

107TH CONGRESS
1ST SESSION

S. 350

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2001

Referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AN ACT

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Brownfields Revitalization and Environmental Restora-
6 tion Act of 2001”.

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

Sec. 1. Short title; table of contents.

TITLE I—BROWNFIELDS REVITALIZATION FUNDING

Sec. 101. Brownfields revitalization funding.

TITLE II—BROWNFIELDS LIABILITY CLARIFICATIONS

Sec. 201. Contiguous properties.

Sec. 202. Prospective purchasers and windfall liens.

Sec. 203. Innocent landowners.

TITLE III—STATE RESPONSE PROGRAMS

Sec. 301. State response programs.

Sec. 302. Additions to National Priorities List.

3 **TITLE I—BROWNFIELDS** 4 **REVITALIZATION FUNDING**

5 **SEC. 101. BROWNFIELDS REVITALIZATION FUNDING.**

6 (a) DEFINITION OF BROWNFIELD SITE.—Section
 7 101 of the Comprehensive Environmental Response, Com-
 8 pensation, and Liability Act of 1980 (42 U.S.C. 9601) is
 9 amended by adding at the end the following:

10 “(39) BROWNFIELD SITE.—

11 “(A) IN GENERAL.—The term ‘brownfield
 12 site’ means real property, the expansion, rede-
 13 velopment, or reuse of which may be com-
 14 plicated by the presence or potential presence of
 15 a hazardous substance, pollutant, or contami-
 16 nant.

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

1 “(i) a facility that is the subject of a
2 planned or ongoing removal action under
3 this title;

4 “(ii) a facility that is listed on the Na-
5 tional Priorities List or is proposed for
6 listing;

7 “(iii) a facility that is the subject of
8 a unilateral administrative order, a court
9 order, an administrative order on consent
10 or judicial consent decree that has been
11 issued to or entered into by the parties
12 under this Act;

13 “(iv) a facility that is the subject of a
14 unilateral administrative order, a court
15 order, an administrative order on consent
16 or judicial consent decree that has been
17 issued to or entered into by the parties, or
18 a facility to which a permit has been issued
19 by the United States or an authorized
20 State under the Solid Waste Disposal Act
21 (42 U.S.C. 6901 et seq.), the Federal
22 Water Pollution Control Act (33 U.S.C.
23 1321), the Toxic Substances Control Act
24 (15 U.S.C. 2601 et seq.), or the Safe

1 Drinking Water Act (42 U.S.C. 300f et
2 seq.);

3 “(v) a facility that—

4 “(I) is subject to corrective ac-
5 tion under section 3004(u) or 3008(h)
6 of the Solid Waste Disposal Act (42
7 U.S.C. 6924(u), 6928(h)); and

8 “(II) to which a corrective action
9 permit or order has been issued or
10 modified to require the implementa-
11 tion of corrective measures;

12 “(vi) a land disposal unit with respect
13 to which—

14 “(I) a closure notification under
15 subtitle C of the Solid Waste Disposal
16 Act (42 U.S.C. 6921 et seq.) has been
17 submitted; and

18 “(II) closure requirements have
19 been specified in a closure plan or
20 permit;

21 “(vii) a facility that is subject to the
22 jurisdiction, custody, or control of a de-
23 partment, agency, or instrumentality of the
24 United States, except for land held in trust
25 by the United States for an Indian tribe;

1 “(viii) a portion of a facility—

2 “(I) at which there has been a
3 release of polychlorinated biphenyls;
4 and

5 “(II) that is subject to remedi-
6 ation under the Toxic Substances
7 Control Act (15 U.S.C. 2601 et seq.);
8 or

9 “(ix) a portion of a facility, for which
10 portion, assistance for response activity
11 has been obtained under subtitle I of the
12 Solid Waste Disposal Act (42 U.S.C. 6991
13 et seq.) from the Leaking Underground
14 Storage Tank Trust Fund established
15 under section 9508 of the Internal Rev-
16 enue Code of 1986.

17 “(C) SITE-BY-SITE DETERMINATIONS.—

18 Notwithstanding subparagraph (B) and on a
19 site-by-site basis, the President may authorize
20 financial assistance under section 128 to an eli-
21 gible entity at a site included in clause (i), (iv),
22 (v), (vi), (viii), or (ix) of subparagraph (B) if
23 the President finds that financial assistance will
24 protect human health and the environment, and
25 either promote economic development or enable

1 the creation of, preservation of, or addition to
2 parks, greenways, undeveloped property, other
3 recreational property, or other property used
4 for nonprofit purposes.

5 “(D) ADDITIONAL AREAS.—For the pur-
6 poses of section 128, the term ‘brownfield site’
7 includes a site that—

8 “(i) meets the definition of ‘brownfield
9 site’ under subparagraphs (A) through (C);
10 and

11 “(ii)(I) is contaminated by a con-
12 trolled substance (as defined in section 102
13 of the Controlled Substances Act (21
14 U.S.C. 802));

15 “(II)(aa) is contaminated by petro-
16 leum or a petroleum product excluded from
17 the definition of ‘hazardous substance’
18 under section 101; and

19 “(bb) is a site determined by the Ad-
20 ministrator or the State, as appropriate, to
21 be—

22 “(AA) of relatively low risk, as
23 compared with other petroleum-only
24 sites in the State; and

1 “(BB) a site for which there is
 2 no viable responsible party and which
 3 will be assessed, investigated, or
 4 cleaned up by a person that is not po-
 5 tentially liable for cleaning up the
 6 site; and

7 “(cc) is not subject to any order
 8 issued under section 9003(h) of the Solid
 9 Waste Disposal Act (42 U.S.C. 6991b(h));
 10 or

11 “(III) is mine-scarred land.”.

12 (b) BROWNFIELDS REVITALIZATION FUNDING.—
 13 Title I of the Comprehensive Environmental Response,
 14 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
 15 et seq.) is amended by adding at the end the following:

16 **“SEC. 128. BROWNFIELDS REVITALIZATION FUNDING.**

17 “(a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-
 18 tion, the term ‘eligible entity’ means—

19 “(1) a general purpose unit of local govern-
 20 ment;

21 “(2) a land clearance authority or other quasi-
 22 governmental entity that operates under the super-
 23 vision and control of or as an agent of a general
 24 purpose unit of local government;

1 “(3) a government entity created by a State
2 legislature;

3 “(4) a regional council or group of general pur-
4 pose units of local government;

5 “(5) a redevelopment agency that is chartered
6 or otherwise sanctioned by a State;

7 “(6) a State; or

8 “(7) an Indian Tribe.

