal agency involved in strike forces, emergency task forces, or other response teams under the National Contingency Plan.

(3) EMPLOYEE SAFETY PROGRAMS.—The cost of maintaining programs otherwise authorized by this Act to protect the health and safety of employees involved in response to hazardous substance releases.

(4) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

(5) WORKER TRAINING AND EDUCATION GRANTS.—The cost of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $40,000,000 for each of fiscal years 2000 through 2007.

(6) ATSDR ACTIVITIES.—Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, public health assessments, and other activities authorized by section 104(i).

(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluation facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

(8) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

(9) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration).

(10) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d) (relating to providing information concerning violations).

(11) COMPREHENSIVE STATE GROUND WATER PROTECTION PLANS.—Costs of providing assistance to States to develop comprehensive State ground water protection plans to the extent such costs do not exceed $3,000,000 in a fiscal year.

(e) LIMITATIONS ON NATURAL RESOURCES CLAIMS.—No money in the Fund may be used for the payment of any claim under subsection (c)(6) where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

(f) OTHER LIMITATIONS.—

(1) LIMITATIONS ON PAYMENTS OF CLAIMS.—Claims against or presented to the Fund shall not be valid or paid in excess of the total unobligated balance in the Fund at any one time. Such claims become valid and are payable only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) REMEDIAL ACTIONS AT FEDERALLY OWNED FACILITIES.—No money in the Fund shall be available for costs of remedial action, other than costs specified in subsection (d), with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving ground water contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

(3) REMEDIAL ACTIONS AT FACILITIES NOT LISTED ON NPL.—No money in the Fund shall be available for response actions that are not removal actions under section 101(23) with respect to any facility that is not listed on the National Priorities List.

[(f)**]** *(g)* The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State or Indian tribe

operating under a contract or cooperative agreement with the Federal Government pursuant to section 104(d) of this title.

【(g)】 *(h)* The President shall provide for the promulgation of rules and regulations with respect to the notice to be provided to potential injured parties by an owner and operator of any vessel, or facility from which a hazardous substance has been released. Such rules and regulations shall consider the scope and form of the notice which would be appropriate to carry out the purposes of this title. Upon promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide notice in accordance with such rules and regulations. With respect to releases from public vessels, the President shall provide such notification as is appropriate to potential injured parties. Until the promulgation of such rules and regulations, the owner and operator of any vessel or facility from which a hazardous substance has been released shall provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.

* * * * * * *

【(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.】

* * * * * * *

【(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

【(1) SECTION 311(b).—For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

【(2) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

【(A) For the fiscal year 1987, $3,000,000.

【(B) For the fiscal year 1988, $10,000,000.

【(C) For the fiscal year 1989, $20,000,000.

【(D) For the fiscal year 1990, $30,000,000.

【(E) For each of the fiscal years 1991, 1992, 1993, and 1994, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

[(3) SECTION 311(d).—For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).]

* * * * * * *

(p) GENERAL REVENUE SHARE OF SUPERFUND.—

[(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

[(A) For fiscal year 1987, $212,500,000.

[(B) For fiscal year 1988, $212,500,000.

[(C) For fiscal year 1989, $212,500,000.

[(D) For fiscal year 1990, $212,500,000.

[(E) For fiscal year 1991, $212,500,000.

[(F) For fiscal year 1992, $212,500,000.

[(G) For fiscal year 1993, $212,500,000.

[(H) For fiscal year 1994, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.]

(1) IN GENERAL.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund $250,000,000 for each of fiscal years 2000 through 2007. In addition, there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection as has not been appropriated before the beginning of the fiscal year involved.

* * * * * * *

CLAIMS PROCEDURE

SEC. 112. (a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.— No claim may be asserted against the Fund pursuant to section 111[(a)]*(c)* unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

* * * * * * *

(f) DOUBLE RECOVERY PROHIBITED.—Where the President has paid out of the Fund for any response costs or any costs specified

under section [111(c)(1) or (2)] *111(c)(6)*, no other claim may be paid out of the Fund for the same costs.

LITIGATION, JURISDICTION AND VENUE

SEC. 113. (a) * * *

* * * * * * *

(f) CONTRIBUTION.—

(1) * * *

(4) LIMITATIONS ON CONTRIBUTION ACTIONS.—

(A) IN GENERAL.—There shall be no right of contribution under this subsection in any of the following circumstances:

(i) The person asserting the right of contribution has waived the right in a settlement pursuant to this Act.

(ii) The person from whom contribution is sought is not liable under this Act.

(iii) The person from whom contribution is sought has entered into a settlement with the United States pursuant to section 122(g), with respect to matters addressed in that settlement.

(B) ATTORNEYS' FEES.—Any person who commences an action for contribution shall be liable to the person against whom the claim of contribution is brought for all reasonable costs of defending against the claim, including all reasonable attorneys' and expert witness fees, if—

(i) the action is barred by subparagraph (A);

(ii) the action is brought against a person who is protected from such suits pursuant to section 113(f)(2) by reason of a settlement with the United States; or

(iii) the action is brought during the moratorium pursuant to section 131 (relating to allocation).

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RELATIONSHIP TO OTHER LAW

SEC. 114. (a) * * *

* * * * * * *

(c) RECYCLED OIL.—

(1) SERVICE STATION DEALERS, ETC.—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

(A) * * *

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable [authorities.] *authorities that were in effect on the date of such activity.*

* * * * * * *

(2) PRESUMPTION.—Solely for the purposes of this subsection, [a service station dealer may presume that] a small quantity of used oil [is not mixed with] *is presumed to be not mixed with* other hazardous substances if it—

[(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

[(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.]

(A) has been removed from the engine of a light duty motor vehicle or household appliance by the owner of such vehicle or appliance and is presented by such owner to the dealer for collection, accumulation, and delivery to an oil recycling facility; or

(B) has been removed from such an engine or appliance by the dealer for collection, accumulation, and delivery to an oil recycling facility.

* * * * * * *

[(4) EFFECTIVE DATE.—The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act.]

* * * * * * *

SEC. 117. PUBLIC PARTICIPATION.

(a) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION IN DECISIONMAKING.—

(1) IN GENERAL.—In order to provide an opportunity for meaningful public participation at every significant phase of a response action at a covered facility, the President shall take the actions specified in this subsection. Public meetings required under this subsection shall be designed to obtain information from the community and to disseminate information to the community concerning the President's activities at a covered facility.

(2) PRELIMINARY ASSESSMENT AND SITE INSPECTION.—

(A) EVALUATION OF CONCERNS.—To the extent practicable, before or during site inspection, the President shall solicit and evaluate concerns, interests, and information from affected Indian Tribes, the affected community, local government officials, and State and local health officials.

(B) REQUIREMENTS FOR EVALUATION.—An evaluation under subparagraph (A) shall include, as appropriate, face-to-face community surveys to identify the location of private drinking water wells, potential exposure pathways, including historic and current or potential use of water, and other environmental resources in the community; a public meeting; written responses to significant concerns; and other appropriate participatory activities.

(3) REMEDIAL INVESTIGATION AND FEASIBILITY STUDY.—

(A) PUBLIC MEETINGS.—The President shall provide, as appropriate, an opportunity for public meetings and publish a notice of such meetings before or during the remedial investigation and feasibility study.

(B) SOLICITATION OF VIEWS.—During the remedial investigation and feasibility study, the President shall solicit the views and preferences of affected Indian tribes, the affected community, local government officials, and State and local health officials on the remediation and disposition of hazardous substances, pollutants, or contaminants at the facility. Such views and preferences shall be described in the remedial investigation and feasibility study and considered in the screening of remedial alternatives for the facility.

⟦(a)⟧ *(4)* ⟦PROPOSED PLAN⟧ *PROPOSED PLAN.*—Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other person, under section 104, 106, 120, or 122, the President or State, as appropriate, shall take both of the following actions:

⟦(1)⟧ *(A)* Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

⟦(2)⟧ *(B)* Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 121(d)(4) (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published ⟦under paragraph (1)⟧ *under subparagraph (A)* shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

(5) COMPLETION OF WORK PLAN.—The President shall provide, as appropriate, an opportunity for public meetings and publish a notice of such meetings before or during the completion of the work plan for the remedial action.

⟦(b)⟧ *(6)* ⟦FINAL PLAN⟧ *FINAL PLAN.*—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

⟦(c)⟧ *(7)* ⟦EXPLANATION OF DIFFERENCES⟧ *EXPLANATION OF DIFFERENCES.*—After adoption of a final remedial action plan—

⟦(1)⟧ *(A)* if any remedial action is taken,

⟦(2)⟧ *(B)* if any enforcement action under section 106 is taken, or

⟦(3)⟧ *(C)* if any settlement or consent decree under section 106 or section 122 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

(8) ALTERNATIVES.—Pursuant to paragraph (4), affected Indian tribes, the affected community, local government officials, and State and local health officials may propose remedial alternatives to the President. The President shall consider such alternatives in the same manner as the President considers alternatives proposed by other parties.

(9) SELECTING APPROPRIATE ACTIVITIES.—In determining which of the activities set forth in paragraph (2) may be appropriate, the President may consult with affected Indian tribes, the affected community, local government officials, and State and local health officials.

(10) PROVIDING INFORMATION.—

(A) IN GENERAL.—The President shall provide information to affected Indian tribes, the affected community, local government officials, and State and local health officials at every significant phase of the response action at the covered facility.

