

107TH CONGRESS
1ST SESSION

S. 350

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2001

Mr. CHAFEE (for himself, Mr. SMITH of New Hampshire, Mr. REID, Mrs. BOXER, Mr. WARNER, Mr. BAUCUS, Mr. SPECTER, Mr. GRAHAM, Mr. CAMPBELL, Mr. LIEBERMAN, Mr. GRASSLEY, Mr. CARPER, Mrs. CLINTON, Mr. CORZINE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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,*

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

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

5 (b) TABLE OF CONTENTS.—The table of contents of
6 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.

7 **TITLE I—BROWNFIELDS**
8 **REVITALIZATION FUNDING**

9 **SEC. 101. BROWNFIELDS REVITALIZATION FUNDING.**

10 (a) DEFINITION OF BROWNFIELD SITE.—Section
11 101 of the Comprehensive Environmental Response, Com-
12 pensation, and Liability Act of 1980 (42 U.S.C. 9601) is
13 amended by adding at the end the following:

14 “(39) BROWNFIELD SITE.—

15 “(A) IN GENERAL.—The term ‘brownfield
16 site’ means real property, the expansion, rede-
17 velopment, or reuse of which may be com-
18 plicated by the presence or potential presence of

1 a hazardous substance, pollutant, or contami-
2 nant.

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

5 “(i) a facility that is the subject of a
6 planned or ongoing removal action under
7 this title;

8 “(ii) a facility that is listed on the Na-
9 tional Priorities List or is proposed for
10 listing;

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

17 “(iv) a facility that is the subject of a
18 unilateral administrative order, a court
19 order, an administrative order on consent
20 or judicial consent decree that has been
21 issued to or entered into by the parties, or
22 a facility to which a permit has been issued
23 by the United States or an authorized
24 State under the Solid Waste Disposal Act
25 (42 U.S.C. 6901 et seq.), the Federal

1 Water Pollution Control Act (33 U.S.C.
2 1321), the Toxic Substances Control Act
3 (15 U.S.C. 2601 et seq.), or the Safe
4 Drinking Water Act (42 U.S.C. 300f et
5 seq.);

6 “(v) a facility that—

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

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

15 “(vi) a land disposal unit with respect
16 to which—

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

21 “(II) closure requirements have
22 been specified in a closure plan or
23 permit;

24 “(vii) a facility that is subject to the
25 jurisdiction, custody, or control of a de-

partment, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

“(viii) a portion of a facility—

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

“(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

“(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 Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

“(C) SITE-BY-SITE DETERMINATIONS.—

Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 128 to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if

the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

“(D) ADDITIONAL AREAS.—For the purposes of section 128, the term ‘brownfield site’ includes—

“(i) a site that is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); and

“(ii) mine-scarred land.”.

(b) BROWNFIELDS REVITALIZATION FUNDING.—

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

“SEC. 128. BROWNFIELDS REVITALIZATION FUNDING.

“(a) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term ‘eligible entity’ means—

“(1) a general purpose unit of local government;

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

5 “(3) a government entity created by a State
 6 legislature;

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

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

11 “(6) a State; or

12 “(7) an Indian Tribe.

13 “(b) BROWNFIELD SITE CHARACTERIZATION AND
 14 ASSESSMENT GRANT PROGRAM.—

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

17 “(A) provide grants to inventory, charac-
 18 terize, assess, and conduct planning related to
 19 brownfield sites under paragraph (2); and

20 “(B) perform targeted site assessments at
 21 brownfield sites.

22 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
 23 AND ASSESSMENT.—

24 “(A) IN GENERAL.—On approval of an ap-
 25 plication made by an eligible entity, the Admin-

1 istrator may make a grant to the eligible entity
 2 to be used for programs to inventory, charac-
 3 terize, assess, and conduct planning related to
 4 1 or more brownfield sites.

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

10 “(c) GRANTS AND LOANS FOR BROWNFIELD REME-
 11 DIATION.—

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

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

17 “(B) eligible entities or nonprofit organiza-
 18 tions, where warranted, as determined by the
 19 President based on considerations under para-
 20 graph (3), to be used directly for remediation of
 21 1 or more brownfield sites that is owned by the
 22 entity or organization that receives the grant
 23 and in amounts not to exceed \$200,000 for
 24 each site to be remediated.