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

11 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
12 ministrators shall establish a program to—

13 “(A) provide grants to inventory, charac-
14 terize, assess, and conduct planning related to
15 brownfield sites under paragraph (2); and

16 “(B) perform targeted site assessments at
17 brownfield sites.

18 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
19 AND ASSESSMENT.—

20 “(A) IN GENERAL.—On approval of an ap-
21 plication made by an eligible entity, the Admin-
22 istrator may make a grant to the eligible entity
23 to be used for programs to inventory, charac-
24 terize, assess, and conduct planning related to
25 1 or more brownfield sites.

1 “(B) SITE CHARACTERIZATION AND AS-
 2 SESSMENT.—A site characterization and assess-
 3 ment carried out with the use of a grant under
 4 subparagraph (A) shall be performed in accord-
 5 ance with section 101(35)(B).

6 “(c) GRANTS AND LOANS FOR BROWNFIELD REME-
 7 DIATION.—

8 “(1) GRANTS PROVIDED BY THE PRESIDENT.—
 9 Subject to subsections (d) and (e), the President
 10 shall establish a program to provide grants to—

11 “(A) eligible entities, to be used for cap-
 12 italization of revolving loan funds; and

13 “(B) eligible entities or nonprofit organiza-
 14 tions, where warranted, as determined by the
 15 President based on considerations under para-
 16 graph (3), to be used directly for remediation of
 17 1 or more brownfield sites owned by the entity
 18 or organization that receives the grant and in
 19 amounts not to exceed \$200,000 for each site
 20 to be remediated.

21 “(2) LOANS AND GRANTS PROVIDED BY ELIGI-
 22 BLE ENTITIES.—An eligible entity that receives a
 23 grant under paragraph (1)(A) shall use the grant
 24 funds to provide assistance for the remediation of
 25 brownfield sites in the form of—

1 “(A) 1 or more loans to an eligible entity,
2 a site owner, a site developer, or another per-
3 son; or

4 “(B) 1 or more grants to an eligible entity
5 or other nonprofit organization, where war-
6 ranted, as determined by the eligible entity that
7 is providing the assistance, based on consider-
8 ations under paragraph (3), to remediate sites
9 owned by the eligible entity or nonprofit organi-
10 zation that receives the grant.

11 “(3) CONSIDERATIONS.—In determining wheth-
12 er a grant under paragraph (1)(B) or (2)(B) is war-
13 ranted, the President or the eligible entity, as the
14 case may be, shall take into consideration—

15 “(A) the extent to which a grant will facili-
16 tate the creation of, preservation of, or addition
17 to a park, a greenway, undeveloped property,
18 recreational property, or other property used
19 for nonprofit purposes;

20 “(B) the extent to which a grant will meet
21 the needs of a community that has an inability
22 to draw on other sources of funding for environ-
23 mental remediation and subsequent redevelop-
24 ment of the area in which a brownfield site is

1 located because of the small population or low
2 income of the community;

3 “(C) the extent to which a grant will facili-
4 tate the use or reuse of existing infrastructure;

5 “(D) the benefit of promoting the long-
6 term availability of funds from a revolving loan
7 fund for brownfield remediation; and

8 “(E) such other similar factors as the Ad-
9 ministrator considers appropriate to consider
10 for the purposes of this section.

11 “(4) TRANSITION.—Revolving loan funds that
12 have been established before the date of enactment
13 of this section may be used in accordance with this
14 subsection.

15 “(d) GENERAL PROVISIONS.—

16 “(1) MAXIMUM GRANT AMOUNT.—

17 “(A) BROWNFIELD SITE CHARACTERIZA-
18 TION AND ASSESSMENT.—

19 “(i) IN GENERAL.—A grant under
20 subsection (b)—

21 “(I) may be awarded to an eligi-
22 ble entity on a community-wide or
23 site-by-site basis; and

1 “(II) shall not exceed, for any in-
2 dividual brownfield site covered by the
3 grant, \$200,000.

4 “(ii) WAIVER.—The Administrator
5 may waive the \$200,000 limitation under
6 clause (i)(II) to permit the brownfield site
7 to receive a grant of not to exceed
8 \$350,000, based on the anticipated level of
9 contamination, size, or status of ownership
10 of the site.

11 “(B) BROWNFIELD REMEDIATION.—

12 “(i) GRANT AMOUNT.—A grant under
13 subsection (c)(1)(A) may be awarded to an
14 eligible entity on a community-wide or site-
15 by-site basis, not to exceed \$1,000,000 per
16 eligible entity.

17 “(ii) ADDITIONAL GRANT AMOUNT.—
18 The Administrator may make an additional
19 grant to an eligible entity described in
20 clause (i) for any year after the year for
21 which the initial grant is made, taking into
22 consideration—

23 “(I) the number of sites and
24 number of communities that are ad-
25 dressed by the revolving loan fund;

1 “(II) the demand for funding by
2 eligible entities that have not pre-
3 viously received a grant under this
4 section;

5 “(III) the demonstrated ability of
6 the eligible entity to use the revolving
7 loan fund to enhance remediation and
8 provide funds on a continuing basis;
9 and

10 “(IV) such other similar factors
11 as the Administrator considers appro-
12 priate to carry out this section.

13 “(2) PROHIBITION.—

14 “(A) IN GENERAL.—No part of a grant or
15 loan under this section may be used for the
16 payment of—

17 “(i) a penalty or fine;

18 “(ii) a Federal cost-share require-
19 ment;

20 “(iii) an administrative cost;

21 “(iv) a response cost at a brownfield
22 site for which the recipient of the grant or
23 loan is potentially liable under section 107;
24 or

1 “(v) a cost of compliance with any
2 Federal law (including a Federal law speci-
3 fied in section 101(39)(B)), excluding the
4 cost of compliance with laws applicable to
5 the cleanup.

6 “(B) EXCLUSIONS.—For the purposes of
7 subparagraph (A)(iii), the term ‘administrative
8 cost’ does not include the cost of—

9 “(i) investigation and identification of
10 the extent of contamination;

11 “(ii) design and performance of a re-
12 sponse action; or

13 “(iii) monitoring of a natural re-
14 source.