(B) NOTICE.—The President, on a regular basis, shall inform the entities specified in subparagraph (A) of the progress and substance of technical meetings between the lead agency and potentially responsible parties regarding a covered facility and shall provide notice to such entities concerning—

(i) the schedule for commencement of construction activities at the covered facility and the location and availability of construction plans;

(ii) the results of any review under section 121(c) and any modifications to the covered facility made as a result of the review; and

(iii) the execution of and any revisions to institutional controls being used as part of a remedial action.

(b) ADDITIONAL INFORMATION REQUIREMENTS.—

(1) ADDITIONAL PUBLIC INVOLVEMENT REQUIREMENTS.—

(A) AVAILABILITY OF RECORDS.—The President shall make records relating to a response action at a covered facility available to the public throughout all phases of the response action. Such information shall be made available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate. This paragraph shall not apply to a record that is exempt from disclosure under section 552 of title 5, United States Code.

(B) REQUIREMENTS FOR PUBLIC INFORMATION.—The President, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is unbiased and informative and clearly discloses any uncertainties and data gaps.

(2) DISCLOSURE OF RELEASES OF HAZARDOUS SUBSTANCES AT SUPERFUND SITES.—

(A) INFORMATION.—The President shall make the following information available to the public as provided in subparagraph (B) about releases of hazardous substances, pollutants, and contaminants from covered facilities at the following stages of a response action:

(i) REMOVAL ACTIONS.—A best estimate of the releases from the facility before the removal action is taken, during the period of the removal action, and that are expected after the removal action is completed.

(ii) REMEDIAL INVESTIGATION.—As part of the requirements for the remedial investigation, a summary and best estimate of the releases from the facility.

(iii) FEASIBILITY STUDY.—As part of the feasibility study, a summary and best estimate of the releases that are expected both during and at the conclusion of each remedial option that is considered.

(iv) RECORD OF DECISION.—As part of the record of decision, a summary and best estimate of the releases that are expected both during and at the conclusion of implementation of the selected remedy.

(v) CONSTRUCTION COMPLETION.—After construction of the remedy is complete and during operation and maintenance, a periodic assessment of releases based on any monitoring required under section 121(g).

(B) AVAILABILITY OF INFORMATION.—Information provided under this paragraph shall be made available to the residents of the communities surrounding the covered facility, to police, fire, and emergency medical personnel in the surrounding communities, and to the general public. To improve access to such information by Federal, State, and local governments and researchers, such information may be provided to the general public through electronic or other means. Such information shall be expressed in common units and a common format.

(C) SOURCE OF INFORMATION AND METHODS OF COLLECTION.—Nothing in this paragraph shall require the collection of any additional data beyond that already collected as part of the response action. If data are not readily available, the information provided under this paragraph shall be based on best estimates.

⟦(d)⟧ *(c)* PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

⟦(e) GRANTS FOR TECHNICAL ASSISTANCE.—

⟦(1) AUTHORITY.—Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

[(2) AMOUNT.—The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.]

(d) TECHNICAL ASSISTANCE GRANTS.—

(1) AUTHORITY.—In accordance with rules to be promulgated by the Administrator, the Administrator may make grants for technical assistance available to any affected community with respect to—

(A) a covered facility;

(B) a facility at which the Administrator is undertaking a response action anticipated to exceed 1 year; or

(C) a facility at which the funding limit under section 104 is anticipated to be reached.

(2) SPECIAL RULES.—

(A) FEDERAL SHARE.—No matching contribution shall be required for a grant under this subsection.

(B) ADVANCE PAYMENTS.—The Administrator may make available to a recipient of a grant under this subsection in advance of the expenditures to be covered by the grant the lesser of $5,000 or 10 percent of the total amount of the grant.

(3) GRANT AVAILABILITY.—The Administrator shall promptly notify residents and Indian tribes living near a facility eligible for grants under paragraph (1) that technical assistance grants are available under this section.

(4) NUMBER OF GRANTS PER FACILITY.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the Administrator may not make more than 1 grant under this subsection with respect to a single facility.

(B) RENEWAL OF GRANTS.—A grant made under this subsection with respect to a facility may be renewed to facilitate public participation at all stages of a response action.

(C) SPECIAL RULE.—In exceptional circumstances, the Administrator may provide more than 1 grant under this subsection with respect to a single facility, after considering such factors as the area affected by the facility and the distances between affected communities.

(5) FUNDING AMOUNT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a grant under this subsection may not exceed $50,000 for a single grant recipient.

(B) ADDITIONAL FUNDS.—The Administrator may increase the amount of a grant under this subsection if—

(i) the grant recipient demonstrates that the characteristics of a facility indicate that additional funds are necessary due to the complexity of the response action, including the size and complexity of the facility, or the nature or volume of site-related information; and

(ii) the Administrator finds that the grant recipient's management of a previous grant under this subsection, if any, was satisfactory, and the costs incurred under the grant were allowable and reasonable.

(6) SIMPLIFICATION.—To ensure that the application process is accessible to all affected citizens, the Administrator shall review the existing guidelines and application procedures for grants under this subsection and, not later than 180 days after the date of enactment of this paragraph, revise, as appropriate, such guidelines and procedures to simplify the process of obtaining such grants.

(7) AUTHORIZED GRANT ACTIVITIES.—

(A) INFORMATION AND PARTICIPATION.—To facilitate full participation by a grant recipient in response activities at a facility, a grant made under this subsection may be used to obtain technical assistance, including the hiring of health and safety experts, in interpreting information for, and disseminating information to, members of the community, and in providing information and recommendations to the President, with regard to—

(i) the nature of the hazard at a facility, including information used to rank facilities according to the Hazard Ranking System;

(ii) sampling and monitoring plans;

(iii) the remedial investigation and feasibility study;

(iv) the record of decision;

(v) the selection, design, and construction of the remedial action;

(vi) operation and maintenance;

(vii) institutional controls;

(viii) removal activities at the facility; and

(ix) public health assessment or health studies.

(B) ADDITIONAL ACTIVITIES.—In addition to the activities specified in subparagraph (A), not more than 10 percent of the amount of a grant under this subsection may be used for educational training, hiring neutral professionals to facilitate deliberations and consensus efforts, and hiring community liaisons to potentially responsible parties and government agencies to facilitate public participation at the facility.

(C) AVAILABILITY OF INFORMATION.—Information generated by the recipients of grants under this subsection shall be made publicly available.

(D) LIMITATION.—Grants made under this subsection may not be used for the purposes of collecting field sampling data.

(8) NON-SITE-SPECIFIC GRANTS.—In accordance with rules to be promulgated by the Administrator, the Administrator may make grants under this subsection to Indian tribes, nonprofit

organizations, and citizens groups to enhance their participation, prior to final agency action, in rulemaking processes carried out in accordance with this Act. Total funding for all such grants shall not exceed $100,000.

(9) REPRESENTATIVE OF THE COMMUNITY.—The Administrator shall publish guidance for determining whether a recipient of a grant under this subsection is a legitimate representative of the community affected by a facility.

(e) UNDERSTANDABLE PRESENTATION OF MATERIALS.—The President shall ensure that information prepared for distribution to the public under this section will be provided or summarized in a manner that may be easily understood by the community, after considering any unique cultural needs of the community, including presentation of information orally and distribution of information in languages other than English, as appropriate.

(f) PUBLIC PARTICIPATION IN REMOVAL ACTIONS.—In the case of a removal action taken in accordance with section 104, the President shall provide opportunities for meaningful public participation as follows:

(1) REMOVAL ACTIONS WHERE ON-SITE ACTIVITIES MUST BEGIN IN LESS THAN 6 MONTHS.—In the case of a removal action where on-site activities must begin in less than 6 months, the President shall—

(A) publish a notice of availability of the administrative record established under section 113(k) in a local newspaper of general circulation within 60 days of any on-site removal activity;

(B) provide a public comment period, as appropriate, of not less than 30 days from the date on which the administrative record is made available for public inspection; and

(C) prepare a written response to comments.

(2) REMOVAL ACTIONS WHERE ON-SITE ACTIVITIES WILL EXTEND BEYOND 120 DAYS.—In the case of a removal action where on-site activities are expected to extend beyond 120 days, the President shall—

(A) conduct interviews with any relevant community advisory group, affected Indian tribes, the affected community, local government officials, and State and local health officials, as appropriate, to solicit their concerns and information needs and to determine the method and timing of involvement in the response action by the affected community;

(B) prepare a formal community relations plan based on the community interviews and other relevant information, specifying the community relations activities that the President expects to undertake during the response; and

(C) establish at least 1 local information repository at or near the location of the response action.

The information repository shall contain items made available for public information and the administrative record. The President shall inform the affected community of the establishment of the information repository and provide a notice of availability of the administrative record for public review. All

items in the repository shall be available for public inspection and copying.

(3) REMOVAL ACTIONS WHERE PLANNING PERIOD WILL EXTEND BEYOND 6 MONTHS.—In the case of a removal action where the planning period is expected to extend beyond 6 months, the President shall—

(A) comply with the requirements of paragraph (2);

(B) provide a notice of availability of and a brief description of the removal engineering evaluation and cost analysis in a local newspaper of general circulation;

(C) provide a reasonable opportunity, not less than 30 days, for submission of written and oral comments after completion of the engineering evaluation and cost analysis; and

(D) prepare a written response to significant comments.

(g) COMMUNITY STUDY.—

(1) REPORT BY THE ADMINISTRATOR.—Not later than 2 years after the date of enactment of this Act, the Administrator shall prepare and submit to Congress a community study. The Administrator shall periodically update the study. The Administrator shall ensure that copies of such studies are made available to the public.

