

105TH CONGRESS  
1ST SESSION

# H. R. 2727

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to reauthorize and reform the Superfund program, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 1997

Mr. BOEHLERT introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, and Ways and Means, 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

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## A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to reauthorize and reform the Superfund program, 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 “Superfund Acceleration, Fairness, and Efficiency Act”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Amendments to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Sec. 3. Effective date.

## TITLE I—REMEDY SELECTION AND ENVIRONMENTAL STANDARDS

- Sec. 101. General rules and objectives.
- Sec. 102. Remedy selection.
- Sec. 103. Site review requirement.
- Sec. 104. Human health and environmental standards.
- Sec. 105. Early evaluation and phased remedial action.
- Sec. 106. Generic remedies.
- Sec. 107. Hazardous substance property use.
- Sec. 108. Risk assessment standards.
- Sec. 109. Remedy review.
- Sec. 110. Remedy updates.
- Sec. 111. Remedy defined.

## TITLE II—COMMUNITY PARTICIPATION AND HUMAN HEALTH

### Subtitle A—Community Participation

- Sec. 201. Definitions.
- Sec. 202. Improving citizen and community participation in decisionmaking.
- Sec. 203. Additional public involvement requirements.
- Sec. 204. Superfund site information offices; publication requirement.
- Sec. 205. Technical assistance grants.
- Sec. 206. Understandable presentation of materials.
- Sec. 207. Public participation in removal actions.
- Sec. 208. Community advisory groups.
- Sec. 209. Community study.

### Subtitle B—Human Health

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

## TITLE III—LIABILITY REFORM

- Sec. 301. Amendments to section 104.
- Sec. 302. Amendments to section 106.
- Sec. 303. Amendments to section 107(a).
- Sec. 304. Innocent parties.
- Sec. 305. Liability relief for small businesses and de minimis parties.
- Sec. 306. Amendments to section 113.
- Sec. 307. Liability of response action contractors.
- Sec. 308. Amendments to section 122.
- Sec. 309. Clarification of liability for recycling transactions.
- Sec. 310. Allocation.
- Sec. 311. Transition rules.

## TITLE IV—BROWNFIELDS REVITALIZATION

- Sec. 401. Brownfields.
- Sec. 402. Assistance for State response programs.
- Sec. 403. Enforcement in cases of a release subject to a State plan.

## TITLE V—STATE ROLE

- Sec. 501. State delegation at NPL facilities.
- Sec. 502. State authorization at NPL facilities.
- Sec. 503. Federal funding of State actions under State delegation or State authorization.
- Sec. 504. Transfer of authorities.
- Sec. 505. State cost share.
- Sec. 506. Additions to National Priorities List.
- Sec. 507. State and local reimbursement for response actions.
- Sec. 508. State role at Federal facilities.

## TITLE VI—NATURAL RESOURCES DAMAGES

- Sec. 601. Natural resources defined.
- Sec. 602. Consultation with natural resources trustees.
- Sec. 603. Liability.
- Sec. 604. Designation of trustees.
- Sec. 605. Determination of causation.
- Sec. 606. Measure of damages.
- Sec. 607. Damage assessments.
- Sec. 608. Process for determining damages.
- Sec. 609. Selection of restoration alternatives.
- Sec. 610. Use of sums recovered by trustees.
- Sec. 611. Relation to other laws; damages occurring before December 11, 1980.
- Sec. 612. Restoration.
- Sec. 613. Recovery by foreign claimants.
- Sec. 614. Applicability.

## TITLE VII—OIL POLLUTION

- Sec. 701. Natural resources defined.
- Sec. 702. Liability.
- Sec. 703. Designation of lead decisionmaking trustee.
- Sec. 704. Selection of restoration alternatives.
- Sec. 705. Measure of damages.
- Sec. 706. Damage assessments.
- Sec. 707. Process for determining damages.
- Sec. 708. Restoration.
- Sec. 709. Applicability.

## TITLE VIII—MISCELLANEOUS

- Sec. 801. Trust fund defined.
- Sec. 802. Indian tribes.
- Sec. 803. Grants for training and education of workers.

## TITLE IX—FUNDING

## Subtitle A—Expenditures From the Hazardous Substance Superfund

- Sec. 901. Expenditures from the Hazardous Substance Superfund.
- Sec. 902. Authorization of appropriations from general revenues.

## Subtitle B—5-Year Extension of Hazardous Substance Superfund

- Sec. 911. 5-year extension of Hazardous Substance Superfund.

1 **SEC. 2. AMENDMENTS TO COMPREHENSIVE ENVIRON-**  
 2 **MENTAL RESPONSE, COMPENSATION, AND LI-**  
 3 **ABILITY ACT OF 1980.**

4 Except as otherwise specifically provided, whenever in  
 5 this Act an amendment or repeal is expressed in terms  
 6 of an amendment to, or repeal of, a section or other provi-  
 7 sion of law, the reference shall be considered to be made  
 8 to a section or other provision of the Comprehensive Envi-  
 9 ronmental Response, Compensation, and Liability Act of  
 10 1980 (42 U.S.C. 9601 et seq.).

11 **SEC. 3. EFFECTIVE DATE.**

12 Except as otherwise specifically provided, this Act,  
 13 and the amendments made by this Act, shall become effec-  
 14 tive on the date of the enactment of this Act.

15 **TITLE I—REMEDY SELECTION**  
 16 **AND ENVIRONMENTAL**  
 17 **STANDARDS**

18 **SEC. 101. GENERAL RULES AND OBJECTIVES.**

19 Section 121(a) (42 U.S.C. 9621(a)) is amended—

20 (1) by striking “(a)” and all that follows  
 21 through “The President” and inserting the follow-  
 22 ing:

23 “(a) GENERAL RULES AND OBJECTIVES.—

24 “(1) GENERAL RULES.—Final remedies selected  
 25 under this Act shall protect human health and the

1 environment, and shall provide long-term reliability  
2 at reasonable cost. The President”;

3 (2) by adding at the end the following:

4 “(2) OBJECTIVES.—The objectives of remedial  
5 actions taken under this Act shall be to make con-  
6 taminated property available for beneficial use, to  
7 protect uncontaminated water resources, and to re-  
8 turn contaminated water resources to beneficial uses  
9 in a period of time that is reasonable given the par-  
10 ticular circumstances of the release.”; and

11 (3) by aligning the text of paragraph (1) of  
12 such section, as designated by paragraph (1) of this  
13 section, with the text of paragraph (2) of such sec-  
14 tion, as added by paragraph (2) of this section.

15 **SEC. 102. REMEDY SELECTION.**

16 Section 121(b) (42 U.S.C. 9621(b) is amended to  
17 read as follows:

18 “(b) REMEDY SELECTION.—

19 “(1) METHODS OF REMEDIATION.—A remedial  
20 action may achieve protection of human health and  
21 the environment through—

22 “(A) treatment that reduces the toxicity,  
23 mobility, or volume of hazardous substances,  
24 pollutants, or contaminants;

25 “(B) natural attenuation;

1           “(C) containment or other engineering con-  
2           trols to limit exposure or release;

3           “(D) removal of the contaminated media;

4           “(E) a combination of treatment, contain-  
5           ment, and removal; or

6           “(F) other methods of protection.

7           “(2) PROTECTIVE REMEDIES.—The President  
8           shall identify appropriate remedial options, including  
9           options with a treatment component, that are de-  
10          signed to meet the standards set forth in this section  
11          within a reasonable period of time and considering  
12          reasonable points of compliance.

13          “(3) BALANCING FACTORS.—The President  
14          shall determine the appropriate remedial action by  
15          balancing the following factors:

16               “(A) The effectiveness of a remedy in pro-  
17               tecting human health and the environment, in-  
18               cluding consideration of highly exposed or espe-  
19               cially susceptible subpopulations.

20               “(B) The reliability of a remedy in main-  
21               taining protection of human health and the en-  
22               vironment over the long term.

23               “(C) The effectiveness of a remedy in  
24               meeting the objectives set forth in subsection  
25               (a)(2).

1           “(D) Risks to the affected community, to  
2           those engaged in the remedial effort, and to the  
3           environment arising from the implementation of  
4           a remedy, including any component of a remedy  
5           that requires offsite transportation and subse-  
6           quent management of the hazardous sub-  
7           stances.

8           “(E) The implementability of a remedy.

9           “(F) The acceptability of a remedy to the  
10          affected community.

11          “(G) The reasonableness of the cost of a  
12          remedy.

13          “(4) CONSIDERATION OF TREATMENT AS A  
14          COMPONENT OF A REMEDY.—

15               “(A) IN GENERAL.—In balancing factors  
16               under paragraph (3) and determining the ap-  
17               propriate remedial action, the President shall  
18               give preference to remedies that include a treat-  
19               ment component for discrete areas within a fa-  
20               cility that contain—

21                   “(i) high concentrations of highly  
22                   toxic substances that present such a sub-  
23                   stantial inherent threat to human health or  
24                   the environment that it would be impru-

1 dent to rely solely on remedies that do not  
2 include such a treatment component; or

3 “(ii) high concentrations of toxic sub-  
4 stances that, due to the mobility of such  
5 substances or other characteristics, cannot  
6 be controlled reliably through engineered  
7 barriers and therefore could present a sub-  
8 stantial threat to human health or the en-  
9 vironment if such substances are not treat-  
10 ed.

11 “(B) SELECTION OF A REMEDY WITHOUT  
12 A TREATMENT COMPONENT.—In the case of a  
13 facility with discrete areas containing toxic sub-  
14 stances described in clause (i) or (ii) of sub-  
15 paragraph (A), if the President selects a rem-  
16 edy that does not include a treatment compo-  
17 nent for such discrete areas, the President shall  
18 publish an explanation of why such treatment  
19 component was not included in the remedy.

20 “(5) ALTERNATIVE REMEDIAL ACTIONS.—The  
21 President may select an alternative remedial action  
22 meeting the requirements of this section whether or  
23 not such action has been achieved in practice at any  
24 other facility or site that has similar characteristics.  
25 In making such a selection, the President may take



1 into account the degree of support for such remedial  
2 action by parties interested in such site.

3 “(6) INSTITUTIONAL CONTROLS.—

4 “(A) USE AND IMPLEMENTATION.—In any  
5 case in which the President selects a remedial  
6 action that allows hazardous substances to re-  
7 main on-site at a facility above concentration  
8 levels that would be protective for unrestricted  
9 use, the President—

10 “(i) shall include, as an integral com-  
11 ponent of the remedy, restrictions on the  
12 use of land, water, or other resources nec-  
13 essary to provide long-term protection of  
14 human health and the environment;

15 “(ii) shall not determine the remedy  
16 to be complete until a mechanism is estab-  
17 lished to ensure ongoing monitoring and  
18 operation and maintenance of the remedy;

19 “(iii) shall not determine the remedy  
20 to be complete until any necessary institu-  
21 tional controls are implemented and sub-  
22 ject to appropriate monitoring and enforce-  
23 ment; and

24 “(iv) shall ensure that any necessary  
25 institutional controls remain in effect as

1 long as necessary to protect human health  
2 and the environment.

3 “(B) RESTRICTIONS ON USE.—The Presi-  
4 dent may use institutional controls as a supple-  
5 ment to, but not as a substitute for, other re-  
6 sponse measures at a facility, except in extraor-  
7 dinary circumstances.

8 “(C) NOTICE.—Whenever the President  
9 selects, in accordance with subparagraph (A), a  
10 remedy at a facility that relies on institutional  
11 controls as an integral component of the rem-  
12 edy, the President shall—

13 “(i) clearly specify in the record of de-  
14 cision the anticipated restrictions on uses  
15 of land, water, or other resources or activi-  
16 ties at the facility and the terms of antici-  
17 pated institutional controls to implement  
18 those restrictions;

19 “(ii) specify such restrictions and con-  
20 trols in all other appropriate remedy deci-  
21 sion documents and other public informa-  
22 tion regarding the site, along with identi-  
23 fication of the unit of government pri-  
24 marily responsible for monitoring and en-  
25 forcement of the institutional controls;

1           “(iii) provide public notice of such  
2           controls and, in the case of a deed restric-  
3           tion, easement, or other similar measure,  
4           incorporate the measure in the public land  
5           records for the jurisdiction in which the af-  
6           fected property is located; and

7           “(iv) undertake any change in the na-  
8           ture or form of institutional controls at the  
9           facility in a manner consistent with section  
10          117 and give notice pursuant to the re-  
11          quirements of section 104.