15 “(3) ASSISTANCE FOR DEVELOPMENT OF
16 LOCAL GOVERNMENT SITE REMEDIATION PRO-
17 GRAMS.—A local government that receives a grant
18 under this section may use not to exceed 10 percent
19 of the grant funds to develop and implement a
20 brownfields program that may include—

21 “(A) monitoring the health of populations
22 exposed to 1 or more hazardous substances
23 from a brownfield site; and

24 “(B) monitoring and enforcement of any
25 institutional control used to prevent human ex-

1 posure to any hazardous substance from a
2 brownfield site.

3 “(4) INSURANCE.—A recipient of a grant or
4 loan awarded under subsection (b) or (c) that per-
5 forms a characterization, assessment, or remediation
6 of a brownfield site may use a portion of the grant
7 or loan to purchase insurance for the characteriza-
8 tion, assessment, or remediation of that site.

9 “(e) GRANT APPLICATIONS.—

10 “(1) SUBMISSION.—

11 “(A) IN GENERAL.—

12 “(i) APPLICATION.—An eligible entity
13 may submit to the Administrator, through
14 a regional office of the Environmental Pro-
15 tection Agency and in such form as the
16 Administrator may require, an application
17 for a grant under this section for 1 or
18 more brownfield sites (including informa-
19 tion on the criteria used by the Adminis-
20 trator to rank applications under para-
21 graph (3), to the extent that the informa-
22 tion is available).

23 “(ii) NCP REQUIREMENTS.—The Ad-
24 ministrator may include in any require-
25 ment for submission of an application

1 under clause (i) a requirement of the Na-
2 tional Contingency Plan only to the extent
3 that the requirement is relevant and appro-
4 priate to the program under this section.

5 “(B) COORDINATION.—The Administrator
6 shall coordinate with other Federal agencies to
7 assist in making eligible entities aware of other
8 available Federal resources.

9 “(C) GUIDANCE.—The Administrator shall
10 publish guidance to assist eligible entities in ap-
11 plying for grants under this section.

12 “(2) APPROVAL.—The Administrator shall—

13 “(A) at least annually, complete a review
14 of applications for grants that are received from
15 eligible entities under this section; and

16 “(B) award grants under this section to el-
17 igible entities that the Administrator deter-
18 mines have the highest rankings under the
19 ranking criteria established under paragraph
20 (3).

21 “(3) RANKING CRITERIA.—The Administrator
22 shall establish a system for ranking grant applica-
23 tions received under this subsection that includes the
24 following criteria:

1 “(A) The extent to which a grant will stim-
2 ulate the availability of other funds for environ-
3 mental assessment or remediation, and subse-
4 quent reuse, of an area in which 1 or more
5 brownfield sites are located.

6 “(B) The potential of the proposed project
7 or the development plan for an area in which 1
8 or more brownfield sites are located to stimu-
9 late economic development of the area on com-
10 pletion of the cleanup.

11 “(C) The extent to which a grant would
12 address or facilitate the identification and re-
13 duction of threats to human health and the en-
14 vironment, including threats in areas in which
15 there is a greater-than-normal incidence of dis-
16 eases or conditions (including cancer, asthma,
17 or birth defects) that may be associated with
18 exposure to hazardous substances, pollutants,
19 or contaminants.

20 “(D) The extent to which a grant would
21 facilitate the use or reuse of existing infrastruc-
22 ture.

23 “(E) The extent to which a grant would
24 facilitate the creation of, preservation of, or ad-
25 dition to a park, a greenway, undeveloped prop-

erty, recreational property, or other property
used for nonprofit purposes.

“(F) The extent to which a grant would
meet the needs of a community that has an in-
ability to draw on other sources of funding for
environmental remediation and subsequent re-
development of the area in which a brownfield
site is located because of the small population
or low income of the community.

“(G) The extent to which the applicant is
eligible for funding from other sources.

“(H) The extent to which a grant will fur-
ther the fair distribution of funding between
urban and nonurban areas.

“(I) The extent to which the grant pro-
vides for involvement of the local community in
the process of making decisions relating to
cleanup and future use of a brownfield site.

“(J) The extent to which a grant would
address or facilitate the identification and re-
duction of threats to the health or welfare of
children, pregnant women, minority or low-in-
come communities, or other sensitive popu-
lations.

1 “(f) IMPLEMENTATION OF BROWNFIELDS PRO-
2 GRAMS.—

3 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
4 ministrator may provide, or fund eligible entities or
5 nonprofit organizations to provide, training, re-
6 search, and technical assistance to individuals and
7 organizations, as appropriate, to facilitate the inven-
8 tory of brownfield sites, site assessments, remedi-
9 ation of brownfield sites, community involvement, or
10 site preparation.

11 “(2) FUNDING RESTRICTIONS.—The total Fed-
12 eral funds to be expended by the Administrator
13 under this subsection shall not exceed 15 percent of
14 the total amount appropriated to carry out this sec-
15 tion in any fiscal year.

16 “(g) AUDITS.—

17 “(1) IN GENERAL.—The Inspector General of
18 the Environmental Protection Agency shall conduct
19 such reviews or audits of grants and loans under
20 this section as the Inspector General considers nec-
21 essary to carry out this section.

22 “(2) PROCEDURE.—An audit under this para-
23 graph shall be conducted in accordance with the au-
24 diting procedures of the General Accounting Office,
25 including chapter 75 of title 31, United States Code.

1 “(3) VIOLATIONS.—If the Administrator deter-
2 mines that a person that receives a grant or loan
3 under this section has violated or is in violation of
4 a condition of the grant, loan, or applicable Federal
5 law, the Administrator may—

6 “(A) terminate the grant or loan;

7 “(B) require the person to repay any funds
8 received; and

9 “(C) seek any other legal remedies avail-
10 able to the Administrator.

11 “(4) REPORT TO CONGRESS.—Not later than 3
12 years after the date of enactment of this section, the
13 Inspector General of the Environmental Protection
14 Agency shall submit to Congress a report that pro-
15 vides a description of the management of the pro-
16 gram (including a description of the allocation of
17 funds under this section).

18 “(h) LEVERAGING.—An eligible entity that receives
19 a grant under this section may use the grant funds for
20 a portion of a project at a brownfield site for which fund-
21 ing is received from other sources if the grant funds are
22 used only for the purposes described in subsection (b) or
23 (c).