(2) CONTENTS OF THE REPORT.—The Administrator's report shall include an analysis of—

(A) the time between the discovery and listing of a facility;

(B) the timing and nature of response actions;

(C) the degree to which public views are reflected in response actions;

(D) future land use determinations and use of institutional controls;

(E) the population, race, ethnicity, and income characteristics of each community affected by a facility listed or proposed for listing on the National Priorities List; and

(F) the risk presented by each such facility.

(3) EVALUATION.—The Administrator shall evaluate the information in the study to determine whether priority setting, response actions, and public participation requirements were conducted in a fair and equitable manner and identify program areas that require improvements or modification.

(4) ACTIONS BASED ON EVALUATION.—The Administrator shall institute necessary improvements or modifications to address any deficiencies identified by the study prepared under this section.

(h) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED FACILITY.—The term "covered facility" means a facility that has been listed or proposed for listing on the National Priorities List.

(2) AFFECTED COMMUNITY.—The term "affected community" means any group of 2 or more individuals (including representatives of Indian tribes) which may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a covered facility.

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SEC. 119. RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

(1) RESPONSE ACTION CONTRACTORS.—A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this [title or under any other Federal law] *title, under any other Federal law, or under the law of any State or political subdivision of a State* to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release. *Notwithstanding the preceding sentence, this section shall not apply in determining the liability of a response action contractor under the law of any State or political subdivision thereof if the State has enacted a law determining the liability of a response action contractor.*

(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct. *Such conduct shall be evaluated based on the generally accepted standards and practices in effect at the time and place that the conduct occurred.*

* * * * * * *

(5) LIABILITY.—Notwithstanding any other provision of this Act, any liability of a response action contractor under this Act shall be determined solely in accordance with this section.

* * * * * * *

(c) INDEMNIFICATION.—

(1) IN GENERAL.—The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct. *Any such agreement may apply to claims for negligence arising under Federal law or under the law of any State or political subdivision of a State.*

* * * * * * *

(5) LIMITATIONS.—

(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release *or threatened release* of any hazardous substance or pollutant or contaminant if such release *or threatened release* arises out of response action activities.

* * * * * * *

(e) DEFINITIONS.—For purposes of this section—

(1) RESPONSE ACTION CONTRACT.—The term "response action contract" means any written contract or agreement entered

into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

(A) * * *

* * * * * * *

(D) any potentially responsible party [carrying out an agreement under section 106 or 122];

to provide [any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act,] *any response as defined by section 101(25),* with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.

* * * * * * *

(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—No action to recover for any injury to property, real or personal, or for bodily injury or wrongful death, or any other expenses or costs arising out of the performance of services under a response action contract, nor any action for contribution or indemnity for damages sustained as a result of such injury, shall be brought against any response action contractor more than 6 years after the completion of work at any site under such contract. Notwithstanding the preceding sentence, this section shall not—

(1) bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct;

(2) affect any right of indemnification that such response action contractor may have under this section or may acquire by written agreement with any party; or

(3) apply in any State or political subdivision thereof if the State has enacted a statute of repose determining the liability of a response action contractor.

SEC. 120. FEDERAL FACILITIES.

(a) * * *

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[(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.]

(g) STATE ROLE AT FEDERAL FACILITIES.—

(1) ENFORCEMENT AND DISPUTE RESOLUTION.—

(A) IN GENERAL.—An interagency agreement under this section between a State and any department, agency, or instrumentality of the United States shall be enforceable by the State or the Federal department, agency, or instrumentality in the United States district court for the district in which the facility is located. The district court shall have the jurisdiction to enforce compliance with any provision, standard, regulation, condition, requirement, order, or final

determination which has become effective under such agreement, and to impose any appropriate civil penalty provided for any violation of the agreement, not to exceed $25,000 per day.

(B) NONCONCURRENCE BY STATE.—At a Federal facility in a State to which the President's authorities under subsection (e)(4) have been transferred pursuant to a cooperative agreement, if the State does not concur in the remedy selection proposed by the Federal department, agency, or instrumentality that owns or operates the facility, the parties shall enter into dispute resolution as provided in the interagency agreement. If there is no interagency agreement, the State shall, not later than 120 days after the transfer of authorities under a cooperative agreement, enter into an agreement with the head of the department, agency, or instrumentality on a process for resolving disputes regarding remedy selection for the facility. If a dispute is unresolved after using the process under the interagency agreement or dispute resolution agreement, the head of the Federal department, agency, or instrumentality that owns the Federal facility and the Governor of the State shall attempt to resolve such dispute by consensus. If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor, the State may issue the final determination. In order to compel implementation of the State's selected remedy, the State must bring a civil action in the appropriate United States district court. The district court shall have jurisdiction as provided in subparagraph (A) to issue any relief that may be necessary to implement the remedial action, to impose appropriate civil penalties not to exceed $25,000 per day from the date the selected remedy becomes final, and to review any challenges to the State's final determination consistent with the standards set forth in section 113(j) of this Act.

(2) LIMITATION.—Except as necessary to implement the transfer of the Administrator's authorities to a State under a cooperative agreement, nothing in this subsection shall be construed as altering, modifying, or impairing in any manner, or authorizing the unilateral modification of, any terms of any agreement, permit, administrative or judicial order, decree, or interagency agreement existing on the effective date of the Recycle America's Land Act of 1999. Any other modifications or revisions of an interagency agreement entered into under this section shall require the consent of all parties to such agreement, and absent such consent the agreement shall remain unchanged.

(3) EFFECT ON OTHER AUTHORITIES.—Nothing in this subsection shall affect the exercise by a State of any other authorities that may be applicable to Federal facilities in the State.

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SEC. 121. CLEANUP STANDARDS.

(a) * * *

* * * * * * *

(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. *The preference referred to in the preceding sentence may be implemented in accordance with the November 1991, Environmental Protection Agency, Office of Solid Waste and Emergency Response Publication No. 9380.3–06FS, "A Guide to Principal Threat and Low Level Threat Waste".* The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) * * *

* * * * * * *

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; [and]

(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment[.]*; and*

(H) the effectiveness of the remedial action in making contaminated property available for beneficial use.

* * * * * * *

(c) REVIEW.—If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after [the initiation of] *construction and installation of equipment and structures to be used for* such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. *The President shall review the effectiveness of and compliance with any institutional controls related to the remedial action during the review.* In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

(d) DEGREE OF CLEANUP.—(1) * * *

(2) HEALTH AND ENVIRONMENTAL STANDARDS.—

(A) EXPOSURE INFORMATION.—In any case in which an exposure assessment is conducted, such assessment shall be consistent with the current and reasonably anticipated future uses of land, water, and other resources as identified under paragraph (3). Information used by the President to

determine potential exposures shall include information made available to the President on actual exposure to hazardous substances or pollutants or contaminants that the President determines is valid and reliable and any other relevant information.

(B) PLANTS AND ANIMALS.—In determining what is protective of plants and animals for purposes of this section, the President shall base such determinations on the significance of impacts from a release or releases of hazardous substances from a facility to local populations or communities of plants and animals or ecosystems. If a species is listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) impacts to individual plants or animals may be considered to be impacts to populations of plants or animals.

(3) ANTICIPATED USE OF LAND, WATER, AND OTHER RESOURCES.—

(A) IN GENERAL.—To assist in selecting the method or methods of remediation appropriate for a given facility, the President shall identify the current and reasonably anticipated uses of land, water, and other resources at and around the facility and the timing of such uses.

(B) REASONABLY ANTICIPATED USES OF LAND.—In identifying reasonably anticipated uses of land and the timing of such uses, the President shall consider relevant information identified through a process that includes solicitation of the views of interested parties, including the affected local government and the affected local community. The President may meet this requirement though the process outlined in the May 25, 1995, Environmental Protection Agency, Office of Solid Waste and Emergency Response Directive No. 9355.7–04, pertaining to "Land Use in the CERCLA Remedy Selection Process".

(C) REASONABLY ANTICIPATED USES OF WATER.—In identifying reasonably anticipated uses of water and the timing of such uses, the President shall consider relevant information identified through a process that includes solicitation of the views of interested parties, including the affected State, the affected local government, the affected local community, and affected local water suppliers.

(D) SPECIAL RULES FOR GROUND WATER.—The President shall meet the requirements of subparagraph (C) for ground water as follows:

(i) If a State has a comprehensive State ground water protection program that has provisions for making site-specific determinations of use and timing of use and that has received a written endorsement by the President, the President shall use the State determinations of use and timing of use that are based on such program.

(ii) If a State does not have a program described in clause (i), the President shall identify the reasonably anticipated uses of ground water and the timing of such uses as provided in subparagraph (C). In con-

ducting the analysis, the President shall begin with the presumption that ground water is drinking water, if the ground water is within an aquifer that is classified by a State or the Administrator as a drinking water aquifer or if the ground water is within an aquifer that has not been classified. The presumption may be rebutted through site-specific information identified through the analysis of relevant factors under subparagraph (C).

(iii) Unless the State has made a specific determination otherwise under clause (i), a current or reasonably anticipated beneficial use of ground water shall not be identified as drinking water if—

(I) the ground water contains more than 10,000 milligrams per liter total dissolved solids;

(II) the ground water is so contaminated by naturally occurring conditions or by the effects of broad-scale human activity unrelated to a specific activity that restoration to drinking water quality is impracticable; or

(III) the potential source of drinking water is physically incapable of yielding a quantity of 150 gallons per day of water to a well or spring without adverse environmental consequences, unless available information indicates that such source is used as a source of drinking water.