12          “(D) REGISTRY.—The President shall  
13          maintain a registry of restrictions on the use of  
14          land, water, or other resources through institu-  
15          tional controls that are included in final records  
16          of decision as an integral component of the  
17          remedy at facilities that are, or have been, on  
18          the National Priorities List. The registry shall  
19          identify the property and the nature or form of  
20          the institution controls, including any subse-  
21          quent changes in the nature or form of such  
22          controls.

23          “(E) ANNUAL REPORT.—On March 1,  
24          1999, and annually thereafter, the Adminis-  
25          trator shall transmit to the Committee on Com-

merce and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on each record of decision signed during the previous fiscal year, the type of institutional controls and media affected, and the institution designated to monitor, enforce, and ensure compliance with the institutional controls.”.

**SEC. 103. SITE REVIEW REQUIREMENT.**

Section 121(c) (42 U.S.C. 9621(c)) is amended—

(1) in the first sentence—

(A) by inserting after “remedial action” the second time it appears the following: “, including public health recommendations and decisions resulting from activities under section 104(i),”; and

(B) by striking “the initiation of” and inserting “construction and installation of equipment and structures to be used for”; and

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

1 **SEC. 104. HUMAN HEALTH AND ENVIRONMENTAL STAND-**  
2 **ARDS.**

3 Section 121(d) (42 U.S.C. 9621(d)) is amended to  
4 read as follows:

5 “(d) HUMAN HEALTH AND ENVIRONMENTAL STAND-  
6 ARDS.—

7 “(1) HUMAN HEALTH RISK ASSESSMENT.—

8 “(A) IN GENERAL.—To determine what is  
9 protective of human health, the President shall  
10 conduct a site-specific human health risk as-  
11 sessment that meets the requirements set forth  
12 in section 127(a).

13 “(B) BASIS OF EXPOSURE ASSESS-  
14 MENTS.—A risk assessment conducted under  
15 subparagraph (A) shall base exposure assess-  
16 ments on the reasonably anticipated uses of  
17 land and water identified under paragraph (3).

18 “(C) INCLUSION OF CERTAIN INFORMA-  
19 TION.—In a case in which reliable information  
20 is made available to the President on actual in-  
21 gestion of, inhalation of, or dermal contact with  
22 hazardous substances, pollutants, or contami-  
23 nants or blood lead levels at or near the site,  
24 the President shall include such information,  
25 along with other relevant information, in the as-  
26 sessment.

1 “(2) ECOLOGICAL RISK ASSESSMENT.—

2 “(A) IN GENERAL.—To determine what is  
3 protective of the environment, the President  
4 shall conduct a site-specific ecological risk as-  
5 sessment that meets the requirements set forth  
6 in section 127(a).

7 “(B) BASIS OF DETERMINATIONS ON  
8 RISKS TO PLANTS AND ANIMALS.—A risk as-  
9 sessment conducted under subparagraph (A)  
10 shall base determinations of what is protective  
11 of plants and animals on the significance of di-  
12 rect, indirect, or potential impacts from a re-  
13 lease or threatened release of hazardous sub-  
14 stances from a facility to the local ecosystem,  
15 communities of plants and animals, or popu-  
16 lations of plants and animals. If a species is  
17 listed as threatened or endangered under the  
18 Endangered Species Act (16 U.S.C. 1531 et  
19 seq.), impacts to individual plants or animals  
20 shall be considered impacts to populations of  
21 such plants or animals.

22 “(3) REASONABLY ANTICIPATED USES OF LAND  
23 AND WATER.—

24 “(A) LAND USES.—Remedies selected  
25 under this section shall take into account the

1 reasonably anticipated beneficial uses of land at  
2 a facility and, to the extent appropriate, of  
3 nearby property. Assumptions regarding such  
4 uses shall be used in the development and eval-  
5 uation of remedial alternatives. The Adminis-  
6 trator shall develop assumptions regarding such  
7 reasonably anticipated beneficial uses and the  
8 timing of such uses, considering the following  
9 factors:

10 “(i) The view of elected local govern-  
11 ment officials.

12 “(ii) The current land use zoning, fu-  
13 ture land use plans of the local government  
14 with land use regulatory authority, and  
15 water management plans.

16 “(iii) Views of the affected commu-  
17 nity, giving substantial weight to any con-  
18 sensus recommendations by a Community  
19 Advisory Group established under section  
20 117(h) or, as appropriate, a restoration or  
21 site-specific advisory board.

22 “(iv) The land use history of the facil-  
23 ity and surrounding properties, the current  
24 land uses of the facility and surrounding  
25 properties, recent development patterns in

1 the area where the facility is located, and  
2 population projections for the areas.

3 “(v) Federal or State land use des-  
4 ignations, including national park designa-  
5 tions, State ground water or surface water  
6 recharge area designations established  
7 under a State’s comprehensive protection  
8 plan for ground water and surface water,  
9 and recreational area designations.

10 “(vi) The potential for beneficial use.

11 “(vii) The proximity of the contamina-  
12 tion to residences, sensitive ecosystems,  
13 natural resources, or areas of unique or  
14 cultural significance.

15 “(viii) Current plans for the future  
16 use of the facility by the property owner or  
17 owners.

18 “(ix) Navigational or transportation  
19 uses that may be affected by the facility.

20 “(x) Any additional factors the Ad-  
21 ministrator considers appropriate.

22 “(B) GROUND WATER USES.—Remedies  
23 selected under this section shall take into ac-  
24 count the reasonably anticipated beneficial uses  
25 of ground water that are or may be impacted



1 by releases or threatened releases from the fa-  
2 cility and the timing of such uses. Assumptions  
3 regarding such uses shall be used in the devel-  
4 opment and evaluation of remedial alternatives.  
5 The Administrator shall develop assumptions  
6 regarding reasonably anticipated beneficial uses  
7 of such ground water as follows:

8 “(i) If a State has a comprehensive  
9 State ground water protection program  
10 that has provisions for making site-specific  
11 determinations of use and timing of use  
12 and that has received a written endorse-  
13 ment by the Administrator, the Adminis-  
14 trator shall base such assumptions on  
15 State determinations of use and timing of  
16 use that are based on such program.

17 “(ii) If a State does not have a  
18 ground water protection program referred  
19 to in clause (i), or if interstate ground  
20 water resources may be affected by the re-  
21 lease or threatened release and the affected  
22 States do not agree on the reasonably an-  
23 ticipated beneficial uses of the interstate  
24 ground water, the Administrator shall de-  
25 termine the reasonably anticipated bene-

1           ficial uses of ground water potentially im-  
2           pacted by releases from the facility follow-  
3           ing extensive consultation with the affected  
4           States and consideration of relevant fac-  
5           tors, including, as appropriate, the avail-  
6           ability of alternative water supplies and the  
7           current and anticipated uses planned by  
8           local water suppliers.

9           “(iii) In a State where there has not  
10          been a comprehensive Statewide evaluation  
11          of ground water uses, the Administrator  
12          shall begin the determination of the rea-  
13          sonably anticipated beneficial use of  
14          ground water with the presumption that  
15          ground water within an aquifer that is  
16          classified as a drinking water aquifer is  
17          reasonably anticipated to be used as drink-  
18          ing water. Such presumption may be over-  
19          come through site-specific information  
20          identified during the analysis of relevant  
21          factors under clause (ii).

22          “(iv) A current or reasonably antici-  
23          pated beneficial use of ground water shall  
24          not be identified as drinking water if—

1 “(I) the ground water contains  
2 more than 10,000 milligrams per liter  
3 total dissolved solids;

4 “(II) the ground water is so con-  
5 taminated by naturally occurring con-  
6 ditions or by the effects of broad-scale  
7 human activity unrelated to a specific  
8 activity that restoration to drinking  
9 water quality is impracticable; or

10 “(III) the potential source of  
11 drinking water is physically incapable  
12 of yielding a quantity of 150 gallons  
13 per day of water to a well or spring  
14 without adverse environmental con-  
15 sequences, unless available informa-  
16 tion indicates that such source is used  
17 as a source of drinking water.

18 “(C) ADMINISTRATIVE RECORD.—All infor-  
19 mation considered by the Administrator in eval-  
20 uating current and reasonably anticipated bene-  
21 ficial land and ground water uses under this  
22 paragraph shall be included in the administra-  
23 tive record under section 113(k).

24 “(4) OTHER APPLICABLE REQUIREMENTS.—

1           “(A) HAZARDOUS SUBSTANCES REMAINING  
2           ON SITE.—With respect to any hazardous sub-  
3           stance, pollutant, or contaminant that will re-  
4           main onsite, a remedial action, at completion,  
5           shall comply with the substantive requirements  
6           of any promulgated standard, requirement, cri-  
7           terion, or limitation that is applicable to the  
8           conduct or operation of the remedial action, and  
9           shall at least attain any promulgated protective  
10          concentration levels applicable to determining  
11          the level of cleanup for remedial actions,  
12          under—

13               “(i) a Federal environmental or facil-  
14               ity siting law that is legally applicable to  
15               the hazardous substance, pollutant, or con-  
16               taminant concerned; or

17               “(ii) a State environmental or facility  
18               siting law that is legally applicable to the  
19               hazardous substance, pollutant, or con-  
20               taminant concerned, and is—

21                   “(I) identified in a timely manner  
22                   to the President by the State as appli-  
23                   cable at the facility to the proposed  
24                   remedial alternative;

25                   “(II) of general applicability; and

1                   “(III) consistently applied to re-  
2                   sponse actions in the State, whether  
3                   conducted under this Act or other au-  
4                   thorities, including any State response  
5                   program.

6           The President shall closely examine whether a  
7           requirement is of general applicability under  
8           clause (ii)(II) if, in practice, the requirement  
9           only applies to 1 facility in the State or if the  
10          requirement only applies to facilities owned or  
11          operated by the United States.

12               “(B)   DRINKING   WATER   PROTECTION  
13               STANDARDS.—If, as determined under para-  
14               graph (3)(B), the reasonably anticipated bene-  
15               ficial use of ground water is drinking water,  
16               final remedies selected under this Act shall re-  
17               quire a level or standard of control which meets  
18               maximum contaminant levels established under  
19               the Safe Drinking Water Act at reasonable  
20               points of compliance, as determined by the Ad-  
21               ministrators, considering the nature and timing  
22               of such use of the ground water.

23               “(C)   SURFACE   WATER   PROTECTION  
24               STANDARDS.—To the extent technically prac-  
25               ticable, final remedies selected under this Act

1 shall prevent impairment of any designated use  
2 of surface water established under section 303  
3 of the Federal Water Pollution Control Act  
4 caused by hazardous substances, pollutants, or  
5 contaminants from ground water contaminated  
6 by releases from the facility in any surface  
7 water body into which such contaminated  
8 ground water is known or expected to enter.

9 “(D) GROUND WATER PROTECTION  
10 STANDARDS.—To the extent technically prac-  
11 ticable, final remedies selected under this Act  
12 shall ensure that uncontaminated ground water  
13 is protected from contamination unless—

14 “(i) the remedial action includes natu-  
15 ral attenuation as a component to facilitate  
16 restoration of ground water to beneficial  
17 use within a period of time that is reason-  
18 able given the particular circumstances of  
19 the release;

20 “(ii) an alternative concentration limit  
21 has been adopted under paragraph (5); or

22 “(iii) the ground water has no bene-  
23 ficial use.

24 “(E) HUMAN INGESTION OR EXPOSURE.—  
25 Final remedies selected under this Act shall

1 prevent or eliminate, at a minimum, any actual  
2 human ingestion or exposure to drinking water  
3 containing any hazardous substances, pollut-  
4 ants, or contaminants at levels in excess of the  
5 levels specified in subparagraph (B), including,  
6 as appropriate, the provision of an alternative  
7 water supply.