24 “(i) AGREEMENTS.—Each grant or loan made under
25 this section shall—

1 “(1) include a requirement of the National Con-
2 tingency Plan only to the extent that the require-
3 ment is relevant and appropriate to the program
4 under this section, as determined by the Adminis-
5 trator; and

6 “(2) be subject to an agreement that—

7 “(A) requires the recipient to—

8 “(i) comply with all applicable Federal
9 and State laws; and

10 “(ii) ensure that the cleanup protects
11 human health and the environment;

12 “(B) requires that the recipient use the
13 grant or loan exclusively for purposes specified
14 in subsection (b) or (c), as applicable;

15 “(C) in the case of an application by an el-
16 igible entity under subsection (c)(1), requires
17 the eligible entity to pay a matching share
18 (which may be in the form of a contribution of
19 labor, material, or services) of at least 20 per-
20 cent, from non-Federal sources of funding, un-
21 less the Administrator determines that the
22 matching share would place an undue hardship
23 on the eligible entity; and

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

4 “(j) FACILITY OTHER THAN BROWNFIELD SITE.—
5 The fact that a facility may not be a brownfield site within
6 the meaning of section 101(39)(A) has no effect on the
7 eligibility of the facility for assistance under any other pro-
8 vision of Federal law.

9 “(k) EFFECT ON FEDERAL LAWS.—Nothing in this
10 section affects any liability or response authority under
11 any Federal law, including—

12 “(1) this Act (including the last sentence of sec-
13 tion 101(14));

14 “(2) the Solid Waste Disposal Act (42 U.S.C.
15 6901 et seq.);

16 “(3) the Federal Water Pollution Control Act
17 (33 U.S.C. 1251 et seq.);

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

20 “(5) the Safe Drinking Water Act (42 U.S.C.
21 300f et seq.).

22 “(l) FUNDING.—

23 “(1) AUTHORIZATION OF APPROPRIATIONS.—
24 There is authorized to be appropriated to carry out

1 this section \$200,000,000 for each of fiscal years
2 2002 through 2006.

3 “(2) USE OF CERTAIN FUNDS.—Of the amount
4 made available under paragraph (1), \$50,000,000,
5 or, if the amount made available is less than
6 \$200,000,000, 25 percent of the amount made avail-
7 able, shall be used for site characterization, assess-
8 ment, and remediation of facilities described in sec-
9 tion 101(39)(D)(ii)(II).”.

10 **TITLE II—BROWNFIELDS** 11 **LIABILITY CLARIFICATIONS**

12 **SEC. 201. CONTIGUOUS PROPERTIES.**

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

17 “(o) CONTIGUOUS PROPERTIES.—

18 “(1) NOT CONSIDERED TO BE AN OWNER OR
19 OPERATOR.—

20 “(A) IN GENERAL.—A person that owns
21 real property that is contiguous to or otherwise
22 similarly situated with respect to, and that is or
23 may be contaminated by a release or threatened
24 release of a hazardous substance from, real
25 property that is not owned by that person shall

1 not be considered to be an owner or operator of
2 a vessel or facility under paragraph (1) or (2)
3 of subsection (a) solely by reason of the con-
4 tamination if—

5 “(i) the person did not cause, con-
6 tribute, or consent to the release or threat-
7 ened release;

8 “(ii) the person is not—

9 “(I) potentially liable, or affili-
10 ated with any other person that is po-
11 tentially liable, for response costs at a
12 facility through any direct or indirect
13 familial relationship or any contrac-
14 tual, corporate, or financial relation-
15 ship (other than a contractual, cor-
16 porate, or financial relationship that
17 is created by a contract for the sale of
18 goods or services); or

19 “(II) the result of a reorganiza-
20 tion of a business entity that was po-
21 tentially liable;

22 “(iii) the person takes reasonable
23 steps to—

24 “(I) stop any continuing release;

1 “(II) prevent any threatened fu-
2 ture release; and

3 “(III) prevent or limit human,
4 environmental, or natural resource ex-
5 posure to any hazardous substance re-
6 leased on or from property owned by
7 that person;

8 “(iv) the person provides full coopera-
9 tion, assistance, and access to persons that
10 are authorized to conduct response actions
11 or natural resource restoration at the ves-
12 sel or facility from which there has been a
13 release or threatened release (including the
14 cooperation and access necessary for the
15 installation, integrity, operation, and main-
16 tenance of any complete or partial re-
17 sponse action or natural resource restora-
18 tion at the vessel or facility);

19 “(v) the person—

20 “(I) is in compliance with any
21 land use restrictions established or re-
22 lied on in connection with the re-
23 sponse action at the facility; and

24 “(II) does not impede the effec-
25 tiveness or integrity of any institu-

1 tional control employed in connection
2 with a response action;

3 “(vi) the person is in compliance with
4 any request for information or administra-
5 tive subpoena issued by the President
6 under this Act;

7 “(vii) the person provides all legally
8 required notices with respect to the dis-
9 covery or release of any hazardous sub-
10 stances at the facility; and

11 “(viii) at the time at which the person
12 acquired the property, the person—

13 “(I) conducted all appropriate in-
14 quiry within the meaning of section
15 101(35)(B) with respect to the prop-
16 erty; and

17 “(II) did not know or have rea-
18 son to know that the property was or
19 could be contaminated by a release or
20 threatened release of 1 or more haz-
21 ardous substances from other real
22 property not owned or operated by the
23 person.

24 “(B) DEMONSTRATION.—To qualify as a
25 person described in subparagraph (A), a person

1 must establish by a preponderance of the evi-
2 dence that the conditions in clauses (i) through
3 (viii) of subparagraph (A) have been met.

4 “(C) BONA FIDE PROSPECTIVE PUR-
5 CHASER.—Any person that does not qualify as
6 a person described in this paragraph because
7 the person had, or had reason to have, knowl-
8 edge specified in subparagraph (A)(viii) at the
9 time of acquisition of the real property may
10 qualify as a bona fide prospective purchaser
11 under section 101(40) if the person is otherwise
12 described in that section.

13 “(D) GROUND WATER.—With respect to a
14 hazardous substance from 1 or more sources
15 that are not on the property of a person that
16 is a contiguous property owner that enters
17 ground water beneath the property of the per-
18 son solely as a result of subsurface migration in
19 an aquifer, subparagraph (A)(iii) shall not re-
20 quire the person to conduct ground water inves-
21 tigation or to install ground water remediation
22 systems, except in accordance with the policy of
23 the Environmental Protection Agency con-
24 cerning owners of property containing contami-
25 nated aquifers, dated May 24, 1995.