(iv) Following identification of the reasonably anticipated uses of ground water, the President may utilize the phased approach to ground water remediation identified in October 1996 Environmental Protection Agency, Office of Solid Waste and Emergency Response Directive No. 9283.1–12, pertaining to "Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites".

(E) INSTITUTIONAL CONTROLS.—Assumptions restricting future uses can be used in evaluating remedial alternatives only to the extent that institutional controls meeting the criteria of subsection (g) are identified.

(F) INCLUSION IN ADMINISTRATIVE RECORD.—All information considered by the President in evaluating current and reasonably anticipated future land or water uses under this subsection shall be included in the administrative record under section 113(k).

⟦(2)⟧ *(4) LEGALLY APPLICABLE STANDARDS*.—(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

(i) * * *

(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute

cited in subparagraph (A), *that is generally applicable, that is consistently applied to response actions in the State,* and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned ⟦or is relevant and appropriate⟧ under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable ⟦or relevant and appropriate⟧ standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant ⟦Level Goals⟧ *Levels* established under the Safe Drinking Water Act and water quality criteria established under section 304 or 303 of the Clean Water Act, where such ⟦goals⟧ *levels* or criteria are relevant and appropriate under the circumstances of the release or threatened release. *The President shall closely examine whether a requirement is of general applicability under clause (ii) if, in practice, the requirement only applies to one facility in the State or if the requirement only applies to facilities owned or operated by the United States.*

(B)(i) In determining whether or not any water quality criteria under the Clean Water Act is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

(I) there are known and projected points of entry of such groundwater into surface water; and

(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

[(3)**]** *(5) LIMITATION ON TRANSFERS*.—In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

The President shall notify the owner or operator of such facility of determinations under this paragraph.

【(4)】 *(6) WAIVERS.*—The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph 【(2)】 *(4)* (including subparagraph (B) thereof), if the President finds that—

(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

(C) compliance with such requirements is technically impracticable from an engineering perspective;

(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

(7) EXCLUSIONS.—The standards, requirements, criteria, and limitations referred to in paragraph (4) shall not include any requirement for a reduction in concentrations of contaminants below background levels.

* * * * * * *

(f) STATE INVOLVEMENT.—(1) * * *

* * * * * * *

(4) STATES ADJOINING CERTAIN FACILITIES.—The President shall modify regulations promulgated pursuant to paragraph (1) to provide to any adjoining State within a 50-mile radius of a facility owned or operated by the Department of Energy the

same rights as are provided by this subsection to the State in which such facility is located.

* * * * * * *

(g) INSTITUTIONAL CONTROLS.—

(1) USE AND IMPLEMENTATION.—In any case in which the President selects a remedial action that allows hazardous substances to remain on-site at a facility above concentration levels that would be protective for unrestricted use, the President—

(A) shall include, as a component of the remedy, restrictions on the use of land, water, or other resources necessary to provide long-term protection of human health and the environment;

(B) shall require, as a component of the remedy, ongoing monitoring and operation and maintenance of the remedy and such remedy shall not be determined to be complete until such monitoring and operation and maintenance are established;

(C) shall require, as a component of the remedy, that any necessary institutional controls are effective, implemented, and subject to appropriate monitoring and enforcement;

(D) shall ensure through authorities provided under this Act, including the reviews conducted under subsection (c), that any necessary institutional controls remain in effect as long as necessary to protect human health and the environment, including ensuring that the enforceability of such institutional controls will not be adversely affected by any transfer of the property subject to the controls.

(2) RESTRICTIONS ON USE.—The President may use institutional controls as a supplement to, but not as a substitute for, other response measures at a facility, except in extraordinary circumstances.

(3) NOTICE.—Whenever the President selects, in accordance with paragraph (1), a remedy at a facility that relies on institutional controls as an integral component of the remedy, the President shall—

(A) clearly specify in the record of decision the anticipated restrictions on uses of land, water, or other resources or activities at the facility and the terms of anticipated institutional controls to implement those restrictions;

(B) specify such restrictions and controls in all other appropriate remedy decision documents and other public information regarding the site, along with identification of the unit of government primarily responsible for monitoring and enforcement of the institutional controls;

(C) provide public notice of such controls and, in the case of a deed restriction, easement, or other similar measure, incorporate the measure in the public land records for the jurisdiction in which the affected property is located;

(D) to the extent that institutional controls will be implemented pursuant to an order under section 106, record, in accordance with State law, a notation on the deed to the facility property, or on some other instrument which is normally examined during a title search, that will notify any potential purchaser that use restrictions are or will be

placed on the facility property pursuant to an order issued under section 106; and

(E) undertake any change in the nature or form of institutional controls at the facility in a manner consistent with section 117 and give notice pursuant to the requirements of section 104.

(4) REGISTRY.—The President shall establish and maintain a registry of restrictions on the use of land, water, or other resources through institutional controls that are included in final records of decision as a component of the remedy at facilities that are, or have been, on the National Priorities List. The registry shall identify the property and the nature or form of the institution controls, including any subsequent changes in the nature or form of such controls.

(5) ANNUAL REPORT.—On or before March 1, 2000, and annually thereafter, the Administrator shall transmit to the Committee on Commerce and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on each record of decision signed during the previous fiscal year, the type of institutional controls and media affected, and the unit of government designated to monitor, enforce, and ensure compliance with the institutional controls.

(h) REMEDIAL DESIGN.—Where appropriate and practicable, remedial designs for remedies selected under this section shall seek to accommodate existing beneficial uses of the contaminated property and shall seek to expedite the return of contaminated property to beneficial use, including the return to beneficial use of separate areas within a facility prior to completion of the remedial action for an entire facility.

SEC. 122. SETTLEMENTS.

(a) * * *

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(f) COVENANT NOT TO SUE.—

[(1) DISCRETIONARY COVENANTS.—The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

[(A) The covenant not to sue is in the public interest.

[(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

[(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

[(D) The response action has been approved by the President.]

(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements that

are in the public interest a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs addressed in the settlement, if all of the following conditions are met:

(A) The settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action authorized by the Administrator for the release or threat of release that is the subject of the settlement.

(B) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility.

(C) The settling party waives all contribution rights against other potentially responsible parties at the facility.

(D) The settling party (other than a small business) pays a premium that compensates for the risks of remedy failure; future liability resulting from unknown conditions; and unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action. The President shall have sole discretion to determine the appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President has discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.

(E) The remedial action does not rely on institutional controls to ensure continued protection of human health and the environment.

(F) The settlement is otherwise acceptable to the United States.

(2) SPECIAL COVENANTS NOT TO SUE.—In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of [remedial] *response* action—

(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed [remedial] *response* action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

* * * * * * *

[(3) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.]

(3) DISCRETIONARY COVENANTS.—For settlements under this Act for which covenants under paragraph (1) are not available, the President may provide any person with a covenant not to

sue concerning any liability to the United States under this Act, if the covenant not to sue is in the public interest. Such covenants shall be subject to the requirements of paragraph (5). The President may include any conditions in such covenant not to sue, including the additional condition referred to in paragraph (5). In determining whether such conditions or covenants are in the public interest, the President shall consider the nature and scope of the commitment by the settling party under the settlement, the effectiveness and reliability of the response action, the nature of the risks remaining at the facility, the strength of evidence, the likelihood of cost recovery, the reliability of any response action or actions to restore, replace, or acquire the equivalent of injured natural resources, the extent to which performance standards are included in the order or decree, the extent to which the technology used in the response action is demonstrated to be effective, and any other factors relevant to the protection of human health and the environment.

⟦(4) FACTORS.—In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

⟦(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

⟦(B) The nature of the risks remaining at the facility.

⟦(C) The extent to which performance standards are included in the order or decree.

⟦(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

⟦(E) The extent to which the technology used in the response action is demonstrated to be effective.

⟦(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

⟦(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.⟧

⟦(5)⟧ *(4)* SATISFACTORY PERFORMANCE.—Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

⟦(6)⟧ *(5)* ADDITIONAL CONDITION FOR FUTURE LIABILITY.—(A) Except for the portion of the ⟦remedial⟧ *response* action which is subject to a covenant not to sue under paragraph ⟦(2)⟧ *(1) or (2)* or under subsection (g) (relating to de minimis ⟦settlements⟧ *and other expedited settlements pursuant to subsection (g) of this section)*, a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such li-

ability arises out of conditions which are unknown at the time ⟦the President certifies under paragraph (3) that remedial action has been completed at the facility concerned⟧ *that the response action that is the subject of the settlement agreement is selected*.

(B) ⟦In extraordinary circumstances, the⟧ *The* President may determine, after assessment of relevant factors such as ⟦those referred to in paragraph (4) and⟧ volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) ⟦if other terms,⟧ *if the agreement containing the covenant not to sue provides for payment of a premium to address possible remedy failure or any releases that may result from unknown conditions, and if other terms,* conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility. *The President may waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.*

* * * * * * *

⟦(g) DE MINIMIS SETTLEMENTS.—

⟦(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

⟦(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

⟦(i) The amount of the hazardous substances contributed by that party to the facility.

⟦(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

⟦(B) The potentially responsible party—

⟦(i) is the owner of the real property on or in which the facility is located;

⟦(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

⟦(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

⟦(2) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this sub-

section unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

[(3) EXPEDITED AGREEMENT.—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.]