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

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

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

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

20 “(A) the extent to which a grant will facili-
 21 tate the creation of, preservation of, or addition
 22 to a park, a greenway, undeveloped property,
 23 recreational property, or other property used
 24 for nonprofit purposes;

1 “(B) the extent to which a grant will meet
2 the needs of a community that has an inability
3 to draw on other sources of funding for environ-
4 mental remediation and subsequent redevelop-
5 ment of the area in which a brownfield site is
6 located because of the small population or low
7 income of the community;

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

10 “(D) the benefit of promoting the long-
11 term availability of funds from a revolving loan
12 fund for brownfield remediation; and

13 “(E) such other factors as the Adminis-
14 trator considers appropriate to consider for the
15 purposes of this section.

16 “(4) COMPLIANCE WITH APPLICABLE LAWS.—
17 An eligible entity that provides assistance under
18 paragraph (2) shall include in all loan and grant
19 agreements a requirement that the loan or grant re-
20 cipient shall comply with all laws applicable to the
21 cleanup for which grant funds will be used and en-
22 sure that the cleanup protects human health and the
23 environment.

24 “(5) TRANSITION.—Revolving loan funds that
25 have been established before the date of enactment

1 of this section may be used in accordance with this
2 subsection.

3 “(d) GENERAL PROVISIONS.—

4 “(1) MAXIMUM GRANT AMOUNT.—

5 “(A) BROWNFIELD SITE CHARACTERIZA-
6 TION AND ASSESSMENT.—

7 “(i) IN GENERAL.—A grant under
8 subsection (b)—

9 “(I) may be awarded to an eligi-
10 ble entity on a community-wide or
11 site-by-site basis; and

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

15 “(ii) WAIVER.—The Administrator
16 may waive the \$200,000 limitation under
17 clause (i)(II) to permit the brownfield site
18 to receive a grant of not to exceed
19 \$350,000, based on the anticipated level of
20 contamination, size, or status of ownership
21 of the site.

22 “(B) BROWNFIELD REMEDIATION.—

23 “(i) GRANT AMOUNT.—A grant under
24 subsection (c)(1)(A) may be awarded to an
25 eligible entity on a community-wide or site-

by-site basis, not to exceed \$1,000,000 per eligible entity.

“(ii) ADDITIONAL GRANT AMOUNT.—

The Administrator may make an additional grant to an eligible entity described in clause (i) for any year after the year for which the initial grant is made, taking into consideration—

“(I) the number of sites and number of communities that are addressed by the revolving loan fund;

“(II) the demand for funding by eligible entities that have not previously received a grant under this section;

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

“(IV) any other factors that the Administrator considers appropriate to carry out this section.

“(2) PROHIBITION.—

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

4 “(i) a penalty or fine;

5 “(ii) a Federal cost-share require-
6 ment;

7 “(iii) an administrative cost;

8 “(iv) a response cost at a brownfield
9 site for which the recipient of the grant or
10 loan is potentially liable under section 107;
11 or

12 “(v) a cost of compliance with any
13 Federal law (including a Federal law speci-
14 fied in section 101(39)(B)).

15 “(B) EXCLUSIONS.—For the purposes of
16 subparagraph (A)(iii), the term ‘administrative
17 cost’ does not include the cost of—

18 “(i) investigation and identification of
19 the extent of contamination;

20 “(ii) design and performance of a re-
21 sponse action; or

22 “(iii) monitoring of a natural re-
23 source.

24 “(3) ASSISTANCE FOR DEVELOPMENT OF
25 LOCAL GOVERNMENT SITE REMEDIATION PRO-

1 GRAMS.—A local government that receives a grant
2 under this section may use not to exceed 10 percent
3 of the grant funds to develop and implement a
4 brownfields program that may include—

5 “(A) monitoring the health of populations
6 exposed to 1 or more hazardous substances
7 from a brownfield site; and

8 “(B) monitoring and enforcement of any
9 institutional control used to prevent human ex-
10 posure to any hazardous substance from a
11 brownfield site.