1 “(2) EFFECT OF LAW.—With respect to a per-
 2 son described in this subsection, nothing in this
 3 subsection—

4 “(A) limits any defense to liability that
 5 may be available to the person under any other
 6 provision of law; or

7 “(B) imposes liability on the person that is
 8 not otherwise imposed by subsection (a).

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

10 “(A) issue an assurance that no enforce-
 11 ment action under this Act will be initiated
 12 against a person described in paragraph (1);
 13 and

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

17 **SEC. 202. PROSPECTIVE PURCHASERS AND WINDFALL**
 18 **LIENS.**

19 (a) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
 20 CHASER.—Section 101 of the Comprehensive Environ-
 21 mental Response, Compensation, and Liability Act of
 22 1980 (42 U.S.C. 9601) (as amended by section 101(a))
 23 is amended by adding at the end the following:

24 “(40) BONA FIDE PROSPECTIVE PURCHASER.—

25 The term ‘bona fide prospective purchaser’ means a

1 person (or a tenant of a person) that acquires own-
 2 ership of a facility after the date of enactment of
 3 this paragraph and that establishes each of the fol-
 4 lowing by a preponderance of the evidence:

5 “(A) DISPOSAL PRIOR TO ACQUISITION.—

6 All disposal of hazardous substances at the fa-
 7 cility occurred before the person acquired the
 8 facility.

9 “(B) INQUIRIES.—

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

17 “(ii) STANDARDS AND PRACTICES.—

18 The standards and practices referred to in
 19 clauses (ii) and (iv) of paragraph (35)(B)
 20 shall be considered to satisfy the require-
 21 ments of this subparagraph.

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

23 of property in residential or other similar
 24 use at the time of purchase by a non-
 25 governmental or noncommercial entity, a

1 facility inspection and title search that re-
2 veal no basis for further investigation shall
3 be considered to satisfy the requirements
4 of this subparagraph.

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

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

13 “(i) stop any continuing release;

14 “(ii) prevent any threatened future re-
15 lease; and

16 “(iii) prevent or limit human, environ-
17 mental, or natural resource exposure to
18 any previously released hazardous sub-
19 stance.

20 “(E) COOPERATION, ASSISTANCE, AND AC-
21 CESS.—The person provides full cooperation,
22 assistance, and access to persons that are au-
23 thorized to conduct response actions or natural
24 resource restoration at a vessel or facility (in-
25 cluding the cooperation and access necessary

1 for the installation, integrity, operation, and
2 maintenance of any complete or partial re-
3 sponse actions or natural resource restoration
4 at the vessel or facility).

5 “(F) INSTITUTIONAL CONTROL.—The
6 person—

7 “(i) is in compliance with any land
8 use restrictions established or relied on in
9 connection with the response action at a
10 vessel or facility; and

11 “(ii) does not impede the effectiveness
12 or integrity of any institutional control em-
13 ployed at the vessel or facility in connec-
14 tion with a response action.

15 “(G) REQUESTS; SUBPOENAS.—The person
16 complies with any request for information or
17 administrative subpoena issued by the President
18 under this Act.

19 “(H) NO AFFILIATION.—The person is
20 not—

21 “(i) potentially liable, or affiliated
22 with any other person that is potentially
23 liable, for response costs at a facility
24 through—

1 “(I) any direct or indirect famil-
2 ial relationship; or

3 “(II) any contractual, corporate,
4 or financial relationship (other than a
5 contractual, corporate, or financial re-
6 lationship that is created by the in-
7 struments by which title to the facility
8 is conveyed or financed or by a con-
9 tract for the sale of goods or services);
10 or

11 “(ii) the result of a reorganization of
12 a business entity that was potentially lia-
13 ble.”.

14 (b) PROSPECTIVE PURCHASER AND WINDFALL
15 LIEN.—Section 107 of the Comprehensive Environmental
16 Response, Compensation, and Liability Act of 1980 (42
17 U.S.C. 9607) (as amended by section 201) is amended by
18 adding at the end the following:

19 “(p) PROSPECTIVE PURCHASER AND WINDFALL
20 LIEN.—

21 “(1) LIMITATION ON LIABILITY.—Notwith-
22 standing subsection (a)(1), a bona fide prospective
23 purchaser whose potential liability for a release or
24 threatened release is based solely on the purchaser’s
25 being considered to be an owner or operator of a fa-

1 cility shall not be liable as long as the bona fide pro-
2 spective purchaser does not impede the performance
3 of a response action or natural resource restoration.

4 “(2) LIEN.—If there are unrecovered response
5 costs incurred by the United States at a facility for
6 which an owner of the facility is not liable by reason
7 of paragraph (1), and if each of the conditions de-
8 scribed in paragraph (3) is met, the United States
9 shall have a lien on the facility, or may by agree-
10 ment with the owner, obtain from the owner a lien
11 on any other property or other assurance of payment
12 satisfactory to the Administrator, for the unre-
13 covered response costs.

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

16 “(A) RESPONSE ACTION.—A response ac-
17 tion for which there are unrecovered costs of
18 the United States is carried out at the facility.

19 “(B) FAIR MARKET VALUE.—The response
20 action increases the fair market value of the fa-
21 cility above the fair market value of the facility
22 that existed before the response action was ini-
23 tiated.

24 “(4) AMOUNT; DURATION.—A lien under para-
25 graph (2)—

1 “(A) shall be in an amount not to exceed
 2 the increase in fair market value of the prop-
 3 erty attributable to the response action at the
 4 time of a sale or other disposition of the prop-
 5 erty;

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

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

11 “(D) shall continue until the earlier of—

12 “(i) satisfaction of the lien by sale or
 13 other means; or

14 “(ii) notwithstanding any statute of
 15 limitations under section 113, recovery of
 16 all response costs incurred at the facility.”.