(g) EXPEDITED FINAL SETTLEMENT.—

(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—The President shall, as promptly as possible, offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet the following conditions for eligibility for an expedited settlement in subparagraph (A) or (B):

(A) The potentially responsible party's individual contribution to the release of hazardous substances at the facility as an owner or operator, arranger for disposal, or transporter for disposal is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if both of the following conditions are met:

(i) The contribution of materials containing hazardous substances that the potentially responsible party arranged or transported for treatment or disposal, or that were treated or disposed during the potentially responsible party's period of ownership or operation of the facility, is minimal in comparison to the total volume of materials containing hazardous substances at the facility. Such individual contribution is presumed to be minimal if it is not more than 1 percent of the total volume of such materials, unless the Administrator identifies a different threshold based on site-specific factors.

(ii) Such hazardous substances do not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the facility.

(B)(i) The potentially responsible party is a natural person, a small business, or a municipality and can demonstrate to the United States an inability or limited ability to pay response costs. A party who enters into a settlement pursuant to this subparagraph shall be deemed to have resolved its liability under this Act to the United States for all matters addressed in the settlement.

(ii) For purposes of this subparagraph, the following provisions apply:

(I) In the case of a small business, the President shall take into consideration the ability to pay of the business, if requested by the business. The term "ability to pay" means the President's reasonable expectation of the ability of the small business to pay its total settlement amount and still maintain its basic business operations. Such consideration shall include the

business's overall financial condition and demonstrable constraints on its ability to raise revenues.

(II) Any business requesting such consideration shall promptly provide the President with all relevant information needed to determine the business's ability to pay.

(III) If the President determines that a small business is unable to pay its total settlement amount immediately, the President shall consider alternative payment methods as may be necessary or appropriate. The methods to be considered may include installment payments to be paid during a period of not to exceed 10 years and the provision of in-kind services.

(iii) Any municipality which is a potentially responsible party may submit for consideration by the President an evaluation of the potential impact of the settlement on essential services that the municipality must provide, and the feasibility of making delayed payments or payments over time. If a municipality asserts that it has additional environmental obligations besides its potential liability under this Act, then the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations.

(iv) Any municipality which is a potentially responsible party may establish an inability to pay through an affirmative showing that such payment of its liability under this Act would either—

(I) create a substantial demonstrable risk that the municipality would default on existing debt obligations, be forced into bankruptcy, be forced to dissolve, or be forced to make budgetary cutbacks that would substantially reduce current levels of protection of public health and safety; or

(II) necessitate a violation of legal requirements or limitations of general applicability concerning the assumption and maintenance of fiscal municipal obligations.

(v) This subparagraph does not limit or affect the President's authority to evaluate any person's ability to pay or to enter into settlements with any person based on that person's inability to pay.

(2) BASIS OF DETERMINATION.—Any person who enters into a settlement pursuant to this subsection shall provide any information requested by the President in accordance with section 104(e). The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the President at the time the determination is made. The President's determination as to the eligibility of a party that is not a department, agency, or instrumentality of the United States for settlement pursuant to this section shall not be subject to judicial review. If the President determines that a party is not eligible for a settlement pursuant to this section, the President shall explain the basis for that determination in writing to any person who requests such a settlement.

(3) ADDITIONAL FACTORS RELEVANT TO SETTLEMENTS WITH MUNICIPALITIES.—In any settlement with a municipality pursuant to this Act, the President may take additional equitable factors into account in determining an appropriate settlement amount, including the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.

(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed ❲$500,000❳ *$2,000,000* (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

❲(5) EFFECT OF AGREEMENT.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.❳

(5) SMALL BUSINESS DEFINED.—In this section, the term "small business" refers to any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. 631 et seq.).

* * * * * * *

(7) DEADLINE.—If the President does not make a settlement offer to a small business on or before the 180th day following the date of the President's determination that such small business is eligible for an expedited settlement under this subsection, or on or before the 180th day following the date of the enactment of this paragraph, whichever is later, such small business shall have no further liability under this Act, unless the failure to make a settlement offer on or before such 180th day is due to circumstances beyond the control of the President.

(8) PREMIUMS.—In any settlement under this Act with a small business, the President may not require the small business to pay any premium over and above the small business's share of liability.

(h) ❲COST RECOVERY SETTLEMENT AUTHORITY.—❳ *AUTHORITY TO SETTLE CLAIMS FOR FINES, CIVIL PENALTIES, PUNITIVE DAMAGES, AND COST RECOVERY.—*

(1) AUTHORITY TO SETTLE.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may con-

sider, compromise, and settle a claim under section 107 for [costs incurred] *past and future costs incurred or that may be incurred* by the United States Government if the claim has not been referred to the Department of Justice for further action. *The head of any department or agency with the authority to seek fines, civil penalties, or punitive damages under this Act may consider, compromise, and settle claims for any such fines, civil penalties, or punitive damages which may otherwise be assessed in civil administrative or judicial proceedings if the claim has not been referred to the Department of Justice for further action. If the total claim for response costs, fines, civil penalties, or punitive damages exceeds $3,000,000, such claim may be compromised and settled only with the prior written approval of the Attorney General.* In the case of any facility where the total response costs exceed [$500,000 (excluding interest), any claim referred to in the preceding sentence] *$2,000,000 (excluding interest), any claim for response costs referred to in this subsection* may be compromised and settled only with the prior written approval of the Attorney General.

* * * * * * *

[(4) CLAIMS FOR CONTRIBUTION.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.]

* * * * * * *

(n) CHALLENGE TO COST RECOVERY COMPONENT OF SETTLEMENT.—Notwithstanding the limitations on review in section 113(h), and except as provided in subsection (g) of this section, a person whose potential claim for response costs or contribution is limited as a result of contribution protection afforded by an administrative settlement under this section may challenge the cost recovery component of such settlement. Such a challenge may be made only by filing a complaint against the Administrator in the United States District Court within 60 days after such settlement becomes final. Venue shall lie in the district in which the principal office of the appropriate region of the Environmental Protection Agency is located. Any review of an administrative settlement shall be limited to the administrative record, and the settlement shall be upheld unless the objecting party can demonstrate on that record that the decision of the President to enter into the administrative settlement was arbitrary, capricious, or otherwise not in accordance with law.

[SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

[(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

[(b) REIMBURSEMENT.—

[(1) TEMPORARY EMERGENCY MEASURES.—The President is authorized to reimburse local community authorities for expenses incurred (before or after the enactment of the Super-

fund Amendments and Reauthorization Act of 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

⟦(2) LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant local funds normally provided for response.

⟦(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

⟦(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Administrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.⟧

SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOVERNMENTS.

(a) APPLICATION.—Any State or general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

(b) REIMBURSEMENT.—

(1) EMERGENCY RESPONSE.—The President is authorized to reimburse a State or general purpose unit of local government for expenses incurred in carrying out emergency response actions necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such actions may include, where appropriate, security fencing to limit access, response to fires and explosions, and other activities which require immediate response at the State or local level.

(2) STATE OR LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant State or local funds normally provided for response.

(c) AMOUNT.—

(1) REIMBURSEMENT TO STATES AND GENERAL PURPOSE UNITS OF LOCAL GOVERNMENT.—The amount of any reimbursement to a State or general purpose unit of local government under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the State or general purpose unit of local government having jurisdiction over the political subdivision in which the facility is located.

(2) LIMITATION.—The amounts allowed for the State and general purpose units of local government may not be combined for any single response action.

(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Ad-

ministrator within 1 year after the date of the enactment of the Recycle America's Land Act of 1999.

* * * * * * *

SEC. 126. INDIAN TRIBES.

(a) TREATMENT GENERALLY.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities) [and], section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List)*, section 117 (regarding public participation), section 121 (regarding selection of remedies), and section 128 (regarding State voluntary cleanup programs). In applying this subsection, any reference contained in a section identified in the preceding sentence to a facility located in a State shall include a facility located on lands within the jurisdiction of a Federal Indian reservation under the jurisdiction of the United States government.*

* * * * * * *

[(c) STUDY.—The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.]

(c) HEALTH IMPACTS.—

(1) STUDY.—The President shall conduct a study of the health impacts on Indian tribes of pollutants, contaminants, and hazardous substances released from facilities that have been listed or proposed for listing on the National Priorities List.

(2) REPORT.—Not later than 2 years after the date of the enactment of the Recycle America's Land Act of 1999, the President shall transmit to Congress a report on the results of the study conducted under this subsection.

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SEC. 127. BROWNFIELDS.

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) ADMINISTRATIVE COST.—The term "administrative cost" does not include the cost of—

(A) site inventories;

(B) investigation and identification of the extent of contamination;

(C) design and performance of a response action; or

(D) monitoring of natural resources.

(2) BROWNFIELD FACILITY.—

(A) IN GENERAL.—The term "brownfield facility" means real property with respect to which expansion, development,

or redevelopment is complicated by the presence or potential presence of a hazardous substance.

(B) EXCLUDED FACILITIES.—The term "brownfield facility" does not include—

(i) any portion of real property that is the subject of an ongoing removal or planned removal under section 104;

(ii) any portion of real property that is listed or has been proposed for listing on the National Priorities List;

(iii) any portion of real property with respect to which a cleanup is proceeding under a permit, an administrative order, or a judicial consent decree entered into by the United States or an authorized State under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(iv) a facility that is owned or operated by a department, agency, or instrumentality of the United States, except a facility located on lands held in trust for an Indian tribe; or

(v) a portion of a facility for which assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

(3) ELIGIBLE ENTITY.—

(A) IN GENERAL.—The term "eligible entity" means—

(i) a State or a political subdivision of a State, including—

(I) a general purpose unit of local government; and

(II) a regional council or group of general purpose units of local government;

(ii) a redevelopment agency that is chartered or otherwise sanctioned by a State or other unit of government; and

(iii) an Indian tribe.