12 “(e) GRANT APPLICATIONS.—

13 “(1) SUBMISSION.—

14 “(A) IN GENERAL.—

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

1 “(ii) NCP REQUIREMENTS.—The Ad-
2 ministrators may include in any require-
3 ment for submission of an application
4 under clause (i) a requirement of the Na-
5 tional Contingency Plan only to the extent
6 that the requirement is relevant and appro-
7 priate to the program under this section.

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

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

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

16 “(A) complete an annual review of applica-
17 tions for grants that are received from eligible
18 entities under this section; and

19 “(B) award grants under this section to el-
20 igible entities that the Administrator deter-
21 mines have the highest rankings under the
22 ranking criteria established under paragraph
23 (3).

24 “(3) RANKING CRITERIA.—The Administrator
25 shall establish a system for ranking grant applica-

1 tions received under this subsection that includes the
2 following criteria:

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

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

13 “(C) The extent to which a grant would
14 address or facilitate the identification and re-
15 duction of threats to human health and the en-
16 vironment.

17 “(D) The extent to which a grant would
18 facilitate the use or reuse of existing infrastruc-
19 ture.

20 “(E) The extent to which a grant would
21 facilitate the creation of, preservation of, or ad-
22 dition to a park, a greenway, undeveloped prop-
23 erty, recreational property, or other property
24 used for nonprofit purposes.

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

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

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

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

17 “(f) IMPLEMENTATION OF BROWNFIELDS PRO-
 18 GRAMS.—

19 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
 20 ministrator may provide, or fund eligible entities to
 21 provide, training, research, and technical assistance
 22 to individuals and organizations, as appropriate, to
 23 facilitate the inventory of brownfield sites, site as-
 24 sessments, remediation of brownfield sites, commu-
 25 nity involvement, or site preparation.

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

6 “(g) AUDITS.—

7 “(1) IN GENERAL.—The Inspector General of
 8 the Environmental Protection Agency shall conduct
 9 such reviews or audits of grants and loans under
 10 this section as the Inspector General considers nec-
 11 essary to carry out this section.

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

16 “(3) VIOLATIONS.—If the Administrator deter-
 17 mines that a person that receives a grant or loan
 18 under this section has violated or is in violation of
 19 a condition of the grant, loan, or applicable Federal
 20 law, the Administrator may—

21 “(A) terminate the grant or loan;

22 “(B) require the person to repay any funds
 23 received; and

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

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

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

9 “(1) requires the recipient to comply with all
10 applicable Federal and State laws;

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

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

22 “(4) contains such other terms and conditions
23 as the Administrator determines to be necessary to
24 carry out this section.

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

6 “(k) FUNDING.—There is authorized to be appro-
 7 priated to carry out this section \$150,000,000 for each
 8 of fiscal years 2002 through 2006.”.

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

11 **SEC. 201. CONTIGUOUS PROPERTIES.**

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

16 “(o) CONTIGUOUS PROPERTIES.—

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

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

1 a vessel or facility under paragraph (1) or (2)
2 of subsection (a) solely by reason of the con-
3 tamination if—

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

7 “(ii) the person is not—

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

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

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

23 “(I) stop any continuing release;

24 “(II) prevent any threatened fu-
25 ture release; and

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

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

16 “(v) the person—

17 “(I) is in compliance with any
18 land use restrictions established or re-
19 lied on in connection with the re-
20 sponse action at a facility; and

21 “(II) does not impede the effec-
22 tiveness or integrity of any institu-
23 tional control employed in connection
24 with a response action;

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

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

9 “(viii) at the time at which the person
10 acquired the property, the person—

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

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

22 “(B) DEMONSTRATION.—To qualify as a
23 person described in subparagraph (A), a person
24 must establish by a preponderance of the evi-

1 dence that the conditions in clauses (i) through
2 (viii) of subparagraph (A) have been met.