8 “(F) EXCLUSIONS.—The standards, re-  
9 quirements, criteria, and limitations referred to  
10 in subparagraph (A) shall not include—

11 “(i) any requirement with respect to  
12 the return, replacement, or disposal of con-  
13 taminated media, residuals, or other solid  
14 waste or contaminated media into the  
15 same medium in or very near existing  
16 areas of contamination on site; or

17 “(ii) any requirement for a reduction  
18 in concentrations of contaminants below  
19 background levels.

20 “(G) WAIVERS.—The President may select  
21 a remedial action meeting the requirements of  
22 subsection (a)(1) that does not attain a stand-  
23 ard, requirement, criterion, or limitation set  
24 forth in subparagraphs (A) through (D), if the  
25 President finds any of the following:

1           “(i) The remedial action selected is  
2           only part of a total remedial action that  
3           will attain such level or standard of control  
4           when completed.

5           “(ii) Compliance with such standard,  
6           requirement, criterion, or limitation at the  
7           facility will result in greater risk to human  
8           health and the environment than alter-  
9           native options.

10          “(iii) Compliance with such standard,  
11          requirement, criterion, or limitation is  
12          technically impracticable from an engineer-  
13          ing perspective. Findings of technical im-  
14          practicability from an engineering perspec-  
15          tive may be based on engineering feasibil-  
16          ity and reliability or inordinate costs and  
17          may be made as soon as adequate and reli-  
18          able information is available to make the  
19          finding.

20          “(iv) The remedial action selected will  
21          attain a standard of performance that is  
22          equivalent to that required under such  
23          standard, requirement, criterion, or limita-  
24          tion through use of another method or ap-  
25          proach.



1           “(v) In the case of a remedial action  
2           to be undertaken solely under section 104  
3           using the Fund, selection of a remedial ac-  
4           tion that attains such standard, require-  
5           ment, criterion, or limitation will not pro-  
6           vide a balance between—

7                   “(I) the need for protection of  
8                   public health and welfare and the en-  
9                   vironment at the facility under consid-  
10                  eration; and

11                  “(II) the availability of amounts  
12                  from the Fund to respond to other  
13                  sites which present or may present a  
14                  threat to public health or welfare or  
15                  the environment, taking into consider-  
16                  ation the relative immediacy of such  
17                  threats.

18           “(vi) Compliance with such standard,  
19           requirement, criterion, or limitation at the  
20           facility will result in less protection of  
21           human health or the environment than al-  
22           ternative options.

23           The President shall publish such findings, to-  
24           gether with an explanation and appropriate doc-  
25           umentation.

1           “(5) PROCESS FOR ESTABLISHING ALTER-  
2       NATIVE CONCENTRATION LIMITS.—For the purposes  
3       of this section, a process for establishing alternative  
4       concentration limits to those otherwise applicable for  
5       hazardous constituents in ground water under sub-  
6       paragraphs (A) and (B) of paragraph (4) may not  
7       be used to establish applicable standards under this  
8       paragraph if the process assumes a point of human  
9       exposure beyond the boundary of the facility, as de-  
10      fined at the conclusion of the remedial investigation  
11      and feasibility study, except where—

12           “(A) there are known and projected points  
13      of entry of such ground water into surface  
14      water;

15           “(B) on the basis of measurements or pro-  
16      jections, there is or will be no impairment of a  
17      designated use of surface water established  
18      under section 303 of the Federal Water Pollu-  
19      tion Control Act from constituents in such  
20      ground water at the point of entry of such  
21      ground water into such surface water or at any  
22      point where there is reason to believe accumula-  
23      tion of constituents may occur downstream; and

24           “(C) the remedial action includes enforce-  
25      able measures that will preclude human expo-

1           sure to the contaminated ground water at any  
2           point between the facility boundary and all  
3           known and projected points of entry of such  
4           ground water into surface water,  
5       then the assumed point of human exposure may be  
6       at such known and projected points of entry.

7           “(6) LAND DISPOSAL.—

8                   “(A) APPLICABILITY OF SUBPARAGRAPH  
9                   (B).—Subparagraph (B) shall be applicable only  
10                  in cases where the proposed disposition of waste  
11                  generated by or associated with the remedial ac-  
12                  tion selected by the President is land disposal  
13                  in a State referred to in subparagraph (B).

14                  “(B) NONAPPLICABILITY OF STATE  
15                  STANDARDS.—Except as provided in subpara-  
16                  graph (C), a State standard, requirement, cri-  
17                  terion, or limitation (including any State siting  
18                  standard or requirement) which could effec-  
19                  tively result in the statewide prohibition of land  
20                  disposal of hazardous substances, pollutants, or  
21                  contaminants shall not apply.

22                  “(C) EXCEPTIONS.—Any State standard,  
23                  requirement, criterion, or limitation referred to  
24                  in subparagraph (B) shall apply where each of  
25                  the following conditions is met:

1                   “(i) The State standard, requirement,  
2                   criterion, or limitation is of general appli-  
3                   cability and was adopted by formal means.

4                   “(ii) The State standard, requirement,  
5                   criterion, or limitation was adopted on the  
6                   basis of hydrologic, geologic, or other rel-  
7                   evant considerations and was not adopted  
8                   for the purpose of precluding onsite reme-  
9                   dial actions or other land disposal for rea-  
10                  sons unrelated to protection of human  
11                  health and the environment.

12                  “(iii) The State arranges for, and  
13                  assures payment of, the incremental costs  
14                  of utilizing, a facility for disposition of the  
15                  hazardous substances, pollutants, or con-  
16                  taminants concerned.

17                  “(7) OFFSITE TRANSFERS.—In the case of any  
18                  removal or remedial action involving the transfer of  
19                  any hazardous substance, pollutant, or contaminant  
20                  offsite, such hazardous substance, pollutant, or con-  
21                  taminant shall only be transferred to a facility that  
22                  is authorized to receive such hazardous substance,  
23                  pollutant, or contaminant and that is operating in  
24                  compliance with all applicable Federal and State re-  
25                  quirements. Such substance, pollutant, or contami-

1       nant may be transferred to a land disposal facility  
2       only if the President determines that both of the fol-  
3       lowing requirements are met:

4               “(A) The unit to which the hazardous sub-  
5       stance, pollutant, or contaminant is transferred  
6       is not releasing any hazardous waste, or con-  
7       stituent thereof, into the ground water, surface  
8       water, or soil.

9               “(B) All such releases from other units at  
10       the facility regulated under section 3005 of the  
11       Solid Waste Disposal Act are being controlled  
12       by a corrective action program approved by the  
13       Administrator under subtitle C of such Act.

14       The President shall notify the owner or operator of  
15       such facility of determinations under this para-  
16       graph.”.

17   **SEC. 105. EARLY EVALUATION AND PHASED REMEDIAL AC-**  
18               **TION.**

19       Section 121 (42 U.S.C. 9621) is amended by adding  
20       at the end the following:

21       “(g) EARLY EVALUATION AND PHASED REMEDIAL  
22       ACTIONS.—

23               “(1) CONSIDERATION OF NEW PROCEDURES.—

24       The President shall consider new procedures for con-  
25       ducting remedial investigations and feasibility stud-

ies in an efficient, cost-effective, and timely manner. Such new procedures shall take into consideration a results-oriented approach in order to minimize the time required to conduct such investigations and studies. The President shall, as appropriate, employ a phased approach to site characterization and remediation in which remedies are arrived at through a sequence of investigations and actions. Information gathered in one phase shall be used to inform each successive phase until final remediation goals are determined and attained.

“(2) COLLECTION OF HYDROGEOLOGIC AND CONTAMINANT-RELATED INFORMATION.—To facilitate efficient and effective site characterization that promotes early evaluation of remedial alternatives and to prevent ground water contamination problems from worsening, the President shall ensure, to the extent practicable, that hydrogeologic and contaminant-related information necessary to select final ground water remedial actions, including findings of technical impracticability, will be collected as part of site characterization activities prior to and during the remedial investigation. Such data shall include information from actions under paragraph (3).

1           “(3) PHASED REMEDIAL ACTIONS.—To facili-  
2       tate efficient and effective site characterization that  
3       promotes early evaluation of remedial alternatives  
4       and to prevent the ground water contamination  
5       problems from worsening, the President shall, as ap-  
6       propriate, consistent with the factors in subsection  
7       (b)(3), and to the extent technically practicable from  
8       an engineering perspective, implement phased reme-  
9       dial actions to minimize further contaminant migra-  
10      tion and to reduce the risk of exposure to contami-  
11      nated ground water. Such actions shall be based on  
12      sufficient site characterization to ensure achievement  
13      of the intended goal of such actions, shall prevent  
14      exacerbation of the contamination problem, and shall  
15      be monitored to collect detailed information on site  
16      characterization and potential remedial alter-  
17      natives.”.

18 **SEC. 106. GENERIC REMEDIES.**

19       Section 121 (42 U.S.C. 9621) is further amended by  
20   adding at the end the following:

21       “(h) GENERIC REMEDIES.—

22           “(1) ESTABLISHMENT.—To expedite and in-  
23       crease the efficiency of the remedy selection process,  
24       the President may, after providing notice and an op-  
25       portunity for public comment, establish generic rem-

1 edies where such remedies are demonstrated to be  
2 effective in protecting human health and the envi-  
3 ronment. Such generic remedies may provide for  
4 consideration of site-specific factors along with ge-  
5 neric approaches for particular categories of sites.

6 “(2) DEMONSTRATION.—A demonstration of  
7 the effectiveness of a remedy under paragraph (1)  
8 shall—

9 “(A) be based on the record from a num-  
10 ber of comparable sites;

11 “(B) evaluate an appropriate selection of  
12 remedial options; and

13 “(C) show that the generic remedy will not  
14 prevent consideration of site-specific factors  
15 which vary significantly from site to site in a  
16 manner that could significantly impact protec-  
17 tion of human health or the environment or the  
18 costs of the remedy.

19 “(3) UTILIZATION.—In a case in which a ge-  
20 neric remedy established under this subsection ap-  
21 plies with respect to a site, the President shall not  
22 be required to perform a site specific risk assess-  
23 ment (other than a baseline assessment) or an eval-  
24 uation of alternatives under this section.



1           “(4) NOTICE AND COMMENT.—The President  
2       shall publish notice of the President’s intention to  
3       utilize, and provide an opportunity to comment on  
4       the applicability of, a generic remedy for a site.

5           “(5) WAIVERS.—

6           “(A) IN GENERAL.—The Administrator  
7       may issue to an interested party a waiver of the  
8       application of a generic remedy established  
9       under this subsection with respect to a site.

10          “(B) FORM OF REQUEST.—A request for a  
11       waiver submitted by an interested party to the  
12       Administrator under this paragraph shall in-  
13       clude sufficient site-specific and other informa-  
14       tion to demonstrate that—

15               “(i) the generic remedy is not appro-  
16               priate; or

17               “(ii) another alternative can protect  
18               human health and the environment  
19               through significantly less costly means in a  
20               manner consistent with this section.

21          “(C) APPROVAL AND DISAPPROVAL.—The  
22       President shall approve or disapprove a request  
23       for a waiver submitted under this paragraph on  
24       or before the 90th day following the date of re-  
25       ceipt of the request.”.

1 **SEC. 107. HAZARDOUS SUBSTANCE PROPERTY USE.**

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

4 “(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

5 “(1) AUTHORITY OF PRESIDENT TO ACQUIRE  
6 EASEMENTS.—In connection with any remedial ac-  
7 tion under this Act, in order to prevent exposure to,  
8 reduce the likelihood of, or otherwise respond to a  
9 release or threatened release of a hazardous sub-  
10 stance, pollutant, or contaminant, the President may  
11 acquire, at fair market value, or for other consider-  
12 ation as agreed to by the parties, a hazardous sub-  
13 stance easement which restricts, limits, or controls  
14 the use of land or other natural resources, including  
15 specifying permissible or impermissible uses of land,  
16 prohibiting specified activities upon property, prohib-  
17 iting the drilling of wells or use of ground water, or  
18 restricting the use of surface water.

19 “(2) USE OF EASEMENTS.—A hazardous sub-  
20 stance easement under this subsection may be used  
21 wherever institutional controls have been selected as  
22 a component of a remedial action under this Act and  
23 the National Contingency Plan.