(B) EXCLUDED ENTITIES.—The term "eligible entity" does not include any entity that is not in full compliance with the requirements of an administrative order, judicial consent decree, or closure plan under a permit which has been issued or entered into by the United States or an authorized State under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) with respect to the real property or portion thereof which is the subject of the order, judicial consent decree, or closure plan.

(b) BROWNFIELD ASSESSMENT GRANT PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities for inventory and assessment of brownfield facilities.

(2) ASSISTANCE FOR SITE ASSESSMENT.—On approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for developing an inventory and conducting an assessment (including an assessment of public health implications) of 1 or more brownfield facilities.

(3) APPLICATIONS.—

(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection for 1 or more brownfield facilities.

(B) APPLICATION REQUIREMENTS.—An application for a grant under this subsection shall include information relevant to the ranking criteria established under paragraph (4) for the facility or facilities for which the grant is requested.

(4) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

(A) The demonstrated need for Federal assistance.

(B) The extent to which a grant will stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

(C) The estimated extent to which a grant would facilitate the identification of or facilitate a reduction in health and environmental risks.

(D) The financial involvement of the State and local government in any response action planned for a brownfield facility and the extent to which the response action and the proposed redevelopment is consistent with any applicable State or local community economic development plan.

(E) The extent to which the site assessment and subsequent development involves the active participation and support of the local community.

(5) MAXIMUM GRANT AMOUNT PER FACILITY.—A grant made to an eligible entity under this subsection shall not exceed $200,000 with respect to any brownfield facility covered by the grant.

(c) BROWNFIELD REMEDIATION GRANT PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities to be used for capitalization of revolving loan funds for remedial actions at brownfield facilities.

(2) ASSISTANCE FOR SITE REMEDIATION.—Upon approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for establishing a revolving loan fund. Any fund established using such grants shall be used to make loans to a State, a site owner, or a site developer for the purpose of carrying out remedial actions at 1 or more brownfield facilities.

(3) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS.—A local government that receives a grant under this subsection may use up to 10 percent of the amount of the grant to develop and implement a brownfields site remediation program, including monitoring of human health of any populations exposed to hazardous substances from brownfields facilities, and monitoring and enforcement of any institutional controls required to prevent human exposure to any hazardous substances from brownfields facilities.

(4) APPLICATIONS.—

(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection.

(B) APPLICATION REQUIREMENTS.—An application under this subsection shall include information relevant to the ranking criteria established under paragraph (5).

(5) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

(A) The adequacy of the financial controls and resources of the eligible entity to administer a revolving loan fund in accordance with this subsection.

(B) The ability of the eligible entity to monitor the use of funds provided to loan recipients under this subsection.

(C) The ability of the eligible entity to ensure that a remedial action funded by the grant will be conducted under the authority of a State cleanup program that ensures that the remedial action is protective of human health and the environment.

(D) The ability of the eligible entity to ensure that any cleanup funded under this subsection will comply with all laws that apply to the cleanup.

(E) The need of the eligible entity for financial assistance to clean up brownfield sites that are the subject of the application, taking into consideration the financial resources available to the eligible entity.

(F) The ability of the eligible entity to ensure that the applicants repay the loans in a timely manner.

(G) The plans of the eligible entity for using the grant to stimulate economic development or creation of recreational areas on completion of the cleanup.

(H) The plans of the eligible entity for using the grant to stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

(I) The plans of the eligible entity for using the grant to facilitate a reduction of health and environmental risks.

(J) The plans of the eligible entity for using the grant for remediation and subsequent development that involve the active participation and support of the local community.

(6) MAXIMUM GRANT AMOUNT.—A grant made to an eligible entity under this subsection may not exceed $1,000,000.

(d) GENERAL PROVISIONS.—

(1) PROHIBITION.—No part of a grant under this section may be used for the payment of penalties or fines. Except as provided in subsection (c)(3), no part of such a grant may be used for the payment of administrative costs.

(2) AUDITS.—The President shall audit an appropriate number of grants made under subsections (b) and (c) to ensure that funds are used for the purposes described in this section.

(3) AGREEMENTS.—

(A) TERMS AND CONDITIONS.—Each grant made under this section shall be subject to an agreement that—

(i) requires the eligible entity to comply with all applicable Federal and State laws;

(ii) requires the eligible entity to use the grant exclusively for the purposes specified in subsection (b) or (c);

(iii) in the case of an application by a State under subsection (c), requires payment by the State of a matching share, of at least 50 percent of the amount of the grant, from other sources of funding;

(iv) requires that grants under this section will not supplant State or local funds normally provided for the purposes specified in subsection (b) or (c); and

(v) contains such other terms and conditions as the President determines to be necessary to ensure proper administration of the grants.

(B) LIMITATION.—The President shall not place terms or conditions on grants made under this section other than the terms and conditions specified in subparagraph (A).

(4) LEVERAGING.—An eligible entity that receives a grant under this section may use the funds for part of a project at a brownfield facility for which funding is received from other sources, including other Federal sources, but the grant shall be used only for the purposes described in subsection (b) or (c).

(e) APPROVAL.—

(1) INITIAL GRANT.—Before the expiration of the fourth quarter of the first fiscal year following the date of enactment of this section, the President shall make grants under this section to eligible entities and States that submit applications, before the expiration of the second quarter of such year, that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(5).

(2) SUBSEQUENT GRANTS.—Beginning with the second fiscal year following the date of enactment of this section, the President shall make an annual evaluation of each application received during the prior fiscal year and make grants under this section to eligible entities and States that submit applications during the prior year that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(5).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary. Such funds shall remain available until expended.

SEC. 128. STATE VOLUNTARY CLEANUP PROGRAMS.

(a) ASSISTANCE TO STATES.—The Administrator may provide technical and other assistance to States to establish and expand State voluntary cleanup programs.

(b) ELIGIBLE PURPOSES.—The purposes for which assistance may be provided under subsection (a) include the following:

(1) Providing technical assistance for response actions.

(2) Providing adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions.

(3) Developing streamlined procedures to ensure expeditious response actions.

(4) Providing oversight and enforcement of response actions.

(5) Performing site inventories and assessments.

(c) PROHIBITION ON CONDITIONS.—A State may request assistance under this section for 1 or more eligible purposes. The President may require that such assistance be used to carry out the eligible purposes for which the assistance is provided, but may not require as a condition of such assistance that the State take actions unrelated to such purposes.

(d) FUNDING.—There is authorized to be appropriated for assistance to States under this section $25,000,000 for each of fiscal years 2000 through 2007. The amount of such assistance shall be distributed among each of the States that notifies the Administrator of the State's intent to establish a State voluntary cleanup program and each of the States with a State voluntary cleanup program.

(e) MINIMUM AMOUNT OF ASSISTANCE.—Subject to appropriations, the minimum amount of assistance the Administrator may provide to a State voluntary cleanup program under this section for a fiscal year shall be $250,000.

(f) LIMITATION ON ASSISTANCE FOR SITE INVENTORIES.—A State that receives assistance under this section in a fiscal year shall not be eligible in assistance for site inventories and assessments under section 127(b) in such fiscal year.

SEC. 129. ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO A STATE RESPONSE ACTION.

(a) ENFORCEMENT.—Except as provided in subsection (b), in the case of a facility that is not listed or proposed for listing on the National Priorities List and at which there is a release or threatened release of a hazardous substance, neither the President nor any other person (other than a State) may use authority under this Act against any person who is conducting or has completed a response action in compliance with a State law that specifically governs response actions for the protection of public health and the environment—

(1) to take an administrative or judicial enforcement action under section 106;

(2) to take a judicial enforcement action to recover response costs under section 107 or 113; or

(3) to bring a private civil action to recover response costs under section 107 or 113;

regarding any release or threatened release that is addressed by such response action.

(b) EXCEPTIONS.—The President may bring an administrative enforcement action or a judicial enforcement action to recover response costs under this Act with respect to a facility described in subsection (a) if—

(1) the State requests the President to take such action;

(2) the President determines that response actions are immediately required to prevent, limit, or mitigate an emergency and the State will not take the necessary response actions in a timely manner;

(3) the Agency for Toxic Substances and Disease Registry issues a public health advisory with respect to the facility; or

(4) the President determines that contamination has migrated across a State line, resulting in the need for further response action to protect human health or the environment and the affected States will not take the necessary response actions in a timely manner.

(c) REPORT TO CONGRESS.—Not later than 30 days after the date of any enforcement action by the President against a person described in subsection (a), the President shall submit a report to Congress describing the factual and legal basis for such action, with specific reference to the facts demonstrating that action is permitted under subsection (b).

SEC. 130. RECYCLING TRANSACTIONS.

(a) LIABILITY CLARIFICATION.—As provided in subsections (b), (c), (d), (e), and (f), a person who arranged for the recycling of recyclable material or transported such material shall not be liable under sections 107(a)(3) and 107(a)(4) with respect to such material. A determination whether or not any person shall be liable under section 107(a)(3) or 107(a)(4) for any transaction not covered by subsections (b) and (c), (d), (e), or (f) of this section shall be made, without regard to subsections (b), (c), (d), (e), and (f) of this section, on a case-by-case basis, based on the individual facts and circumstances of such transaction.