17 **SEC. 203. INNOCENT LANDOWNERS.**

18 Section 101(35) of the Comprehensive Environmental
 19 Response, Compensation, and Liability Act of 1980 (42
 20 U.S.C. 9601(35)) is amended—

21 (1) in subparagraph (A)—

22 (A) in the first sentence, in the matter pre-
 23 ceding clause (i), by striking “deeds or” and in-
 24 serting “deeds, easements, leases, or”; and

25 (B) in the second sentence—

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

3 (ii) by striking the period at the end
4 and inserting “, provides full cooperation,
5 assistance, and facility access to the per-
6 sons that are authorized to conduct re-
7 sponse actions at the facility (including the
8 cooperation and access necessary for the
9 installation, integrity, operation, and main-
10 tenance of any complete or partial re-
11 sponse action at the facility), is in compli-
12 ance with any land use restrictions estab-
13 lished or relied on in connection with the
14 response action at a facility, and does not
15 impede the effectiveness or integrity of any
16 institutional control employed at the facil-
17 ity in connection with a response action.”;
18 and

19 (2) by striking subparagraph (B) and inserting
20 the following:

21 “(B) REASON TO KNOW.—

22 “(i) ALL APPROPRIATE INQUIRIES.—
23 To establish that the defendant had no
24 reason to know of the matter described in

1 subparagraph (A)(i), the defendant must
2 demonstrate to a court that—

3 “(I) on or before the date on
4 which the defendant acquired the fa-
5 cility, the defendant carried out all
6 appropriate inquiries, as provided in
7 clauses (ii) and (iv), into the previous
8 ownership and uses of the facility in
9 accordance with generally accepted
10 good commercial and customary
11 standards and practices; and

12 “(II) the defendant took reason-
13 able steps to—

14 “(aa) stop any continuing
15 release;

16 “(bb) prevent any threat-
17 ened future release; and

18 “(cc) prevent or limit any
19 human, environmental, or natural
20 resource exposure to any pre-
21 viously released hazardous sub-
22 stance.

23 “(ii) STANDARDS AND PRACTICES.—
24 Not later than 2 years after the date of en-
25 actment of the Brownfields Revitalization

1 and Environmental Restoration Act of
2 2001, the Administrator shall by regula-
3 tion establish standards and practices for
4 the purpose of satisfying the requirement
5 to carry out all appropriate inquiries under
6 clause (i).

7 “(iii) CRITERIA.—In promulgating
8 regulations that establish the standards
9 and practices referred to in clause (ii), the
10 Administrator shall include each of the fol-
11 lowing:

12 “(I) The results of an inquiry by
13 an environmental professional.

14 “(II) Interviews with past and
15 present owners, operators, and occu-
16 pants of the facility for the purpose of
17 gathering information regarding the
18 potential for contamination at the fa-
19 cility.

20 “(III) Reviews of historical
21 sources, such as chain of title docu-
22 ments, aerial photographs, building
23 department records, and land use
24 records, to determine previous uses

1 and occupancies of the real property
2 since the property was first developed.

3 “(IV) Searches for recorded envi-
4 ronmental cleanup liens against the
5 facility that are filed under Federal,
6 State, or local law.

7 “(V) Reviews of Federal, State,
8 and local government records, waste
9 disposal records, underground storage
10 tank records, and hazardous waste
11 handling, generation, treatment, dis-
12 posal, and spill records, concerning
13 contamination at or near the facility.

14 “(VI) Visual inspections of the
15 facility and of adjoining properties.

16 “(VII) Specialized knowledge or
17 experience on the part of the defend-
18 ant.

19 “(VIII) The relationship of the
20 purchase price to the value of the
21 property, if the property was not con-
22 taminated.

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

1 “(X) The degree of obviousness
2 of the presence or likely presence of
3 contamination at the property, and
4 the ability to detect the contamination
5 by appropriate investigation.

6 “(iv) INTERIM STANDARDS AND PRAC-
7 TICES.—

8 “(I) PROPERTY PURCHASED BE-
9 FORE MAY 31, 1997.—With respect to
10 property purchased before May 31,
11 1997, in making a determination with
12 respect to a defendant described of
13 clause (i), a court shall take into
14 account—

15 “(aa) any specialized knowl-
16 edge or experience on the part of
17 the defendant;

18 “(bb) the relationship of the
19 purchase price to the value of the
20 property, if the property was not
21 contaminated;

22 “(cc) commonly known or
23 reasonably ascertainable informa-
24 tion about the property;

1 “(dd) the obviousness of the
2 presence or likely presence of
3 contamination at the property;
4 and

5 “(ee) the ability of the de-
6 fendant to detect the contamina-
7 tion by appropriate inspection.

8 “(II) PROPERTY PURCHASED ON
9 OR AFTER MAY 31, 1997.—With re-
10 spect to property purchased on or
11 after May 31, 1997, and until the Ad-
12 ministrator promulgates the regula-
13 tions described in clause (ii), the pro-
14 cedures of the American Society for
15 Testing and Materials, including the
16 document known as ‘Standard
17 E1527–97’, entitled ‘Standard Prac-
18 tice for Environmental Site Assess-
19 ment: Phase 1 Environmental Site
20 Assessment Process’, shall satisfy the
21 requirements in clause (i).

22 “(v) SITE INSPECTION AND TITLE
23 SEARCH.—In the case of property for resi-
24 dential use or other similar use purchased
25 by a nongovernmental or noncommercial

entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.”.

TITLE III—STATE RESPONSE PROGRAMS

SEC. 301. STATE RESPONSE PROGRAMS.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 202) is amended by adding at the end the following:

“(41) ELIGIBLE RESPONSE SITE.—

“(A) IN GENERAL.—The term ‘eligible response site’ means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

“(B) INCLUSIONS.—The term ‘eligible response site’ includes—

“(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion 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 Under-

1 ground Storage Tank Trust Fund estab-
2 lished under section 9508 of the Internal
3 Revenue Code of 1986; or

4 “(ii) a site for which, notwithstanding
5 the exclusions provided in subparagraph
6 (C) or paragraph (39)(B), the President
7 determines, on a site-by-site basis and
8 after consultation with the State, that limi-
9 tations on enforcement under section 129
10 at sites specified in clause (iv), (v), (vi) or
11 (viii) of paragraph (39)(B) would be ap-
12 propriate and will—

13 “(I) protect human health and
14 the environment; and

15 “(II) promote economic develop-
16 ment or facilitate the creation of,
17 preservation of, or addition to a park,
18 a greenway, undeveloped property,
19 recreational property, or other prop-
20 erty used for nonprofit purposes.

21 “(C) EXCLUSIONS.—The term ‘eligible re-
22 sponse site’ does not include—

23 “(i) a facility for which the
24 President—

1 “(I) conducts or has conducted a
2 preliminary assessment or site inspec-
3 tion; and

4 “(II) after consultation with the
5 State, determines or has determined
6 that the site obtains a preliminary
7 score sufficient for possible listing on
8 the National Priorities List, or that
9 the site otherwise qualifies for listing
10 on the National Priorities List;

11 unless the President has made a deter-
12 mination that no further Federal action
13 will be taken; or

14 “(ii) facilities that the President de-
15 termines warrant particular consideration
16 as identified by regulation, such as sites
17 posing a threat to a sole-source drinking
18 water aquifer or a sensitive ecosystem.”.