3 “(C) BONA FIDE PROSPECTIVE PUR-
4 CHASER.—Any person that does not qualify as
5 a person described in this paragraph because
6 the person had knowledge specified in subpara-
7 graph (A)(viii) at the time of acquisition of the
8 real property may qualify as a bona fide pro-
9 spective purchaser under section 101(40) if the
10 person is otherwise described in that section.

11 “(D) GROUND WATER.—If a hazardous
12 substance from 1 or more sources that are not
13 on the property of a person enters ground water
14 beneath the property of the person solely as a
15 result of subsurface migration in an aquifer,
16 subparagraph (A)(iii) shall not require the per-
17 son to conduct ground water investigations or
18 to install ground water remediation systems, ex-
19 cept in accordance with the policy of the Envi-
20 ronmental Protection Agency concerning owners
21 of property containing contaminated aquifers,
22 dated May 24, 1995.

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

1 “(A) limits any defense to liability that
2 may be available to the person under any other
3 provision of law; or

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

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

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

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

14 **SEC. 202. PROSPECTIVE PURCHASERS AND WINDFALL**
15 **LIENS.**

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

21 “(40) BONA FIDE PROSPECTIVE PURCHASER.—

22 The term ‘bona fide prospective purchaser’ means a
23 person (or a tenant of a person) that acquires own-
24 ership of a facility after the date of enactment of

1 this paragraph and that establishes each of the fol-
2 lowing by a preponderance of the evidence:

3 “(A) DISPOSAL PRIOR TO ACQUISITION.—

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

7 “(B) INQUIRIES.—

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

15 “(ii) STANDARDS AND PRACTICES.—

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

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

21 of property in residential or other similar
22 use at the time of purchase by a non-
23 governmental or noncommercial entity, a
24 facility inspection and title search that re-
25 veal no basis for further investigation shall

1 be considered to satisfy the requirements
2 of this subparagraph.

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

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

11 “(i) stop any continuing release;

12 “(ii) prevent any threatened future re-
13 lease; and

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

18 “(E) COOPERATION, ASSISTANCE, AND AC-
19 CESS.—The person provides full cooperation,
20 assistance, and access to persons that are au-
21 thorized to conduct response actions at a vessel
22 or facility (including the cooperation and access
23 necessary for the installation, integrity, oper-
24 ation, and maintenance of any complete or par-
25 tial response actions at the vessel or facility).

1 “(F) INSTITUTIONAL CONTROL.—The
2 person—

3 “(i) is in compliance with any land
4 use restrictions established or relied on in
5 connection with the response action at a
6 vessel or facility; and

7 “(ii) does not impede the effectiveness
8 or integrity of any institutional control em-
9 ployed at the vessel or facility in connec-
10 tion with a response action.

11 “(G) REQUESTS; SUBPOENAS.—The person
12 complies with any request for information or
13 administrative subpoena issued by the President
14 under this Act.

15 “(H) NO AFFILIATION.—The person is
16 not—

17 “(i) potentially liable, or affiliated
18 with any other person that is potentially
19 liable, for response costs at a facility
20 through—

21 “(I) any direct or indirect famil-
22 ial relationship; or

23 “(II) any contractual, corporate,
24 or financial relationship (other than a
25 contractual, corporate, or financial re-

1 lationship that is created by the in-
 2 struments by which title to the facility
 3 is conveyed or financed or by a con-
 4 tract for the sale of goods or services);
 5 or

6 “(ii) the result of a reorganization of
 7 a business entity that was potentially lia-
 8 ble.”.

9 (b) PROSPECTIVE PURCHASER AND WINDFALL
 10 LIEN.—Section 107 of the Comprehensive Environmental
 11 Response, Compensation, and Liability Act of 1980 (42
 12 U.S.C. 9607) (as amended by section 201) is amended by
 13 adding at the end the following:

14 “(p) PROSPECTIVE PURCHASER AND WINDFALL
 15 LIEN.—

16 “(1) LIMITATION ON LIABILITY.—Notwith-
 17 standing subsection (a)(1), a bona fide prospective
 18 purchaser whose potential liability for a release or
 19 threatened release is based solely on the purchaser’s
 20 being considered to be an owner or operator of a fa-
 21 cility shall not be liable as long as the bona fide pro-
 22 spective purchaser does not impede the performance
 23 of a response action or natural resource restoration.