(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term "recyclable material" means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap metal, spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap, and used oil; except that such term shall not include—

(1) shipping containers with a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

(2) any item of material containing polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—

(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling

recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

(A) The recyclable material met a commercial specification grade.

(B) A market existed for the recyclable material.

(C) A substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product.

(D) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

(E) For transactions occurring on or after the 90th day following the date of the enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a "consuming facility") was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

(2) REASONABLE CARE.—For purposes of this subsection, "reasonable care" shall be determined using criteria that include—

(A) the price paid in the recycling transaction;

(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material; and

(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with the recyclable materials shall be deemed to be a substantive provision.

(d) TRANSACTIONS INVOLVING SCRAP METAL.—

(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling

of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

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

(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator issues under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) after the date of the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

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

(2) MELTING OF SCRAP METAL.—For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as "sweating").

(3) SCRAP METAL DEFINED.—In this subsection, the term "scrap metal" means—

(A) bits and pieces of metal parts (such as bars, turnings, rods, sheets, and wire) or metal pieces that may be combined together with bolts or soldering (such as radiators, scrap automobiles, and railroad box cars) which when worn or superfluous can be recycled; and

(B) notwithstanding subsection (d)(1)(C), metal byproducts of the production of copper and copper based alloys that—

(i) are not the sole or primary products of a secondary production process,

(ii) are not produced separately from the primary products of a secondary production process,

(iii) are not and have not been stored in a pile or surface impoundment, and

(iv) are sold to another recycler that is not speculatively accumulating such byproducts,

except for any scrap metal that the Administrator excludes from this definition by regulation.

(e) TRANSACTIONS INVOLVING BATTERIES.—

(1) IN GENERAL.—Transactions involving recyclable materials that consist of spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries but did not recover the valuable components of such batteries; and

(B)(i) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, man-

agement, or other activities associated with the recycling of spent lead-acid batteries;

(ii) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries and the person was in compliance with such regulations or standards and any amendments thereto; or

(iii) with respect to transactions involving other spent batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries and the person was in compliance with such regulations or standards and any amendments thereto.

(2) RECOVERY OF VALUABLE BATTERY COMPONENTS.—For purposes of paragraph (1)(A), a person who, by contract, arranges or pays for processing of batteries by an unrelated third person and receives from such third person materials reclaimed from such batteries shall not thereby be deemed to recover the valuable components of such batteries.

(f) TRANSACTIONS INVOLVING USED OIL.—

(1) IN GENERAL.—Transactions involving recyclable materials that consist of used oil shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) did not mix the recyclable material with a hazardous substance following the removal of the used oil from service and can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the recyclable material was sent to a facility that recycled used oil by using it as feed stock for the manufacture of a new saleable product;

(B) the person met the criteria specified in paragraphs (1)(D) and (1)(E) of subsection (c), as modified by paragraphs (2) and (3) of subsection (c), with respect to used oil; and

(C) regulations or standards for the management of used oil promulgated under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) were in effect on the date of the transaction and the person was in compliance with such regulations or standards and any amendment thereto.

(2) USED OIL DEFINED.—In this subsection, the term "used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used or stored. Such term does not include any oil that is subject to regulation under section 6(e)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2605(e)(1)(A)), relating to regulations prescribing methods for disposal of polychlorinated biphenyls.

(g) EXCLUSIONS.—

(1) IN GENERAL.—The exemptions set forth in subsections (c), (d), (e), and (f) shall not apply if—

(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction that—

(i) the recyclable material would not be recycled;

(ii) in the case of recyclable materials other than used oil meeting used oil specifications promulgated under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the recyclable material would be burned as fuel or for energy recovery or incineration; or

(iii) for transactions occurring on or before the 90th day following the date of the enactment of this section, the consuming facility was not in compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

(2) OBJECTIVELY REASONABLE BASIS.—For purposes of paragraph (1)(A), an objectively reasonable basis for belief shall be determined using criteria that include the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(h) EFFECT ON OWNER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under section 107(a)(1) or 107(a)(2).

(i) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—

(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(j) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

(1) affect any rights, defenses or liabilities under section 107 of any person with respect to any transaction involving any material other than a recyclable material subject to subsection (a) of this section; or

(2) relieve a plaintiff of the burden of proof that the elements of liability under section 107 are met under the particular circumstances of any transaction for which liability is alleged.

SEC. 131. ALLOCATION.

(a) PURPOSE OF ALLOCATION.—The purpose of an allocation under this section is to determine an equitable allocation of the costs of a removal or remedial action at a facility on the National Priorities List that is eligible for an allocation under this section, including the share to be borne by the Trust Fund under subsection (i).

(b) ELIGIBLE RESPONSE ACTION.—

(1) IN GENERAL.—A removal or remedial action is eligible for an allocation under this section if the action is at a facility on the National Priorities List and if—

(A) the performance of the removal or remedial action is not the subject of an administrative order or consent decree as of March 25, 1999;

(B) the President's estimate of the costs for performing such removal or remedial action that have not been recovered by the President as of March 25, 1999, exceeds $2,000,000; and

(C) there are response costs attributable to the Fund share under subsection (i).

(2) EXCLUDED RESPONSE ACTIONS.—

(A) CHAIN OF TITLE SITES.—Notwithstanding paragraph (1), a removal or remedial action is not eligible for an allocation if—

(i) the facility is located on a contiguous area of real property under common ownership or control; and

(ii) all of the parties potentially liable for response costs are current or former owners or operators of such facility,

unless the current owner of such facility is insolvent or defunct.

(B) CURRENT OWNER.—If the current owner of the property on which the facility is located is not liable under section 107(b)(2), the owner immediately preceding such owner shall be considered to be the current owner of the property for purposes of subparagraph (A).

(C) AFFILIATED PARTIES.—If the current owner is affiliated with any other person through any direct or indirect familial relationship or any contractual, corporate, or financial relationship other than that created by instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services, and such other person is liable for response costs at the facility, such other person's assets may be considered assets of the current owner when determining under subparagraph (A) whether the current owner is insolvent or defunct.

(c) DISCRETIONARY ALLOCATION PROCESS.—Notwithstanding subsection (b), the President may initiate an allocation under this sec-

tion for any removal or remedial action at a facility listed on the National Priorities List and may provide a Fund share under subsection (i).

(d) ALLOCATION PROCESS.—For each eligible removal or remedial action, the President shall ensure that a fair and equitable allocation of liability is undertaken at an appropriate time by a neutral allocator selected by agreement of the parties under such process or procedures as are agreed to by the parties. An allocation under this section shall apply to subsequent removal or remedial actions for a facility unless the allocator determines that the allocation should address only one or more of such removal or remedial actions.

(e) EARLY OFFER OF SETTLEMENT.—As soon as practicable and prior to the selection of an allocator, the President shall provide an estimate of the aggregate Fund share in accordance with subsection (i). The President shall offer to contribute to a settlement of liability for response costs on the basis of this estimate.

(f) REPRESENTATION OF THE UNITED STATES AND AFFECTED STATES.—The Administrator or the Attorney General, as a representative of the Fund, and a representative of any State that is or may be responsible pursuant to section 104(c)(3) for any costs of a removal or remedial action that is the subject of an allocation shall be entitled to participate in the allocation proceeding to the same extent as any potentially responsible party.

(g) MORATORIUM ON LITIGATION.—

(1) MORATORIUM ON LITIGATION.—No person may commence any civil action or assert any claim under this Act seeking recovery of any response costs, or contribution toward such costs, in connection with any response action for which the President has initiated an allocation under this section, until 150 days after issuance of the allocator's report or of a report under this section.

(2) STAY.—If any action or claim referred to in paragraph (1) is pending on the date of enactment of this section or on the date of initiation of an allocation, such action or claim (including any pendant claim under State law over which a court is exercising jurisdiction) shall be stayed until 150 days after the issuance of the allocator's report or of a report under this section, unless the court determines that a stay will result in manifest injustice.

(3) TOLLING OF LIMITATIONS PERIOD.—Any applicable limitations period with respect to actions subject to paragraph (1) shall be tolled from the earlier of—

(A) the date of listing of the facility on the National Priorities List, where such listing occurs after the date of enactment of this section; or

(B) the commencement of the allocation process pursuant to this section, until 180 days after the President rejects or waives the President's right to reject the allocator's report.

(h) EFFECT ON PRINCIPLES OF LIABILITY.—The allocation process under this section shall not be construed to modify or affect in any way the principles of liability under this title as determined by the courts of the United States.

(i) FUND SHARE.—For each removal or remedial action that is the subject of an allocation under this section, the allocator shall deter-

mine the share of response costs, if any, to be allocated to the Fund. The Fund share shall consist of the sum of following amounts:

(1) The amount attributable to the aggregate share of response costs that the allocator determines to be attributable to parties who are not affiliated with any potentially responsible party and whom the President determines are insolvent or defunct.

(2) The amount attributable to the difference in the aggregate share of response costs that the allocator determines to be attributable to parties who have resolved their liability to the United States under section 122(g)(1)(B) (relating to limited ability to pay settlements) for the removal or remedial action and the amount actually assumed by those parties in any settlement for the response action with the United States.

(3) Except as provided in subsection (j), the amount attributable to the aggregate share of response costs that the allocator determines to be attributable to persons who are entitled to an exemption from liability under subsection (o) or (p) of section 107 or section 114(c) or 130 at a facility or vessel on the National Priorities List.

(4) The amount attributable to the difference in the aggregate share of response costs that an allocator determines to be attributable to persons subject to a limitation on liability under section 107(p) or 107(q) and the amount actually assumed by those parties in accordance with such limitation.