24 “(3) PERSONS SUBJECT TO EASEMENTS.—A  
25 hazardous substance easement shall be enforceable  
26 in perpetuity (unless terminated and released as pro-

1        vided for in this section) against any owner of the  
2        affected property and all persons who subsequently  
3        acquire an interest in the property or rights to use  
4        the property, including lessees, licensees, and any  
5        other person with an interest in the property, with-  
6        out respect to privity or lack of privity of estate or  
7        contract, lack of benefit running to any other prop-  
8        erty, assignment of the easement to another party or  
9        sale or other transfer of the burdened property, or  
10       any other circumstance which might otherwise affect  
11       the enforceability of easements or similar deed re-  
12       strictions under the laws of the State. The easement  
13       shall be binding upon holders of any other interests  
14       in the property regardless of whether such interests  
15       are recorded or whether they were recorded prior or  
16       subsequent to the easement, and shall remain in ef-  
17       fect notwithstanding any foreclosure or other asser-  
18       tion of such interests.

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

21            “(A) a legal description of the property af-  
22       fected;

23            “(B) the name or names of any current  
24       owner or owners of the property as reflected in  
25       public land records;

1           “(C) a description of the release or threat-  
2           ened release; and

3           “(D) a statement as to the nature of the  
4           restriction, limitation, or control created by the  
5           easement.

6           “(5) RECORDING AND FILING OF EASEMENT.—

7           Whenever the President acquires a hazardous sub-  
8           stance easement or assigns a hazardous substance  
9           easement to another party, the President shall  
10          record the easement in the public land records for  
11          the jurisdiction in which the affected property is lo-  
12          cated. If the State has not by law designated an of-  
13          fice for the recording of interests in real property or  
14          claims or rights burdening real property, the ease-  
15          ment shall be filed in the office of the clerk of the  
16          United States district court for the district in which  
17          the affected property is located and the registry.

18          “(6) METHODS OF ACQUIRING EASEMENTS.—

19          The President may acquire a hazardous substance  
20          easement by purchase or other agreement, by con-  
21          demnation, or by any other means permitted by law.  
22          Compensation for such easement shall be at fair  
23          market value, or for other consideration as agreed to  
24          by the parties, for the interest acquired.

1           “(7) ASSIGNMENT OF EASEMENTS TO PARTIES  
2           OTHER THAN THE PRESIDENT.—

3           “(A) AUTHORITY TO ASSIGN.—The Presi-  
4           dent may, where appropriate and with the con-  
5           sent of the State or other governmental entity,  
6           assign an easement acquired under this sub-  
7           section to a State or other governmental entity  
8           that has the capability of effectively enforcing  
9           the easement over the period of time necessary  
10          to achieve the purposes of the easement. In the  
11          case of any assignment, the easement shall also  
12          be fully enforceable by the assignee. Any assign-  
13          ment of such an easement by the President may  
14          be made by following the same procedures as  
15          are used for the transfer of an interest in real  
16          property to a State under section 104(j).

17          “(B) EASEMENTS HELD BY OTHER PER-  
18          SONS.—

19               “(i) DESIGNATION AS HAZARDOUS  
20               SUBSTANCE EASEMENTS.—Subject to  
21               clause (ii), in a case in which an institu-  
22               tional control is a component of a remedy  
23               selected under section 121 at a facility list-  
24               ed on the National Priorities List, the  
25               owner of property and the potential holder

1 of a restrictive easement may expressly  
2 designate, in writing, any interest in prop-  
3 erty as a hazardous substance easement  
4 within the meaning of this paragraph.

5 “(ii) CONDITIONS.—An interest in  
6 property may be designated as a hazardous  
7 substance easement under clause (i) if  
8 such interest is granted to a State, an In-  
9 dian Tribe, or another governmental entity  
10 or other person for the purpose of restrict-  
11 ing or limiting the use of land, water, or  
12 other resources in order to prevent expo-  
13 sure to, reduce the likelihood of, or other-  
14 wise respond to a release or threatened re-  
15 lease of a hazardous substance, pollutant,  
16 or contaminant from such a facility.

17 “(iii) EFFECT OF DESIGNATION.—  
18 When properly recorded or filed under  
19 paragraph (5), a hazardous substance  
20 easement designated under clause (i) shall  
21 create the same rights, have the same legal  
22 effect, and be enforceable in the same  
23 manner as a hazardous substance ease-  
24 ment acquired by the President regardless  
25 of whether the interest in property is oth-

1           erwise denominated as an easement, cov-  
2           enant, or any other form of property right.

3           “(8) PUBLIC NOTICE.—Not later than 180 days  
4           after the date of the enactment of this subsection,  
5           the President shall issue regulations regarding the  
6           procedures to be used for public notice of proposed  
7           property use restrictions. Such regulations shall en-  
8           sure that before acquiring a hazardous substance  
9           easement, and before recording any notice of such  
10          easement, the President will give notice and an op-  
11          portunity to comment to the owner of the affected  
12          property, all other persons with recorded interests in  
13          the property, any lessees or other authorized occu-  
14          pants of the property known to the President, the  
15          State and any municipalities in which the property  
16          is located, any relevant Community Advisory Group  
17          established under section 117, the affected commu-  
18          nity, and the general public.

19          “(9) TERMINATION OR MODIFICATION OF EASE-  
20          MENTS.—An easement acquired under this sub-  
21          section shall remain in force until the Administrator  
22          approves a modification or termination and release  
23          of the easement and, following such approval, the  
24          holder of the easement executes and records such  
25          modification or termination and release in accord-

1       ance with the terms of the easement. Such modifica-  
2       tion or termination shall be recorded in the same  
3       manner as the easement. A person may conduct ad-  
4       ditional response actions at a facility to allow for un-  
5       restricted use of the facility and may subsequently  
6       request termination of the easement. Such a request  
7       shall be granted by the holder of the easement and  
8       approved by the Administrator, in the discretion of  
9       the holder and the Administrator, if the holder and  
10      the Administrator determine that the easement is no  
11      longer necessary to protect human health and the  
12      environment.

13           “(10) ENFORCEMENT.—

14           “(A) EFFECT OF VIOLATIONS.—Violation  
15           of any restriction, limitation, or control imposed  
16           under a hazardous substance easement shall  
17           have the same effect as failure to comply with  
18           an order issued under section 106 and relief  
19           may be sought either in enforcement actions  
20           under section 106(b)(1) or section 120(g), by  
21           States under section 121(e)(2), or in citizens  
22           suits under section 310. No citizens suit under  
23           section 310 to enforce such a notice may be  
24           commenced if the holder of the easement has



1 commenced and is diligently prosecuting an ac-  
2 tion in court to enforce the easement.

3 “(B) ENFORCEMENT ACTIONS.—The  
4 President may take appropriate enforcement ac-  
5 tions to ensure compliance with the terms of  
6 the easement whenever the Administrator deter-  
7 mines that the terms set forth in the easement  
8 are being violated. If the easement is held by a  
9 party other than the President and that party  
10 has not taken appropriate enforcement actions,  
11 the President may notify the party of the viola-  
12 tion. If the party does not take appropriate en-  
13 forcement actions within 30 days of such notifi-  
14 cation, or sooner in the case of an imminent  
15 hazard, the President may initiate such enforce-  
16 ment actions.

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

20 “(11) APPLICABILITY OF OTHER PROVISIONS.—  
21 Holding a hazardous substance easement shall not  
22 in itself subject either the holder thereof or the  
23 owner of the affected property to liability under sec-  
24 tion 107. Any such easement acquired by the Presi-  
25 dent shall not be subject to the requirements of sec-

1       tion 104(j)(2) or 120(h). Nothing in this subsection  
2       limits or modifies the authority of the President pur-  
3       suant to section 104(j)(1).”.

4   **SEC. 108. RISK ASSESSMENT STANDARDS.**

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

7   **“SEC. 127. RISK ASSESSMENT PRINCIPLES, GUIDELINES,**  
8                   **AND REVIEWS.**

9       “(a) GENERAL PRINCIPLES.—Risk assessments and  
10   characterizations conducted under this Act shall—

11           “(1) provide objective assessments, estimates,  
12       and characterizations which neither minimize nor ex-  
13       aggerate the nature and magnitude of risks to  
14       human health and the environment;

15           “(2) distinguish scientific findings from other  
16       considerations;

17           “(3) be based on the best, relevant, and current  
18       scientific and technical information, including avail-  
19       able or reasonably obtainable (A) epidemiologic data,  
20       (B) data on bioavailability, and (C) site specific and  
21       all other relevant information made available to the  
22       President; and

23           “(4) be based on a careful analysis of the  
24       weight of scientific evidence that supports conclu-

1       sions about a problem’s potential risk to human  
2       health and the environment.

3       “(b) GUIDELINES.—

4               “(1) PUBLICATION.—Not later than 2 years  
5       after the date of the enactment of this section, the  
6       President shall update and publish exposure assess-  
7       ments and ecological risk assessment guidelines  
8       which are consistent with the principles in sub-  
9       section (a). Ecological risk guidelines shall address  
10      how to evaluate the significance of risks to popu-  
11      lations of plant and animal species, ecological com-  
12      munities, and ecosystems.

13              “(2) FINAL GUIDELINES.—Final guidelines  
14      under this subsection shall be established after ex-  
15      ternal peer review and notice and opportunity for  
16      comment on draft guidelines.

17      “(c) STUDY OF SUBSTANCES.—The President shall  
18      conduct a study of the cancer potency values of 12 hazard-  
19      ous substances listed under section 104(i)(2) that are fre-  
20      quently found to pose significant risks at National Prior-  
21      ities List facilities. The study may also include a review  
22      of other health effects values. The President shall not in-  
23      clude a substance in the study under this subsection if  
24      such substance is under scientific reevaluation pursuant  
25      to title XIV of the Safe Drinking Water Act. After solicit-

1 ing public comment, and after external peer review, the  
 2 President shall complete the study and publish the assess-  
 3 ment under this subsection. The publication of the final  
 4 assessment shall be considered a final agency action.”.

5 **SEC. 109. REMEDY REVIEW.**

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

8 **“SEC. 128. REMEDY REVIEW.**

9 “(a) NATIONAL SUPERFUND REMEDY REVIEW  
 10 BOARD.—The President shall establish a National  
 11 Superfund Remedy Review Board to control remedy costs,  
 12 and to provide for protective, consistent, and cost-effective  
 13 remedial decisions, at facilities on the National Priorities  
 14 List.

15 “(b) THRESHOLD FOR REVIEW.—For remedial alter-  
 16 natives evaluated and identified after the date of the en-  
 17 actment of this section, following completion of the evalua-  
 18 tion or remedial alternatives and identification of a pre-  
 19 ferred remedy, the Board shall review remedies for those  
 20 facilities on the National Priorities List for which the esti-  
 21 mated cost of the preferred remedy exceeds \$15,000,000.  
 22 If requested, the Board may review remedies for any facil-  
 23 ity for which the estimated cost for the preferred remedy  
 24 is \$15,000,000 or less.

1       “(c) REMEDY REVIEW AT FEDERAL FACILITIES.—  
2 Notwithstanding the threshold for review established by  
3 subsection (b), the President, after consultation with the  
4 Administrator and the Secretaries of Defense and Energy  
5 and after providing notice and an opportunity for public  
6 comment, may establish a different threshold for review  
7 for remedies at facilities owned or operated by the United  
8 States.

9       “(d) BOARD MEMBERSHIP.—The Board shall consist  
10 of experts on remedy selection, cost-effectiveness, and im-  
11 plementation of this Act. Such experts may be selected  
12 from the Environmental Protection Agency, State environ-  
13 mental agencies, and other Federal departments and  
14 agencies, including the Department of Defense and the  
15 Department of Energy. No person who participated in the  
16 development of a remedy for a facility may be a member  
17 of the Board reviewing such remedy.

18       “(e) PUBLIC PARTICIPATION.—For each remedy that  
19 is subject to review under this section, the President shall  
20 notify the State, the affected local government, the af-  
21 fected community (including any community assistance  
22 group), and the potentially responsible parties that the re-  
23 view will take place. Such notice shall include a brief de-  
24 scription of the preferred remedy and information regard-  
25 ing the location of the administrative record established

1 for the facility under section 113(k). The Board shall re-  
2 view all comments that are received during the period for  
3 public comment. The Board is not required to review any  
4 comments that exceed 4,000 words or are not received  
5 during such period.