24 “(2) LIEN.—If there are unrecovered response
 25 costs incurred by the United States at a facility for

1 which an owner of the facility is not liable by reason
 2 of paragraph (1), and if each of the conditions de-
 3 scribed in paragraph (3) is met, the United States
 4 shall have a lien on the facility, or may by agree-
 5 ment with the party obtain from an appropriate
 6 party a lien on any other property or other assur-
 7 ance of payment satisfactory to the Administrator,
 8 for the unrecovered response costs.

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

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

14 “(B) FAIR MARKET VALUE.—The response
 15 action increases the fair market value of the fa-
 16 cility above the fair market value of the facility
 17 that existed before the response action was ini-
 18 tiated.

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

21 “(A) shall be in an amount not to exceed
 22 the increase in fair market value of the prop-
 23 erty attributable to the response action at the
 24 time of a sale or other disposition of the prop-
 25 erty;

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

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

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

7 “(i) satisfaction of the lien by sale or
 8 other means; or

9 “(ii) notwithstanding any statute of
 10 limitations under section 113, recovery of
 11 all response costs incurred at the facility.”.

12 **SEC. 203. INNOCENT LANDOWNERS.**

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

16 (1) in subparagraph (A)—

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

20 (B) in the second sentence—

21 (i) by striking “he” and inserting “the
 22 defendant”; and

23 (ii) by striking the period at the end
 24 and inserting “, provides full cooperation,
 25 assistance, and facility access to the per-

sons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), and is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.”; and

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

“(B) REASON TO KNOW.—

“(i) ALL APPROPRIATE INQUIRIES.—

To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that—

“(I) on or before the date on

which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in

1 clauses (ii) and (iv), into the previous
2 ownership and uses of the facility in
3 accordance with generally accepted
4 good commercial and customary
5 standards and practices; and

6 “(II) the defendant took reason-
7 able steps to—

8 “(aa) stop any continuing
9 release;

10 “(bb) prevent any threat-
11 ened future release; and

12 “(cc) prevent or limit any
13 human, environmental, or natural
14 resource exposure to any pre-
15 viously released hazardous sub-
16 stance.

17 “(ii) STANDARDS AND PRACTICES.—

18 Not later than 2 years after the date of en-
19 actment of the Brownfields Revitalization
20 and Environmental Restoration Act of
21 2001, the Administrator shall by regula-
22 tion establish standards and practices for
23 the purpose of satisfying the requirement
24 to carry out all appropriate inquiries under
25 clause (i).

1 “(iii) CRITERIA.—In promulgating
2 regulations that establish the standards
3 and practices referred to in clause (ii), the
4 Administrator shall include each of the fol-
5 lowing:

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

8 “(II) Interviews with past and
9 present owners, operators, and occu-
10 pants of the facility for the purpose of
11 gathering information regarding the
12 potential for contamination at the fa-
13 cility.

14 “(III) Reviews of historical
15 sources, such as chain of title docu-
16 ments, aerial photographs, building
17 department records, and land use
18 records, to determine previous uses
19 and occupancies of the real property
20 since the property was first developed.

21 “(IV) Searches for recorded envi-
22 ronmental cleanup liens against the
23 facility that are filed under Federal,
24 State, or local law.

1 “(V) Reviews of Federal, State,
2 and local government records, waste
3 disposal records, underground storage
4 tank records, and hazardous waste
5 handling, generation, treatment, dis-
6 posal, and spill records, concerning
7 contamination at or near the facility.

8 “(VI) Visual inspections of the
9 facility and of adjoining properties.

10 “(VII) Specialized knowledge or
11 experience on the part of the defend-
12 ant.

13 “(VIII) The relationship of the
14 purchase price to the value of the
15 property, if the property was not con-
16 taminated.

17 “(IX) Commonly known or rea-
18 sonably ascertainable information
19 about the property.