(j) CERTAIN MSW GENERATORS.—Notwithstanding subsection (i)(3), the allocator shall not attribute any response costs to any person who would have been liable under section 107(a)(3) or 107(a)(4) but for the exemption from liability under section 107(p)(3).

(k) UNATTRIBUTABLE SHARE.—The share attributable to the aggregate share of response costs incurred to respond to materials containing hazardous substances for which no generator, transporter, or owner or operator at the time of disposal or placement, can be identified shall be divided pro rata among the potentially responsible parties and the Fund share determined under subsection (i).

(l) EXPEDITED ALLOCATION.—At the request of the potentially responsible parties or the United States, to assist in reaching settlement, the allocator may, prior to reaching a final allocation of response costs among all parties, first provide an estimate of the aggregate Fund share, in accordance with subsection (i), and an estimate of the aggregate share of the potentially responsible parties.

(m) SETTLEMENT BEFORE ALLOCATION DETERMINATION.—

(1) SETTLEMENT OF ALL REMOVAL OR REMEDIAL COSTS.—A group of potentially responsible parties may submit to the allocator a private allocation for any removal or remedial action that is within the scope of the allocation. If such private allocation meets each of the following criteria, the allocator shall promptly adopt it as the allocation report:

(A) The private allocation is a binding allocation of at least 80 percent of the past, present, and future costs of the removal or remedial action.

(B) The private allocation does not allocate any share to any person who is not a signatory to the private allocation.

(C) The signatories to the private allocation waive their rights to seek recovery of removal or remedial costs or contribution under this Act with respect to the removal or remedial action from any other party at the facility.

(2) OTHER SETTLEMENTS.—The President may use the authority under section 122(g) to enter into settlement agreements with respect to any response action that is the subject of an allocation at any time.

(n) SETTLEMENTS BASED ON ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the President shall accept an offer of settlement of liability for response costs for a removal or remedial action that is the subject of an allocation if—

(A) the offer is made within 90 days after issuance of the allocator's report; and

(B) the offer is based on the share of response costs specified by the allocator and such other terms and conditions (other than the allocated share of response costs) as are acceptable to the President.

(2) REJECTION OF ALLOCATION REPORT.—The requirement of paragraph (1) to accept an offer of settlement shall not apply if the Administrator and the Attorney General reject the allocation report.

(o) REIMBURSEMENT FOR UAO PERFORMANCE.—

(1) REIMBURSEMENT.—The Administrator shall enter into agreements to provide mixed funding to reimburse parties who satisfactorily perform, pursuant to an administrative order issued under section 106, a removal or remedial action eligible for an allocation under subsection (b) for the reasonable and necessary costs of such removal or remedial action to the extent that—

(A) the costs incurred by a performing party exceed the share of response costs assigned to such party in an allocation that is performed in accordance with the provisions of this section;

(B) the allocation is not rejected by the United States; and

(C) the performing party, in consideration for such reimbursement—

(i) agrees not to contest liability for all response costs not inconsistent with the National Contingency Plan to the extent of the allocated share;

(ii) receives no covenant not to sue; and

(iii) waives contribution rights against all parties who are potentially responsible parties for the response action, as well as waives any rights to challenge any settlement the President enters into with any other potentially responsible party.

(2) OFFSET.—Any reimbursement provided to a performing party under this subsection shall be subject to equitable offset or reduction by the Administrator upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.

(3) TIME OF PAYMENT.—Any reimbursement to a performing party under this subsection shall be paid after work is completed, but no sooner than completion of the construction of the remedial action and, subject to paragraph (5), without any increase for interest or inflation.

(4) LIMIT ON AMOUNT OF REIMBURSEMENT.—The amount of reimbursement under this subsection shall be further limited as follows:

(A) Performing parties who waive their right to challenge remedy selection at the end of the moratorium following allocation shall be entitled to reimbursement of actual dollars spent by each such performing party in excess of the party's share and attributable by the allocator to the Fund share under subsection (i).

(B) Performing parties who retain their right to challenge the remedy shall be reimbursed (i) for actual dollars spent by each such performing party, but not to exceed 90 percent of the Fund share, or (ii) an amount equal to 80 percent of the Fund share if the Fund share is less than 20 percent of responsibility at the site.

(5) REIMBURSEMENT OF SHARES ATTRIBUTABLE TO OTHER PARTIES.—If reimbursement is made under this subsection to a performing party for work in excess of the performing party's allocated share that is not attributable to the Fund share, the performing party shall be entitled to all interest (prejudgment and post judgment, whether recovered from a party or earned in a site account) that has accrued on money recovered by the United States from other parties for such work at the time construction of the remedy is completed.

(6) REIMBURSEMENT CLAIMS.—The Administrator shall require that all claims for reimbursement be supported by—

(A) documentation of actual costs incurred; and

(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.

(7) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.

(p) POST-SETTLEMENT LITIGATION.—Following expiration of the moratorium periods under subsection (g), the United States may request the court to lift the stay and proceed with an action under this Act against any potentially responsible party that has not resolved its liability to the United States following an allocation, seeking to recover response costs that are not recovered through settlements with other persons. All such actions shall be governed by the principles of liability under this Act as determined by the courts of the United States.

(q) RESPONSE COSTS.—

(1) DESCRIPTION.—The following costs shall be considered response costs for purposes of this Act:

(A) Costs incurred by the United States and the court of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator.

(B) Costs paid from amounts made available under section 111(a)(1).

(2) SETTLED PARTIES.—Any costs of allocation described in paragraph (1)(A) and incurred after a party has settled all of its liability with respect to the response action or actions that are the subject of the allocation may not be recovered from such party.

(r) FEDERAL, STATE, AND LOCAL AGENCIES.—All Federal, State, and local governmental departments, agencies, or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination provided by this section to the same extent as any other party.

(s) SOURCE OF FUNDS.—Payments made by the Trust Fund, or work performed on behalf of the Trust Fund, to meet obligations incurred by the President under this section to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under subsections (e), (m), (n), or (o) shall be funded from amounts made available by section 111(a)(1).

(t) SAVINGS PROVISIONS.—Except as otherwise expressly provided, nothing in this section shall limit or affect the following:

(1) The President's—

(A) authority to exercise the powers conferred by sections 103, 104, 105, 106, 107, or 122;

(B) authority to commence an action against a party where there is a contemporaneous filing of a judicial consent decree resolving that party's liability;

(C) authority to file a proof of claim or take other action in a proceeding under title 11, United States Code;

(D) authority to file a petition to preserve testimony under Rule 27 of the Federal Rules of Civil Procedure; or

(E) authority to take action to prevent dissipation of assets, including actions under chapter 176 of title 28, United States Code.

(2) The ability of any person to resolve its liability at a facility to any other person at any time before or during the allocation process.

(3) The validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree issued, signed, lodged, or entered, before the date of enactment of this paragraph with respect to liability under this Act, or authority to modify any such order, judgment, or decree with regard to the response action addressed in the order, judgment or decree.

(4) The validity, enforceability, finality, or merits of any preexisting contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.

SEC. 132. RISK ASSESSMENT PRINCIPLES, GUIDELINES, AND REVIEWS.

Risk assessments and characterizations conducted under this Act shall—

(1) provide objective assessments, estimates, and characterizations which neither minimize nor exaggerate the nature and magnitude of risks to human health and the environment;

(2) distinguish scientific findings from other considerations;

(3) be based on all reasonably available, relevant, and reliable scientific and technical information and shall describe the process for selecting such information; and

(4) be based on an analysis of the weight of scientific evidence that supports conclusions about a problem's potential risk to human health and the environment.

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TITLE III—MISCELLANEOUS PROVISIONS

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EFFECTIVE DATES, SAVINGS PROVISION

SEC. 302. (a) * * *

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(e) NO PREEMPTION OF STATE LAW CLAIMS.—Section 107 shall not be construed to preempt any claims under State law for contribution to or recovery of costs of responding to releases or threatened releases of hazardous substances.

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SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

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TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

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SEC. 126. WORKER PROTECTION STANDARDS.

(a) * * *

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(g) GRANT PROGRAM.—

(1)

GRANT PURPOSES.—Grants *from the Fund* for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

(2) ADMINISTRATION.—Grants *from the Fund* under this subsection shall be administered by the National Institute of Environmental Health Sciences.

(3) GRANT RECIPIENTS.—Grants *from the Fund* shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

(4) ALLOCATION OF AMOUNTS.—Of the amounts made available under section 111 to carry out this subsection in a fiscal year, at least 20 percent shall be allocated to non-profit organizations de-

scribed in paragraph (3) for training minority and other community-based workers who are or may be directly engaged in hazardous waste removal or containment or emergency response actions.

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SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) * * *

⟦(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

⟦(1) 1987, $250,000,000,
⟦(2) 1988, $250,000,000,
⟦(3) 1989, $250,000,000,
⟦(4) 1990, $250,000,000,
⟦(5) 1991, $250,000,000,
⟦(6) 1992, $250,000,000,
⟦(7) 1993, $250,000,000
⟦(8) 1994, $250,000,000, and
⟦(9) 1995, $250,000,000.[,]⟧

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SECTION 9507 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Superfund" (hereinafter in this section referred to as the "Superfund"), consisting of such amounts as may be—

(1) * * *

(2) appropriated to the Superfund pursuant to ⟦section 517(b) of the Superfund Revenue Act of 1986⟧ *section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p))*, or

* * * * * * *