19 (b) STATE RESPONSE PROGRAMS.—Title I of the
20 Comprehensive Environmental Response, Compensation,
21 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as
22 amended by section 101(b)) is amended by adding at the
23 end the following:

24 **“SEC. 129. STATE RESPONSE PROGRAMS.**

25 **“(a) ASSISTANCE TO STATES.—**

1 “(1) IN GENERAL.—

2 “(A) STATES.—The Administrator may
3 award a grant to a State or Indian tribe that—

4 “(i) has a response program that in-
5 cludes each of the elements, or is taking
6 reasonable steps to include each of the ele-
7 ments, listed in paragraph (2); or

8 “(ii) is a party to a memorandum of
9 agreement with the Administrator for vol-
10 untary response programs.

11 “(B) USE OF GRANTS BY STATES.—

12 “(i) IN GENERAL.—A State or Indian
13 tribe may use a grant under this sub-
14 section to establish or enhance the re-
15 sponse program of the State or Indian
16 tribe.

17 “(ii) ADDITIONAL USES.—In addition
18 to the uses under clause (i), a State or In-
19 dian tribe may use a grant under this sub-
20 section to—

21 “(I) capitalize a revolving loan
22 fund for brownfield remediation under
23 section 128(c); or

24 “(II) purchase insurance or de-
25 velop a risk sharing pool, an indem-

1 nity pool, or insurance mechanism to
2 provide financing for response actions
3 under a State response program.

4 “(2) ELEMENTS.—The elements of a State or
5 Indian tribe response program referred to in para-
6 graph (1)(A)(i) are the following:

7 “(A) Timely survey and inventory of
8 brownfield sites in the State.

9 “(B) Oversight and enforcement authori-
10 ties or other mechanisms, and resources, that
11 are adequate to ensure that—

12 “(i) a response action will—

13 “(I) protect human health and
14 the environment; and

15 “(II) be conducted in accordance
16 with applicable Federal and State law;
17 and

18 “(ii) if the person conducting the re-
19 sponse action fails to complete the nec-
20 essary response activities, including oper-
21 ation and maintenance or long-term moni-
22 toring activities, the necessary response ac-
23 tivities are completed.

1 “(C) Mechanisms and resources to provide
2 meaningful opportunities for public participa-
3 tion, including—

4 “(i) public access to documents that
5 the State, Indian tribe, or party con-
6 ducting the cleanup is relying on or devel-
7 oping in making cleanup decisions or con-
8 ducting site activities;

9 “(ii) prior notice and opportunity for
10 comment on proposed cleanup plans and
11 site activities; and

12 “(iii) a mechanism by which—

13 “(I) a person that is or may be
14 affected by a release or threatened re-
15 lease of a hazardous substance, pollut-
16 ant, or contaminant at a brownfield
17 site located in the community in which
18 the person works or resides may re-
19 quest the conduct of a site assess-
20 ment; and

21 “(II) an appropriate State offi-
22 cial shall consider and appropriately
23 respond to a request under subclause
24 (I).

1 “(D) Mechanisms for approval of a clean-
 2 up plan, and a requirement for verification by
 3 and certification or similar documentation from
 4 the State, an Indian tribe, or a licensed site
 5 professional to the person conducting a re-
 6 sponse action indicating that the response is
 7 complete.

8 “(3) FUNDING.—There is authorized to be ap-
 9 propriated to carry out this subsection \$50,000,000
 10 for each of fiscal years 2002 through 2006.

11 “(b) ENFORCEMENT IN CASES OF A RELEASE SUB-
 12 JECT TO STATE PROGRAM.—

13 “(1) ENFORCEMENT.—

14 “(A) IN GENERAL.— Except as provided in
 15 subparagraph (B) and subject to subparagraph
 16 (C), in the case of an eligible response site at
 17 which—

18 “(i) there is a release or threatened
 19 release of a hazardous substance, pollut-
 20 ant, or contaminant; and

21 “(ii) a person is conducting or has
 22 completed a response action regarding the
 23 specific release that is addressed by the re-
 24 sponse action that is in compliance with
 25 the State program that specifically governs

1 response actions for the protection of pub-
2 lic health and the environment;
3 the President may not use authority under this
4 Act to take an administrative or judicial en-
5 forcement action under section 106(a) or to
6 take a judicial enforcement action to recover re-
7 sponse costs under section 107(a) against the
8 person regarding the specific release that is ad-
9 dressed by the response action.

10 “(B) EXCEPTIONS.—The President may
11 bring an administrative or judicial enforcement
12 action under this Act during or after completion
13 of a response action described in subparagraph
14 (A) with respect to a release or threatened re-
15 lease at an eligible response site described in
16 that subparagraph if—

17 “(i) the State requests that the Presi-
18 dent provide assistance in the performance
19 of a response action;

20 “(ii) the Administrator determines
21 that contamination has migrated or will
22 migrate across a State line, resulting in
23 the need for further response action to
24 protect human health or the environment,
25 or the President determines that contami-

1 nation has migrated or is likely to migrate
2 onto property subject to the jurisdiction,
3 custody, or control of a department, agen-
4 cy, or instrumentality of the United States
5 and may impact the authorized purposes of
6 the Federal property;

7 “(iii) after taking into consideration
8 the response activities already taken, the
9 Administrator determines that—

10 “(I) a release or threatened re-
11 lease may present an imminent and
12 substantial endangerment to public
13 health or welfare or the environment;
14 and

15 “(II) additional response actions
16 are likely to be necessary to address,
17 prevent, limit, or mitigate the release
18 or threatened release; or

19 “(iv) the Administrator, after con-
20 sultation with the State, determines that
21 information, that on the earlier of the date
22 on which cleanup was approved or com-
23 pleted, was not known by the State, as re-
24 corded in documents prepared or relied on
25 in selecting or conducting the cleanup, has

1 been discovered regarding the contamina-
2 tion or conditions at a facility such that
3 the contamination or conditions at the fa-
4 cility present a threat requiring further re-
5 mediation to protect public health or wel-
6 fare or the environment. Consultation with
7 the State shall not limit the ability of the
8 Administrator to make this determination.