6 “(f) BOARD RECOMMENDATIONS.—With respect to a  
7 facility for which the Board conducts a review under this  
8 section, the Board shall make recommendations to the Re-  
9 gional Administrator of the Environmental Protection  
10 Agency for the region in which the facility is located. The  
11 Regional Administrator shall make such recommendations  
12 publicly available and shall place such recommendations  
13 in the administrative record for the facility immediately  
14 upon receipt. When the proposed remedial alternative for  
15 the facility is issued, the President shall explain any devi-  
16 ations from the Board’s recommendations.

17 “(g) REVIEWS OF REMEDIES PROPOSED BY STATES  
18 UNDER SECTION 151.—This section shall apply to rem-  
19 edies developed by States under section 151. To the extent  
20 practicable, a majority of the members of the Board re-  
21 viewing any such remedies shall be officials from State en-  
22 vironmental agencies. This section shall not apply to rem-  
23 edies developed by States under section 152, although the  
24 Administrator shall encourage such States to provide re-

1 views of remedies in a manner consistent with this sec-  
2 tion.”.

3 **SEC. 110. REMEDY UPDATES.**

4 (a) REVIEW.—To ensure that Superfund records of  
5 decision reflect the current state of knowledge with respect  
6 to remediation science and technology, and to improve the  
7 cost-effectiveness of site remediation while ensuring reli-  
8 able long-term protection of human health and the envi-  
9 ronment, the President, upon receiving a request from an  
10 interested party on or before the last day of the 12-month  
11 period beginning on the date of the enactment of this Act,  
12 shall review a past Superfund record of decision. If appro-  
13 priate, based on such review, the President shall modify  
14 such record of decision.

15 (b) PAST RECORD OF DECISION DEFINED.—For the  
16 purpose of this section, the term “past Superfund record  
17 of decision” means a record of decision selecting a remedy  
18 at a site on the National Priorities List that was signed  
19 prior to October 2, 1995, and has not been reviewed pur-  
20 suant to United States Environmental Protection Agency,  
21 Office of Solid Waste and Emergency Response Directive,  
22 EPA540/F-96/026, or otherwise updated since October 2,  
23 1995.

24 (c) ADMINISTRATIVE RECORD.—The results of the  
25 President’s review of a record of decision under this sec-

tion and the basis for the President’s decision to update or not update a remedy shall be placed in the administrative record for the facility.

(d) JUDICIAL REVIEW.—The President’s decision under this section to modify or not modify a remedy following a review under this section shall not be subject to judicial review.

(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to affect the authority of the President to modify or amend a record of decision.

**SEC. 111. REMEDY DEFINED.**

Section 101(24) is amended by adding at the end the following: “The term includes obtaining, ensuring adequate public notice of, and otherwise tracking and maintaining the protections afforded by institutional controls, including easements acquired under section 104(k).”.

**TITLE II—COMMUNITY PARTICIPATION AND HUMAN HEALTH**  
**Subtitle A—Community Participation**

**SEC. 201. DEFINITIONS.**

Section 117 (42 U.S.C. 9617) is amended by adding after subsection (i), as added by section 209 of this Act, the following:



1       “(j) DEFINITIONS.—In this section, the following  
2 definitions apply:

3               “(1) COVERED FACILITY.—The term ‘covered  
4 facility’ means a facility that has been listed or pro-  
5 posed for listing on the National Priorities List.

6               “(2) AFFECTED COMMUNITY.—The term ‘af-  
7 fected community’ means any group of 2 or more in-  
8 dividuals (including representatives of Indian tribes)  
9 which may be affected by a release or threatened re-  
10 lease of a hazardous substance, pollutant, or con-  
11 taminant at a covered facility.”.

12 **SEC. 202. IMPROVING CITIZEN AND COMMUNITY PARTICI-**  
13 **PATION IN DECISIONMAKING.**

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

16               (1) in subsection (a)—

17                       (A) by striking “PROPOSED PLAN” and in-  
18 serting “PROPOSED PLAN”;

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

22                       (C) by striking “under paragraph (1)” and  
23 inserting “under subparagraph (A)”;

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

4           (3) in subsection (b) by striking “FINAL PLAN”  
 5           and inserting “FINAL PLAN”;

6           (4) in subsection (c)—

7                 (A) by striking “EXPLANATION OF DIF-  
 8                 FERENCES” and inserting “EXPLANATION OF  
 9                 DIFFERENCES”; and

10                (B) by redesignating paragraphs (1), (2),  
 11                and (3) as subparagraphs (A), (B), and (C), re-  
 12                spectively; and

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

16           (b) PARTICIPATION IN DECISIONMAKING.—Section  
 17 117 (42 U.S.C. 9617) is further amended by inserting  
 18 after the section heading the following:

19           “(a) IMPROVING CITIZEN AND COMMUNITY PARTICI-  
 20           PATION IN DECISIONMAKING.—

21                 “(1) IN GENERAL.—In order to provide an op-  
 22                 portunity for meaningful public participation at  
 23                 every significant phase of a response action at a cov-  
 24                 ered facility, the President shall take the actions  
 25                 specified in this subsection. Public meetings required

1 under this subsection shall be designed to obtain in-  
2 formation from the community and to disseminate  
3 information to the community concerning the Presi-  
4 dent's activities at a covered facility.

5 “(2) PRELIMINARY ASSESSMENT AND SITE IN-  
6 SPECTION.—

7 “(A) EVALUATION OF CONCERNS.—To the  
8 extent practicable, before or during site inspec-  
9 tion, the President shall solicit and evaluate  
10 concerns, interests, and information from the  
11 Community Advisory Group, if any, affected In-  
12 dian Tribes, the affected community, local gov-  
13 ernment officials, and State and local health of-  
14 ficials.

15 “(B) REQUIREMENTS FOR EVALUATION.—  
16 An evaluation under subparagraph (A) shall in-  
17 clude, as appropriate, face-to-face community  
18 surveys to identify the location of private drink-  
19 ing water wells, potential exposure pathways,  
20 including historic and current or potential use  
21 of water, and other environmental resources in  
22 the community; a public meeting; written re-  
23 sponses to significant concerns; and other ap-  
24 propriate participatory activities.

1           “(3) REMEDIAL INVESTIGATION AND FEASIBIL-  
2       ITY STUDY.—

3           “(A) PUBLIC MEETINGS.—The President  
4       shall provide an opportunity for public meetings  
5       and publish a notice of such meetings before or  
6       during the remedial investigation and feasibility  
7       study.

8           “(B) SOLICITATION OF VIEWS.—During  
9       the remedial investigation and feasibility study,  
10      the President shall solicit the views and pref-  
11      erences of the Community Advisory Group, if  
12      any, affected Indian tribes, the affected commu-  
13      nity, local government officials, and State and  
14      local health officials on the remediation and dis-  
15      position of hazardous substances, pollutants, or  
16      contaminants at the facility. Such views and  
17      preferences shall be described in the remedial  
18      investigation and feasibility study and consid-  
19      ered in the screening of remedial alternatives  
20      for the facility.”.

21          (2) COMPLETION OF WORK PLAN.—Section  
22      117(a) (42 U.S.C. 9617(a)) is amended by inserting  
23      after paragraph (4) of such section, as redesignated  
24      by subsection (a)(2) of this section, the following:

1           “(5) COMPLETION OF WORK PLAN.—The Presi-  
2       dent shall provide an opportunity for public meetings  
3       and publish a notice of such meetings before or dur-  
4       ing the completion of the work plan for the remedial  
5       design and remedial action.”.

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

11           “(8) ALTERNATIVES.—Pursuant to paragraph  
12      (4), members of the Community Advisory Group, if  
13      any, affected Indian tribes, the affected community,  
14      local government officials, and State and local health  
15      officials may propose remedial alternatives to the  
16      President. The President shall consider such alter-  
17      natives in the same manner as the President consid-  
18      ers alternatives proposed by other parties.

19           “(9) SELECTING APPROPRIATE ACTIVITIES.—In  
20      determining which of the activities set forth in para-  
21      graph (2) may be appropriate, the President may  
22      consult with the Community Advisory Group, if any,  
23      affected Indian tribes, the affected community, local  
24      government officials, and State and local health offi-  
25      cials.

1 “(10) PROVIDING INFORMATION.—

2 “(A) IN GENERAL.—The President, with  
3 the assistance of the Superfund Site Informa-  
4 tion Offices, shall provide information to the  
5 Community Advisory Group, if any, affected In-  
6 dian tribes, the affected community, local gov-  
7 ernment officials, and State and local health of-  
8 ficials at every significant phase of the response  
9 action at the covered facility.

10 “(B) NOTICE.—The President, on a regu-  
11 lar basis, shall inform the entities specified in  
12 subparagraph (A) of the progress and sub-  
13 stance of technical meetings between the lead  
14 agency and potentially responsible parties re-  
15 garding a covered facility and shall provide no-  
16 tice to such entities concerning—

17 “(i) the schedule for commencement  
18 of construction activities at the covered fa-  
19 cility and the location and availability of  
20 construction plans;

21 “(ii) the results of any review under  
22 section 121(c) and any modifications to the  
23 covered facility made as a result of the re-  
24 view; and

1 “(iii) the execution of and any revi-  
2 sions to institutional controls being used as  
3 part of a remedial action.”.

4 **SEC. 203. ADDITIONAL PUBLIC INVOLVEMENT REQUIRE-**  
5 **MENTS.**

6 Section 117 (42 U.S.C. 9617) is further amended by  
7 inserting after subsection (a) the following:

8 “(b) ADDITIONAL PUBLIC INVOLVEMENT REQUIRE-  
9 MENTS.—

10 “(1) AVAILABILITY OF RECORDS.—The Presi-  
11 dent shall make records relating to a response action  
12 at a covered facility available to the public through-  
13 out all phases of the response action. Such informa-  
14 tion shall be made available to the public for inspec-  
15 tion and copying without the need to file a formal  
16 request, subject to reasonable service charges as ap-  
17 propriate. This paragraph shall not apply to a  
18 record that is exempt from disclosure under section  
19 552 of title 5, United States Code.

20 “(2) REQUIREMENTS FOR PUBLIC INFORMA-  
21 TION.—

22 “(A) PRESENTATION.—The President, in  
23 carrying out responsibilities under this Act,  
24 shall ensure that the presentation of informa-  
25 tion on risk is unbiased and informative and

clearly discloses any uncertainties and data gaps. To the extent feasible, documents made available to the general public which purport to describe the degree of risk to human health shall state, at a minimum—

“(i) the population or populations addressed by any risk estimates;

“(ii) the expected risk or central estimate of risk for the specific population;

“(iii) any appropriate upperbound and lowerbound estimates; and

“(iv) the reasonable range or other description of uncertainties in the assessment process.

“(B) COMPARISONS OF RISK.—To the extent practicable and appropriate, the Administrator shall provide comparisons of the level of risk from hazardous substances found at facilities to the levels of risk from hazardous substances ordinarily encountered by the general public through other routes of exposure.”.

**SEC. 204. SUPERFUND SITE INFORMATION OFFICES; PUBLICATION REQUIREMENT.**

Section 117 (42 U.S.C. 9617) is further amended by inserting after subsection (b) the following :



1 “(c) SUPERFUND SITE INFORMATION OFFICES.—

2 “(1) ESTABLISHMENT.—

3 “(A) IN GENERAL.—Subject to subpara-  
4 graph (B), not later than 18 months after the  
5 date of the enactment of the Superfund Accel-  
6 eration, Fairness, and Efficiency Act, a State  
7 with a site on the National Priorities List may  
8 establish a Superfund Site Information Office  
9 to perform the functions set forth in paragraph  
10 (3).

11 “(B) EXISTING OFFICES.—The Adminis-  
12 trator may determine that a State office in ex-  
13 istence before the date of the enactment of the  
14 Superfund Acceleration, Fairness, and Effi-  
15 ciency Act can or does already perform the  
16 functions of a Superfund Site Information Of-  
17 fice and is eligible for funding under paragraph  
18 (2).

19 “(C) PROCESS.—Each State shall decide  
20 the process for establishing a Superfund Site  
21 Information Office. Such office may be elec-  
22 tronic or a physical location within the State.