20 “(X) The degree of obviousness
21 of the presence or likely presence of
22 contamination at the property, and
23 the ability to detect the contamination
24 by appropriate investigation.

1 “(iv) INTERIM STANDARDS AND PRAC-
2 TICES.—

3 “(I) PROPERTY PURCHASED BE-
4 FORE MAY 31, 1997.—With respect to
5 property purchased before May 31,
6 1997, in making a determination with
7 respect to a defendant described of
8 clause (i), a court shall take into
9 account—

10 “(aa) any specialized knowl-
11 edge or experience on the part of
12 the defendant;

13 “(bb) the relationship of the
14 purchase price to the value of the
15 property, if the property was not
16 contaminated;

17 “(cc) commonly known or
18 reasonably ascertainable informa-
19 tion about the property;

20 “(dd) the obviousness of the
21 presence or likely presence of
22 contamination at the property;
23 and

1 “(ee) the ability of the de-
2 fendant to detect the contamina-
3 tion by appropriate inspection.

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

18 “(v) SITE INSPECTION AND TITLE
19 SEARCH.—In the case of property for resi-
20 dential use or other similar use purchased
21 by a nongovernmental or noncommercial
22 entity, a facility inspection and title search
23 that reveal no basis for further investiga-
24 tion shall be considered to satisfy the re-
25 quirements of this subparagraph.”.

1 **TITLE III—STATE RESPONSE**
2 **PROGRAMS**

3 **SEC. 301. STATE RESPONSE PROGRAMS.**

4 (a) DEFINITIONS.—Section 101 of the Comprehen-
5 sive Environmental Response, Compensation, and Liabil-
6 ity Act of 1980 (42 U.S.C. 9601) (as amended by section
7 202) is amended by adding at the end the following:

8 “(41) ELIGIBLE RESPONSE SITE.—

9 “(A) IN GENERAL.—The term ‘eligible re-
10 sponse site’ means a site that meets the defini-
11 tion of a brownfield site in subparagraphs (A)
12 and (B) of paragraph (39), as modified by sub-
13 paragraphs (B) and (C) of this paragraph.

14 “(B) INCLUSIONS.—The term ‘eligible re-
15 sponse site’ includes—

16 “(i) notwithstanding paragraph
17 (39)(B)(ix), a portion of a facility, for
18 which portion assistance for response activ-
19 ity has been obtained under subtitle I of
20 the Solid Waste Disposal Act (42 U.S.C.
21 6991 et seq.) from the Leaking Under-
22 ground Storage Tank Trust Fund estab-
23 lished under section 9508 of the Internal
24 Revenue Code of 1986; or

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

10 “(I) protect human health and
 11 the environment; and

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

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

20 “(i) a facility for which the
 21 President—

22 “(I) conducts or has conducted a
 23 remedial site investigation; and

24 “(II) after consultation with the
 25 State, determines or has determined

1 that the site qualifies for listing on
 2 the National Priorities List;
 3 unless the President has made a deter-
 4 mination that no further Federal action
 5 will be taken; or

6 “(ii) facilities that the President de-
 7 termines warrant particular consideration
 8 as identified by regulation, such as sites
 9 posing a threat to a sole-source drinking
 10 water aquifer or a sensitive ecosystem.”.

11 (b) STATE RESPONSE PROGRAMS.—Title I of the
 12 Comprehensive Environmental Response, Compensation,
 13 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as
 14 amended by section 101(b)) is amended by adding at the
 15 end the following:

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

17 “(a) ASSISTANCE TO STATES.—

18 “(1) IN GENERAL.—

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

21 “(i) has a response program that in-
 22 cludes each of the elements, or is taking
 23 reasonable steps to include each of the ele-
 24 ments, listed in paragraph (2); or

1 “(ii) is a party to a memorandum of
 2 agreement with the Administrator for vol-
 3 untary response programs.

4 “(B) USE OF GRANTS BY STATES.—

5 “(i) IN GENERAL.—A State or Indian
 6 tribe may use a grant under this sub-
 7 section to establish or enhance the re-
 8 sponse program of the State or Indian
 9 tribe.