9 “(C) PUBLIC RECORD.—The limitations on
10 the authority of the President under subpara-
11 graph (A) apply only at sites in States that
12 maintain, update not less than annually, and
13 make available to the public a record of sites,
14 by name and location, at which response actions
15 have been completed in the previous year and
16 are planned to be addressed under the State
17 program that specifically governs response ac-
18 tions for the protection of public health and the
19 environment in the upcoming year. The public
20 record shall identify whether or not the site, on
21 completion of the response action, will be suit-
22 able for unrestricted use and, if not, shall iden-
23 tify the institutional controls relied on in the
24 remedy. Each State and tribe receiving finan-
25 cial assistance under subsection (a) shall main-

tain and make available to the public a record of sites as provided in this paragraph.

“(D) EPA NOTIFICATION.—

“(i) IN GENERAL.—In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

“(I) notify the State of the action the Administrator intends to take; and

“(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

“(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

“(ii) STATE REPLY.—Not later than 48 hours after a State receives notice from

1 the Administrator under clause (i), the
2 State shall notify the Administrator if—

3 “(I) the release at the eligible re-
4 sponse site is or has been subject to
5 a cleanup conducted under a State
6 program; and

7 “(II) the State is planning to
8 abate the release or threatened re-
9 lease, any actions that are planned.

10 “(iii) IMMEDIATE FEDERAL ACTION.—
11 The Administrator may take action imme-
12 diately after giving notification under
13 clause (i) without waiting for a State reply
14 under clause (ii) if the Administrator de-
15 termines that 1 or more exceptions under
16 subparagraph (B) are met.

17 “(E) REPORT TO CONGRESS.—Not later
18 than 90 days after the date of initiation of any
19 enforcement action by the President under
20 clause (ii), (iii), or (iv) of subparagraph (B),
21 the President shall submit to Congress a report
22 describing the basis for the enforcement action,
23 including specific references to the facts dem-
24 onstrating that enforcement action is permitted
25 under subparagraph (B).

1 “(2) SAVINGS PROVISION.—

2 “(A) COSTS INCURRED PRIOR TO LIMITA-
3 TIONS.—Nothing in paragraph (1) precludes
4 the President from seeking to recover costs in-
5 curred prior to the date of enactment of this
6 section or during a period in which the limita-
7 tions of paragraph (1)(A) were not applicable.

8 “(B) EFFECT ON AGREEMENTS BETWEEN
9 STATES AND EPA.—Nothing in paragraph (1)—

10 “(i) modifies or otherwise affects a
11 memorandum of agreement, memorandum
12 of understanding, or any similar agreement
13 relating to this Act between a State agency
14 or an Indian tribe and the Administrator
15 that is in effect on or before the date of
16 enactment of this section (which agreement
17 shall remain in effect, subject to the terms
18 of the agreement); or

19 “(ii) limits the discretionary authority
20 of the President to enter into or modify an
21 agreement with a State, an Indian tribe, or
22 any other person relating to the implemen-
23 tation by the President of statutory au-
24 thorities.

1 “(3) EFFECTIVE DATE.—This subsection ap-
 2 plies only to response actions conducted after Feb-
 3 ruary 15, 2001.

4 “(c) EFFECT ON FEDERAL LAWS.—Nothing in this
 5 section affects any liability or response authority under
 6 any Federal law, including—

7 “(1) this Act, except as provided in subsection
 8 (b);

9 “(2) the Solid Waste Disposal Act (42 U.S.C.
 10 6901 et seq.);

11 “(3) the Federal Water Pollution Control Act
 12 (33 U.S.C. 1251 et seq.);

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

15 “(5) the Safe Drinking Water Act (42 U.S.C.
 16 300f et seq.).”.

17 **SEC. 302. ADDITIONS TO NATIONAL PRIORITIES LIST.**

18 Section 105 of the Comprehensive Environmental Re-
 19 sponse, Compensation, and Liability Act of 1980 (42
 20 U.S.C. 9605) is amended by adding at the end the fol-
 21 lowing:

22 “(h) NPL DEFERRAL.—

23 “(1) DEFERRAL TO STATE VOLUNTARY CLEAN-
 24 UPS.—At the request of a State and subject to para-
 25 graphs (2) and (3), the President generally shall

1 defer final listing of an eligible response site on the
2 National Priorities List if the President determines
3 that—

4 “(A) the State, or another party under an
5 agreement with or order from the State, is con-
6 ducting a response action at the eligible re-
7 sponse site—

8 “(i) in compliance with a State pro-
9 gram that specifically governs response ac-
10 tions for the protection of public health
11 and the environment; and

12 “(ii) that will provide long-term pro-
13 tection of human health and the environ-
14 ment; or

15 “(B) the State is actively pursuing an
16 agreement to perform a response action de-
17 scribed in subparagraph (A) at the site with a
18 person that the State has reason to believe is
19 capable of conducting a response action that
20 meets the requirements of subparagraph (A).

21 “(2) PROGRESS TOWARD CLEANUP.—If, after
22 the last day of the 1-year period beginning on the
23 date on which the President proposes to list an eligi-
24 ble response site on the National Priorities List, the
25 President determines that the State or other party

1 is not making reasonable progress toward com-
2 pleting a response action at the eligible response
3 site, the President may list the eligible response site
4 on the National Priorities List.

5 “(3) CLEANUP AGREEMENTS.—With respect to
6 an eligible response site under paragraph (1)(B), if,
7 after the last day of the 1-year period beginning on
8 the date on which the President proposes to list the
9 eligible response site on the National Priorities List,
10 an agreement described in paragraph (1)(B) has not
11 been reached, the President may defer the listing of
12 the eligible response site on the National Priorities
13 List for an additional period of not to exceed 180
14 days if the President determines deferring the listing
15 would be appropriate based on—

16 “(A) the complexity of the site;

17 “(B) substantial progress made in negotia-
18 tions; and

19 “(C) other appropriate factors, as deter-
20 mined by the President.

21 “(4) EXCEPTIONS.—The President may decline
22 to defer, or elect to discontinue a deferral of, a list-
23 ing of an eligible response site on the National Pri-
24 orities List if the President determines that—

1 “(A) deferral would not be appropriate be-
2 cause the State, as an owner or operator or a
3 significant contributor of hazardous substances
4 to the facility, is a potentially responsible party;

5 “(B) the criteria under the National Con-
6 tingency Plan for issuance of a health advisory
7 have been met; or

8 “(C) the conditions in paragraphs (1)
9 through (3), as applicable, are no longer being
10 met.”.

Passed the Senate April 25, 2001.

Attest:

GARY SISCO,
Secretary.