23 “(D) EPA ROLE.—The Administrator  
24 shall provide financial and other assistance to a  
25 State for establishment and operation of a

1 Superfund Site Information Office if the office  
2 serves the functions set forth in paragraph (3).  
3 If the Administrator determines that the State  
4 has not established an office that can perform  
5 the functions of a Superfund Site Information  
6 Office, the Administrator shall establish an of-  
7 fice within the Environmental Protection Agen-  
8 cy to perform the functions.

9 “(2) FUNDING.—

10 “(A) IN GENERAL.—Funding for the oper-  
11 ation of Superfund Site Information Offices,  
12 and Environmental Protection Agency offices  
13 that perform similar functions, shall not exceed  
14 \$20,000,000 for a fiscal year.

15 “(B) STATE GRANTS.—Subject to the  
16 availability of appropriations, each State that  
17 has a Superfund Site Information Office, and  
18 each Environmental Protection Agency regional  
19 office performing the functions of a Superfund  
20 Site Information Office, shall receive not less  
21 than \$100,000, and not more than \$500,000,  
22 for a fiscal year.

23 “(C) FORMULA.—

24 “(i) IN GENERAL.—The Administrator  
25 shall publish guidelines establishing a for-

1           mula for determining the actual amount of  
2           funding for each Superfund Site Informa-  
3           tion Office.

4           “(ii) FACTORS.—The formula shall in-  
5           clude factors such as the number of facili-  
6           ties potentially eligible for or on the Na-  
7           tional Priorities List that would be covered  
8           by the Superfund Site Information Office.

9           “(3) FUNCTIONS.—

10           “(A) IN GENERAL.—A Superfund Site In-  
11           formation Office for a State shall—

12           “(i) assist the Administrator in—

13           “(I) disseminating information  
14           regarding covered facilities, the exist-  
15           ence of the Office and its services, and  
16           opportunities to participate under this  
17           Act;

18           “(II) notifying citizens of public  
19           meetings;

20           “(III) notifying the affected com-  
21           munity near a covered facility of the  
22           opportunity to establish a Community  
23           Advisory Group and of the availability  
24           of technical assistance grants under  
25           subsection (e);

1                   “(IV) informing citizens of their  
2                   rights under this Act; and

3                   “(V) providing citizens with in-  
4                   formation relating to the operation of  
5                   this Act with respect to covered facili-  
6                   ties within the State;

7                   “(ii) serve as a clearinghouse, main-  
8                   tain records, and provide electronic access,  
9                   as appropriate, for information regarding  
10                  such facilities, including a description of  
11                  the Administrator’s process for identifying  
12                  covered facilities and undertaking response  
13                  actions under this Act; and

14                  “(iii) provide a list of covered facilities  
15                  located in the State and, with respect to  
16                  each such covered facility to the extent in-  
17                  formation becomes available—

18                         “(I) the location, name of owner  
19                         or operator, and characteristics of the  
20                         covered facility;

21                         “(II) the hazardous substances,  
22                         pollutants, and contaminants present,  
23                         including the quantities and relative  
24                         toxicities of the substances, pollutants,  
25                         and contaminants;

1 “(III) the response actions being  
2 taken, including records of any insti-  
3 tutional controls that are included in  
4 the response actions;

5 “(IV) any health data generated  
6 in connection with the covered facility;

7 “(V) the status of the response  
8 actions at the covered facility;

9 “(VI) any report generated as a  
10 result of a review under section  
11 121(c);

12 “(VII) the location of the admin-  
13 istrative record created for the facil-  
14 ity, if any, under section 113(k); and

15 “(VIII) any ongoing operation  
16 and maintenance requirements or in-  
17 stitutional controls in place.

18 “(B) REPORT.—

19 “(i) IN GENERAL.—Each State with a  
20 Superfund Site Information Office receiv-  
21 ing a grant under this section shall submit  
22 annually a report to the Administrator re-  
23 garding the use of the grant and shall cer-  
24 tify in the report that such grant has been

1           used in compliance with the requirements  
2           of this subsection.

3           “(ii) TERMINATION OF GRANT.—If  
4           the Administrator determines that the  
5           grant is not being used in a manner con-  
6           sistent with the functions under subpara-  
7           graph (A), the Administrator may termi-  
8           nate the grant.”.

9           (b) PUBLICATION.—Section 117(d) (42 U.S.C.  
10 9617(d)) is amended by striking “major”.

11 **SEC. 205. TECHNICAL ASSISTANCE GRANTS.**

12           Section 117(e) (42 U.S.C. 9617(e)) is amended to  
13 read as follows:

14           “(e) TECHNICAL ASSISTANCE GRANTS.—

15           “(1) AUTHORITY.—In accordance with rules to  
16 be promulgated by the Administrator, the Adminis-  
17 trator may make grants for technical assistance  
18 available to any Community Advisory Group or af-  
19 fected community with respect to—

20           “(A) a covered facility;

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

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

1           “(2) SPECIAL RULES.—

2                   “(A) FEDERAL SHARE.—No matching con-  
3           tribution shall be required for a grant under  
4           this subsection.

5                   “(B) ADVANCE PAYMENTS.—The Adminis-  
6           trator may make available to a recipient of a  
7           grant under this subsection in advance of the  
8           expenditures to be covered by the grant the  
9           lesser of \$5,000 or 10 percent of the total  
10          amount of the grant.

11                  “(3) GRANT AVAILABILITY.—The Administrator  
12          shall promptly notify residents and Indian tribes liv-  
13          ing near a covered facility that technical assistance  
14          grants are available under this section.

15                  “(4) NUMBER OF GRANTS PER FACILITY.—

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

20                   “(B) RENEWAL OF GRANTS.—A grant  
21           made under this subsection with respect to a fa-  
22           cility may be renewed to facilitate public par-  
23           ticipation at all stages of a response action.

24                   “(C) SPECIAL RULE.—In exceptional cir-  
25           cumstances, the Administrator may provide

1 more than 1 grant under this subsection with  
2 respect to a single facility, considering such fac-  
3 tors as the area affected by the facility and the  
4 distances between affected communities.

5 “(5) FUNDING AMOUNT.—

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

10 “(B) ADDITIONAL FUNDS.—The Adminis-  
11 trator may increase the amount of a grant  
12 under this subsection if—

13 “(i) the grant recipient demonstrates  
14 that the characteristics of a facility indi-  
15 cate that additional funds are necessary  
16 due to the complexity of the response ac-  
17 tion, including the size and complexity of  
18 the facility, or the nature or volume of  
19 site-related information; and

20 “(ii) the Administrator finds that the  
21 grant recipient’s management of a previous  
22 grant under this subsection, if any, was  
23 satisfactory, and the costs incurred under  
24 the grant were allowable and reasonable.



1           “(6) SIMPLIFICATION.—To ensure that the ap-  
2           plication process is accessible to all affected citizens,  
3           the Administrator shall review the existing guide-  
4           lines and application procedures for grants under  
5           this subsection and, not later than 180 days after  
6           the date of the enactment of this paragraph, revise,  
7           as appropriate, such guidelines and procedures to  
8           simplify the process of obtaining such grants.

9           “(7) AUTHORIZED GRANT ACTIVITIES.—

10           “(A) INFORMATION AND PARTICIPATION.—

11           To facilitate full participation by a grant recipi-  
12           ent in response activities at a facility, a grant  
13           made under this subsection may be used to ob-  
14           tain technical assistance, including the hiring of  
15           health and safety experts, in interpreting infor-  
16           mation for, and disseminating information to,  
17           members of the community, and in providing  
18           information and recommendations to the Presi-  
19           dent, with regard to—

20                   “(i) the nature of the hazard at a fa-  
21                   cility, including information used to rank  
22                   facilities according to the Hazard Ranking  
23                   System;

24                   “(ii) sampling and monitoring plans;

1 “(iii) the remedial investigation and  
2 feasibility study;

3 “(iv) the record of decision;

4 “(v) the selection, design, and con-  
5 struction of the remedial action;

6 “(vi) operation and maintenance;

7 “(vii) institutional controls;

8 “(viii) removal activities at the facil-  
9 ity; and

10 “(ix) health assessment or health  
11 studies.

12 “(B) ADDITIONAL ACTIVITIES.—In addi-  
13 tion to the activities specified in subparagraph  
14 (A), not more than 10 percent of the amount  
15 of a grant under this subsection may be used  
16 for educational training, hiring neutral profes-  
17 sionals to facilitate deliberations and consensus  
18 efforts, and hiring community liaisons to poten-  
19 tially responsible parties and government agen-  
20 cies to facilitate public participation at the facil-  
21 ity.

22 “(C) AVAILABILITY OF INFORMATION.—In-  
23 formation generated by the recipients of grants  
24 under this subsection shall be made available,

1 as appropriate, to the appropriate Superfund  
2 Site Information Office.

3 “(D) LIMITATION.—Grants made under  
4 this subsection may not be used for the pur-  
5 poses of collecting field sampling data.

6 “(8) NON-SITE-SPECIFIC GRANTS.—In accord-  
7 ance with rules to be promulgated by the Adminis-  
8 trator, the Administrator may make grants under  
9 this subsection to Indian tribes, nonprofit organiza-  
10 tions, and citizens groups to enhance their participa-  
11 tion, prior to final agency action, in rulemaking  
12 processes carried out in accordance with this Act.  
13 Total funding for all such grants shall not exceed  
14 \$100,000.

15 “(9) REPRESENTATIVE OF THE COMMUNITY.—  
16 The Administrator shall publish guidance for deter-  
17 mining whether a recipient of a grant under this  
18 subsection is a legitimate representative of the com-  
19 munity affected by a facility.”.

20 **SEC. 206. UNDERSTANDABLE PRESENTATION OF MATE-**  
21 **RIALS.**

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

24 “(f) UNDERSTANDABLE PRESENTATION OF MATE-  
25 RIALS.—The President shall ensure that information pre-

pared for distribution to the public under this section shall be provided or summarized in a manner that may be easily understood by the community, considering any unique cultural needs of the community, including presentation of information orally and distribution of information in languages other than English, as appropriate.”.

**SEC. 207. PUBLIC PARTICIPATION IN REMOVAL ACTIONS.**

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

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

“(1) REMOVAL ACTIONS WHERE ON-SITE ACTIVITIES MUST BEGIN IN LESS THAN 6 MONTHS.—

In the case of a removal action where on-site activities must begin in less than 6 months, the President shall—

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

“(B) provide a public comment period, as appropriate, of not less than 30 days from the

1 date on which the administrative record is made  
2 available for public inspection; and

3 “(C) prepare a written response to com-  
4 ments.

5 “(2) REMOVAL ACTIONS WHERE ON-SITE AC-  
6 TIVITIES WILL EXTEND BEYOND 120 DAYS.—In the  
7 case of a removal action where on-site activities are  
8 expected to extend beyond 120 days, the President  
9 shall—

10 “(A) conduct interviews with the Commu-  
11 nity Advisory Group, if any, affected Indian  
12 tribes, the affected community, local govern-  
13 ment officials, and State and local health offi-  
14 cials, as appropriate, to solicit their concerns,  
15 information needs, and how or when the af-  
16 fected community would like to become involved  
17 in the response action;

18 “(B) prepare a formal community relations  
19 plan based on the community interviews and  
20 other relevant information, specifying the com-  
21 munity relations activities that the President  
22 expects to undertake during the response; and

23 “(C) establish at least 1 local information  
24 repository at or near the location of the re-  
25 sponse action.

1       The information repository shall contain items made  
2       available for public information and the administra-  
3       tive record. The President shall inform the affected  
4       community of the establishment of the information  
5       repository and provide a notice of availability of the  
6       administrative record for public review. All items in  
7       the repository shall be available for public inspection  
8       and copying.

9               “(3) REMOVAL ACTIONS WHERE PLANNING PE-  
10       RIOD WILL EXTEND BEYOND 6 MONTHS.—In the  
11       case of a removal action where the planning period  
12       is expected to extend beyond 6 months, the Presi-  
13       dent shall—

14               “(A) comply with the requirements of  
15       paragraph (2);

16               “(B) provide a notice of availability of and  
17       a brief description of the removal engineering  
18       evaluation and cost analysis in a local news-  
19       paper of general circulation;

20               “(C) provide a reasonable opportunity, not  
21       less than 30 days, for submission of written and  
22       oral comments after completion of the engineer-  
23       ing evaluation and cost analysis; and

24               “(D) prepare a written response to signifi-  
25       cant comments.”.