10 “(ii) ADDITIONAL USES.—In addition
 11 to the uses under clause (i), a State or In-
 12 dian tribe may use a grant under this sub-
 13 section to—

14 “(I) capitalize a revolving loan
 15 fund for brownfield remediation under
 16 section 128(c); or

17 “(II) develop a risk sharing pool,
 18 an indemnity pool, or insurance mech-
 19 anism to provide financing for re-
 20 sponse actions under a State response
 21 program.

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

1 “(A) Timely survey and inventory of
2 brownfield sites in the State.

3 “(B) Oversight and enforcement authori-
4 ties or other mechanisms, and resources, that
5 are adequate to ensure that—

6 “(i) a response action will—

7 “(I) protect human health and
8 the environment; and

9 “(II) be conducted in accordance
10 with applicable Federal and State law;
11 and

12 “(ii) if the person conducting the re-
13 sponse action fails to complete the nec-
14 essary response activities, including oper-
15 ation and maintenance or long-term moni-
16 toring activities, the necessary response ac-
17 tivities are completed.

18 “(C) Mechanisms and resources to provide
19 meaningful opportunities for public participa-
20 tion, including—

21 “(i) public access to documents that
22 the State, Indian tribe, or party con-
23 ducting the cleanup is relying on or devel-
24 oping in making cleanup decisions or con-
25 ducting site activities; and

1 “(ii) prior notice and opportunity for
 2 comment on proposed cleanup plans and
 3 site activities.

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

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

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

16 “(1) ENFORCEMENT.—

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

21 “(i) there is a release or threatened
 22 release of a hazardous substance, pollut-
 23 ant, or contaminant; and

24 “(ii) a person is conducting or has
 25 completed a response action regarding the

1 specific release that is addressed by the re-
2 sponse action that is in compliance with
3 the State program that specifically governs
4 response actions for the protection of pub-
5 lic health and the environment;

6 the President may not use authority under this
7 Act to take an administrative or judicial en-
8 forcement action under section 106(a) or to
9 take a judicial enforcement action to recover re-
10 sponse costs under section 107(a) against the
11 person regarding the specific release that is ad-
12 dressed by the response action.

13 “(B) EXCEPTIONS.—The President may
14 bring an enforcement action under this Act dur-
15 ing or after completion of a response action de-
16 scribed in subparagraph (A) with respect to a
17 release or threatened release at an eligible re-
18 sponse site described in that subparagraph if—

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

22 “(ii) the Administrator determines
23 that contamination has migrated or will
24 migrate across a State line, resulting in
25 the need for further response action to

1 protect human health or the environment,
2 or the President determines that contami-
3 nation has migrated or is likely to migrate
4 onto property subject to the jurisdiction,
5 custody, or control of a department, agen-
6 cy, or instrumentality of the United States
7 and may impact the authorized purposes of
8 the Federal property;

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

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

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

21 “(iv) the Administrator determines
22 that information, that on the earlier of the
23 date on which cleanup was approved or
24 completed, was not known by the State, as
25 recorded in documents prepared or relied

1 on in selecting or conducting the cleanup,
2 has been discovered regarding the contami-
3 nation or conditions at a facility such that
4 the contamination or conditions at the fa-
5 cility present a threat requiring further re-
6 mediation to protect public health or wel-
7 fare or the environment.

8 “(C) PUBLIC RECORD.—The limitations on
9 the authority of the President under subpara-
10 graph (A) apply only at sites in States that
11 maintain, update not less than annually, and
12 make available to the public a record of sites,
13 by name and location, at which response actions
14 have been completed in the previous year and
15 are planned to be addressed under the State
16 program that specifically governs response ac-
17 tions for the protection of public health and the
18 environment in the upcoming year. The public
19 record shall identify whether or not the site, on
20 completion of the response action, will be suit-
21 able for unrestricted use and, if not, shall iden-
22 tify the institutional controls relied on in the
23 remedy. Each State and tribe receiving finan-
24 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 re-
lease 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 Adminis-
trator 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 Adminis-
trator 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 June
 3 8, 2000.

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.”.

○