1 **SEC. 208. COMMUNITY ADVISORY GROUPS.**

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

4 “(h) COMMUNITY ADVISORY GROUPS.—

5 “(1) CREATION AND RESPONSIBILITIES.—The  
6 President shall provide the opportunity for the es-  
7 tablishment of a Community Advisory Group to  
8 serve as a representative public forum to achieve di-  
9 rect, regular, and meaningful consultation with all  
10 interested parties throughout all stages of a response  
11 action whenever—

12 “(A) the President determines such a  
13 group will be helpful; or

14 “(B) 25 individuals residing in the area in  
15 which the facility is located, or 10 percent of  
16 the population of a locality in which the Na-  
17 tional Priorities List facility is located, which-  
18 ever is fewer, petition for a Community Advi-  
19 sory Group to be established.

20 “(2) DUTIES.—

21 “(A) PROVISION OF INFORMATION AND  
22 VIEWS.—A Community Advisory Group shall  
23 provide information and views to the President  
24 and, as appropriate, to any or all of the follow-  
25 ing: the Agency for Toxic Substances and Dis-  
26 ease Registry, State regulatory agencies, Fed-

1           eral agencies, Federal, State, and tribal natural  
2           resource trustees, and potentially responsible  
3           parties conducting response actions.

4           “(B) CONTENTS OF INFORMATION AND  
5           VIEWS.—The information and views reported  
6           under subparagraph (A) may include the var-  
7           ious subjects related to facility remediation, in-  
8           cluding facility health studies, potential reme-  
9           dial alternatives, and selection and implementa-  
10          tion of remedial and removal actions.

11          “(C) ATTEMPTS OF ACHIEVE CONSEN-  
12          SUS.—The Community Advisory Group shall at-  
13          tempt to achieve consensus among its members  
14          before reporting positions to agencies or poten-  
15          tially responsible parties. In cases in which con-  
16          sensus cannot be reached, the Community Advi-  
17          sory Group shall present divergent views.

18          “(3) LAND USE RECOMMENDATIONS.—

19          “(A) CONSULTATION DURING REMEDY SE-  
20          LECTION PROCESS.—To obtain greater commu-  
21          nity input into and support for remedial deci-  
22          sions affecting future land use, the Adminis-  
23          trator shall consult with the Community Advi-  
24          sory Group, if any, affected Indian tribes, the  
25          affected community, local government officials,



1 and local health officials on a regular basis  
2 throughout the remedy selection process regard-  
3 ing the reasonably anticipated beneficial use of  
4 land at the facility and any institutional con-  
5 trols required to assure that land use restric-  
6 tions remain in effect.

7 “(B) RECOMMENDATIONS OF COMMUNITY  
8 ADVISORY GROUPS.—

9 “(i) IN GENERAL.—A Community Ad-  
10 visory Group may offer recommendations  
11 on the reasonably anticipated future use of  
12 land at a facility to the Administrator at  
13 any time prior to the selection of a remedy  
14 at the facility.

15 “(ii) CONSIDERATION OF LAND USE  
16 PLANS.—A land use recommendation of a  
17 Community Advisory Group under this  
18 subparagraph shall consider, at a mini-  
19 mum, applicable comprehensive land use  
20 plans and the other criteria for determin-  
21 ing future land use set forth in section  
22 121(d)(3)(A).

23 “(4) COMMUNITY ADVISORY GROUP INFORMA-  
24 TION AND RECOMMENDATIONS.—With the exception  
25 of land use recommendations, information and rec-

1 ommendations received from the Community Advi-  
2 sory Groups shall be considered by the President to  
3 be of equal weight with the advice received from re-  
4 cipients of technical assistance grants under sub-  
5 section (e) and other affected community members.

6 “(5) COMMUNITY ADVISORY GROUP MEM-  
7 BERS.—

8 “(A) NOTICE AND OPPORTUNITY TO PAR-  
9 TICIPATE.—The President shall provide notice  
10 and opportunity to participate on a Community  
11 Advisory Group to the affected community, in-  
12 cluding to persons who are or historically have  
13 been disproportionately affected by facility con-  
14 tamination in their community.

15 “(B) COMMUNITY REPRESENTATION.—

16 “(i) IN GENERAL.—The President  
17 shall ensure that each Community Advi-  
18 sory Group, to the extent practicable, re-  
19 flects the composition of the community  
20 near the facility and the diversity of inter-  
21 ests.

22 “(ii) REPRESENTATIVES OF LOCAL  
23 RESIDENTS.—Local residents shall com-  
24 prise a majority of the total membership of  
25 the Community Advisory Group.

1           “(iii) REPRESENTATIVES OF TECH-  
2           NICAL ASSISTANCE GRANT RECIPIENTS.—  
3           At least 1 member of a Community Advi-  
4           sory Group shall represent the recipients of  
5           technical assistance grants under sub-  
6           section (e) if such a grant has been made  
7           with respect to the facility.

8           “(iv) OTHER REPRESENTATIVES.—To  
9           the extent possible, the President shall en-  
10          sure that members of the following groups  
11          are represented on a Community Advisory  
12          Group:

13               “(I) Persons residing or owning  
14               residential property near the facility  
15               or persons who may be directly af-  
16               fected by the releases from the facil-  
17               ity.

18               “(II) Persons who, although not  
19               residing or owning property near the  
20               facility, may be potentially affected by  
21               releases from the facility.

22               “(III) Persons in the local medi-  
23               cal community who are practicing in  
24               the community.

1                   “(IV) Members of local Indian  
2                   tribes or Indian communities.

3                   “(V) Persons residing in the  
4                   community who are members of local  
5                   citizen, civic, environmental, or public  
6                   interest groups.

7                   “(VI) Current and former em-  
8                   ployees of the facility during facility  
9                   operation.

10                  “(VII) Persons in the local busi-  
11                  ness community.

12                  “(6) PAY.—Members shall serve on a Commu-  
13                  nity Advisory Group without pay.

14                  “(7) FACA.—The Federal Advisory Committee  
15                  Act shall not apply to a Community Advisory Group  
16                  established under this Act or ATSDR Community  
17                  Advisory Panels.

18                  “(8) TECHNICAL AND ADMINISTRATIVE SUP-  
19                  PORT FOR COMMUNITY ADVISORY GROUPS.—The  
20                  President may provide technical and administrative  
21                  support for Community Advisory Groups.

22                  “(9) ADDITIONAL PARTICIPANTS.—The follow-  
23                  ing persons may participate in meetings of Commu-  
24                  nity Advisory Groups to provide information and

1 technical expertise, but shall not be members of the  
2 Community Advisory Group:

3 “(A) The Administrator.

4 “(B) The Administrator of the Agency for  
5 Toxic Substances and Disease Registry.

6 “(C) The State.

7 “(D) Representatives chosen by the gov-  
8 erning body of local Indian tribes or Indian  
9 community local governments (which may in-  
10 clude pertinent city or county governments, or  
11 both).

12 “(E) The head of any other governmental  
13 unit which regulates land use in the vicinity of  
14 the facility, as appropriate.

15 “(F) Facility owners, and local representa-  
16 tives of the potentially responsible parties, who  
17 represent, wherever practicable, a balance of the  
18 interests of the potentially responsible parties.

19 “(10) OTHER PUBLIC INVOLVEMENT.—

20 “(A) CONSIDERATION OF VIEWS.—The ex-  
21 istence of a Community Advisory Group shall  
22 not diminish any other obligation of the Presi-  
23 dent to consider the views of any person in se-  
24 lecting response actions under this Act.

1           “(B) STATUS OF EXISTING COMMUNITY  
2           ADVISORY GROUPS.—Nothing in this section  
3           shall affect the status of any citizen advisory  
4           group formed before the enactment of this sub-  
5           section.

6           “(C) STATUS OF EXISTING BOARDS.—  
7           Nothing in this section shall affect the status,  
8           decisions, or future formation of any Depart-  
9           ment of Defense Restoration Advisory Board or  
10          Department of Energy Site Specific Advisory  
11          Board. No Citizen Advisory Group must be es-  
12          tablished for a facility if any such Board has  
13          been established for the facility.”.

14 **SEC. 209. COMMUNITY STUDY.**

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

17          “(i) COMMUNITY STUDY.—

18               “(1) REPORT BY THE ADMINISTRATOR.—Not  
19          later than 2 years after the date of the enactment  
20          of this Act, the Administrator shall prepare and sub-  
21          mit to Congress and the Superfund Site Information  
22          Offices a community study. The Administrator shall  
23          periodically update the study. The Administrator  
24          and Superfund Site Information Offices shall ensure

1       that copies of such studies are made available to the  
2       public.

3               “(2) CONTENTS OF THE REPORT.—The Admin-  
4       istrator’s report shall include an analysis of—

5                       “(A) the duration of time between the dis-  
6       covery and listing of a facility;

7                       “(B) the timing and nature of response ac-  
8       tions;

9                       “(C) the degree to which public views are  
10      reflected in response actions;

11                      “(D) future land use determinations and  
12      use of institutional controls;

13                      “(E) the population, race, ethnicity, and  
14      income characteristics of each community af-  
15      fected by each facility listed or proposed for  
16      listing on the National Priorities List; and

17                      “(F) the risk presented by each such facil-  
18      ity.

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

1           “(4) ACTIONS BASED ON EVALUATION.—The  
 2       Administrator shall institute necessary improve-  
 3       ments or modifications to address any deficiencies  
 4       identified by the study prepared under this section.”.

## 5           **Subtitle B—Human Health**

### 6       **SEC. 221. PUBLIC HEALTH AUTHORITIES.**

7           (a) DISEASE REGISTRY AND MEDICAL CARE PROVID-  
 8       ERS.—Section 104(i)(1) (42 U.S.C. 9604(i)(1)) is amend-  
 9       ed—

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

12           “(A) in cooperation with the States, for sci-  
 13       entific purposes and public health purposes, estab-  
 14       lish and maintain a national registry of persons ex-  
 15       posed to toxic substances;”; and

16           (2) in subparagraph (E) by striking “admission  
 17       to hospitals and other facilities and services operated  
 18       or provided by the Public Health Service” and in-  
 19       serting “referral to licensed or accredited health care  
 20       providers”.

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

23           (1) by inserting “(A)” after “(3)”;



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

4           (3) by striking “Any toxicological profile or re-  
5           vision thereof” and all that follows through the pe-  
6           riod at the end of such paragraph and inserting the  
7           following:

8           “(B) Any toxicological profile or revision thereof shall  
9           reflect the Administrator of ATSDR’s assessment of all  
10          relevant toxicological testing which has been peer re-  
11          viewed. The profiles prepared under this paragraph shall  
12          be for those substances highest on the list of priorities  
13          under paragraph (2) for which profiles have not previously  
14          been prepared or for substances not on the listing but  
15          which have been found at facilities for which there has  
16          been a response action under this Act and which have been  
17          determined by ATSDR to be of health concern. Profiles  
18          required under this paragraph shall be revised and repub-  
19          lished, as appropriate, based on scientific development.  
20          Such profiles shall be provided to the States, including  
21          State health departments, tribal health officials, and local  
22          health departments, and made available to other inter-  
23          ested parties.”.

24          (c) DETERMINING HEALTH EFFECTS.—Section  
25          104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is amended—

1           (1) by striking “designed to determine the  
 2           health effects (and techniques for development of  
 3           methods to determine such health effects) of such  
 4           substance.” and inserting “conducted directly or by  
 5           means such as cooperative agreements and grants  
 6           with appropriate public and nonprofit institutions.  
 7           The research shall be designed to determine the  
 8           health effects (and techniques for development of  
 9           methods to determine such health effects) of the  
 10          substance.”;

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

12           (3) by striking “and” at the end of clause (iii);

13          and

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

15           “(iv) laboratory and other studies which can  
 16           lead to the development of innovative techniques for  
 17           predicting organ-specific, site-specific, and system-  
 18           specific acute and chronic toxicity; and”.

19          (d) PUBLIC HEALTH AT NPL FACILITIES.—

20           (1) PRELIMINARY PUBLIC HEALTH ASSESS-  
 21           MENTS.—Section 104(i)(6) (42 U.S.C. 9604(i)(6)) is  
 22           amended by striking “(6)(A)” and all that follows  
 23           through subparagraph (A) and inserting the follow-  
 24           ing:

1       “(6)(A)(i) The Administrator of ATSDR shall per-  
2 form a preliminary public health assessment for each facil-  
3 ity, including those facilities owned by any department,  
4 agency, or instrumentality of the United States, on the  
5 National Priorities List and those sites that are the sub-  
6 ject of a petition under subparagraph (B). The prelimi-  
7 nary public health assessment shall be commenced as soon  
8 as practicable after each facility is proposed for inclusion  
9 on the National Priorities List or ATSDR accepts a peti-  
10 tion for a health assessment. Where ATSDR, in consulta-  
11 tion with local public health officials, determines it is indi-  
12 cated by the preliminary public health assessment,  
13 ATSDR shall conduct a public health assessment of those  
14 sites posing a health hazard, which should be considered  
15 in selecting the remedial action.

16       “(ii) The Administrator of ATSDR shall design pub-  
17 lic health assessments that take into account the needs  
18 and conditions of the affected community, in cooperation  
19 with States.

20       “(iii) The Administrator of the Environmental Pro-  
21 tection Agency shall place highest priority on facilities  
22 with releases of hazardous substances which result in ac-  
23 tual ongoing human exposures at levels of public health  
24 concern or adverse health effects as identified in a public

1 health assessment conducted by the ATSDR or are rea-  
2 sonably anticipated based on currently known facts.”.

3 (2) STRATEGIES FOR OBTAINING DATA; COMMU-  
4 NITY INVOLVEMENT.—Section 104(i)(6)(D) (42  
5 U.S.C. 9604(i)(6)(D)) is amended—

6 (A) by inserting “(i)” after “(D)”;

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

8 “The President and the Administrator of  
9 ATSDR shall develop strategies to obtain rel-  
10 evant on-site and off-site characterization data  
11 for use in the health assessment. The President  
12 shall, to the maximum extent practicable, pro-  
13 vide the Administrator of ATSDR with the data  
14 and information necessary to make public  
15 health assessments sufficiently prior to the  
16 choice of remedial actions to allow ATSDR to  
17 complete these assessments. Where deemed ap-  
18 propriate, the Administrator of ATSDR shall  
19 provide to the President as soon as practicable  
20 after site discovery, recommendations for sam-  
21 pling environmental media for hazardous sub-  
22 stances of public health concern. To the extent  
23 feasible, the President shall incorporate such  
24 recommendations into the President’s site inves-  
25 tigation activities.

1       “(ii) In order to improve community involvement in  
2 health assessments, the Administrator of ATSDR shall  
3 carry out each of the following duties:

4               “(I) The Administrator of ATSDR shall collect  
5 from Community Assistance Groups, from State and  
6 local public health authorities, and from other  
7 sources in communities affected or potentially af-  
8 fected by releases of hazardous substances data re-  
9 garding exposure, relevant human activities, and  
10 other factors.

11              “(II) The Administrator of ATSDR shall design  
12 health assessments that take into account the needs  
13 and conditions of the affected community. Commu-  
14 nity-based research models, building links to local  
15 expertise, and local health resources should be used.  
16 In preparing such designs, emphasis shall be placed  
17 on collection of actual exposure data, and sources of  
18 multiple exposure shall be considered.”.

19              (3) RESULTS OF PUBLIC HEALTH ASSESS-  
20 MENTS.—Section 104(i)(6)(H) (42 U.S.C.  
21 9604(i)(6)(H)) is amended by striking “health as-  
22 sessment” each place it appears and inserting “pub-  
23 lic health assessment”.

24              (e) HEALTH STUDIES.—Section 104(i)(7) (42 U.S.C.  
25 9604(i)(7)) is amended by striking “(7)(A)” and all that

1 follows through subparagraph (A) and inserting the fol-  
2 lowing:

3       “(7)(A) Whenever in the judgment of the Adminis-  
4 trator of ATSDR it is appropriate on the basis of the re-  
5 sults of a public health assessment or on the basis of other  
6 appropriate information, the Administrator of ATSDR  
7 shall conduct a human health study of exposure or other  
8 health effects for selected groups or individuals in order  
9 to determine the desirability of conducting full scale epi-  
10 demiologic or other health studies of the entire exposed  
11 population.”.

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

16       “(14) In implementing this subsection and other  
17 health-related provisions of this Act in cooperation with  
18 the States, the Administrator of ATSDR shall—

19               “(A) assemble, develop as necessary, and dis-  
20 tribute to the State and local health officials, tribes,  
21 medical colleges, physicians, nursing institutions,  
22 nurses, and other health professionals and medical  
23 centers, appropriate educational materials (including  
24 short courses) on the medical surveillance, screening,  
25 and methods of prevention, diagnosis, and treatment

1 of injury or disease related to exposure to hazardous  
 2 substances (giving priority to those listed in para-  
 3 graph (2)), through means the Administrator of  
 4 ATSDR considers appropriate; and

5 “(B) assemble, develop as necessary, and dis-  
 6 tribute to the general public and to at-risk popu-  
 7 lations appropriate educational materials and other  
 8 information on human health effects of hazardous  
 9 substances.”.

10 (g) GRANTS, CONTRACTS, AND COMMUNITY ASSIST-  
 11 ANCE ACTIVITIES.—Section 104(i)(15) (42 U.S.C.  
 12 6904(i)(15)) is amended—

13 (1) by inserting “(A)” before “The activities”;

14 (2) in the first sentence by striking “coopera-  
 15 tive agreements with States (or political subdivisions  
 16 thereof)” and inserting “grants, cooperative agree-  
 17 ments, or contracts with States (or political subdivi-  
 18 sions thereof), other appropriate public authorities,  
 19 public or private institutions, colleges, universities,  
 20 and professional associations”;

21 (3) in the second sentence by inserting “public”  
 22 before “health assessments”; and

23 (4) by adding at the end the following:

24 “(B) When a public health assessment is conducted  
 25 at a facility on the National Priorities List, or a facility

1 is being evaluated for inclusion on the National Priorities  
2 List, the Administrator of ATSDR may provide the assist-  
3 ance specified in this paragraph to public or private non-  
4 profit entities, individuals, and community-based groups  
5 that may be affected by the release or threatened release  
6 of hazardous substances in the environment.

7 “(C) The Administrator of ATSDR, pursuant to the  
8 grants, cooperative agreements, and contracts referred to  
9 in this paragraph, is authorized and directed to provide,  
10 where appropriate, diagnostic services, health data reg-  
11 istries and preventative public health education to commu-  
12 nities affected by the release of hazardous substances.”.

13 (h) PEER REVIEW COMMITTEE.—Section 104(i) (42  
14 U.S.C. 6904(i)) is amended by adding at the end the fol-  
15 lowing:

16 “(19) The Administrator of ATSDR shall establish  
17 an external peer review committee of qualified health sci-  
18 entists who serve for fixed periods and meet periodically  
19 to—

20 “(A) provide guidance on initiation of studies;

21 “(B) assess the quality of study reports funded  
22 by the agency; and

23 “(C) provide guidance on effective and objective  
24 risk characterization and communication.



1 The peer review committee may include additional specific  
2 experts representing a balanced group of stakeholders on  
3 an ad hoc basis for specific issues. Meetings of the com-  
4 mittee should be open to the public.”.

5 **SEC. 222. INDIAN HEALTH PROVISIONS.**

6 Section 104(i) (42 U.S.C. 9406(i)) is amended—

7 (1) in paragraph (1) by inserting “the Indian  
8 Health Service,” after “the Secretary of Transpor-  
9 tation,”;

10 (2) in paragraph (5)(A) by inserting “and the  
11 Indian Health Service” after “Public Health Serv-  
12 ice”;

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

16 (4) in paragraph (6)(E) by inserting at the end  
17 of the subparagraph the following: “If the Adminis-  
18 trator of ATSDR or the Administrator of EPA does  
19 not act on the recommendations of the State, the  
20 Administrators must respond in writing to the State  
21 or tribe as to why they have not acted on the rec-  
22 ommendations.”;

23 (5) in paragraph (6)(F)—

24 (A) by striking “and” after “emissions,”;

25 and

1 (B) by inserting “and any other pathways  
2 resulting from subsistence activities” after  
3 “contamination”; and

4 (6) in paragraph (6)(G) by striking the period  
5 at the end of the last sentence and inserting the fol-  
6 lowing: “, and may give special consideration, where  
7 appropriate, to any practices of the affected commu-  
8 nity that may result in increased exposure to haz-  
9 ardous substances, pollutants, or contaminants, such  
10 as subsistence hunting, fishing, and gathering.”.

11 **SEC. 223. HAZARD RANKING SYSTEM.**

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

14 “(5) RISK PRIORITIZATION.—In setting prior-  
15 ities under subsection (a)(8), the President shall  
16 place highest priority on facilities with releases of  
17 hazardous substances which result in actual ongoing  
18 human exposures at levels of public health concern  
19 or demonstrated adverse health effects as identified  
20 in a health assessment conducted by the Agency for  
21 Toxic Substances and Disease Registry or are rea-  
22 sonably anticipated based on currently known facts.

23 “(6) PRIOR RESPONSE ACTION.—Any evalua-  
24 tion under this section shall take into account all  
25 prior response actions taken at a facility.”.

1 **SEC. 224. FACILITY SCORING.**

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

4 “(h) FACILITY SCORING.—The Administrator shall  
5 evaluate areas, such as Indian country or poor rural com-  
6 munities that warrant special attention and identify up to  
7 5 facilities in each region of the Environmental Protection  
8 Agency that are likely to warrant inclusion on the Na-  
9 tional Priorities List. These facilities shall be accorded a  
10 priority in evaluation for National Priorities List listing  
11 and scoring, and shall be evaluated for listing within 2  
12 years after the date of enactment of this subsection.”.

13 **TITLE III—LIABILITY REFORM**

14 **SEC. 301. AMENDMENTS TO SECTION 104.**

15 (a) LIMITATION ON REMOVAL AUTHORITY.—Section  
16 104(c) (42 U.S.C. 9604(c)) is amended—

17 (1) by striking “(c)(1)” and all that follows  
18 through the period at the end of paragraph (1) and  
19 inserting the following:

20 “(c) LIMITATIONS ON AUTHORITY OF PRESIDENT.—

21 “(1) TAKING OR REQUIRING RESPONSE AC-  
22 TIONS.—The President shall not take or require an-  
23 other person to take response actions at any facility  
24 after \$4,000,000 has been expended for such actions  
25 or 2 years has elapsed from the date of initial re-  
26 sponse to the release or threatened release of haz-

1       ardous substances at the facility unless the facility  
 2       is on the National Priorities List or is proposed to  
 3       be on such List or the President finds that—

4               “(A) continued response actions are imme-  
 5       diately required to prevent, limit, or mitigate an  
 6       emergency at the facility;

7               “(B) there is immediate risk to public  
 8       health or welfare or the environment; and

9               “(C) such assistance will not be otherwise  
 10      provided on a timely basis.”;

11              (2) in paragraph (2) by inserting before “The  
 12      President” the following: “CONSULTATION REQUIRE-  
 13      MENT.—”;

14              (3) in paragraph (3) by inserting before “The  
 15      President” the following: “LIMITATION ON REME-  
 16      DIAL ACTIONS.—”; and

17              (4) by aligning the left margin of paragraphs  
 18      (2) and (3) with paragraph (4).

19              (b) INFORMATION GATHERING AND ACCESS.—Sec-  
 20      tion 104(e)(2) (42 U.S.C. 9604(e)(2)) is amended—

21              (1) by striking subparagraph (C) and inserting  
 22      the following:

23                      “(C) The ability of a person to pay for or  
 24                      to perform a response action.”.

1       (c) CONFIDENTIALITY REQUIREMENTS FOR CON-  
2 TRACTORS.—Paragraph (7) of section 104(e) is amended  
3 by adding at the end the following new subparagraph:

4           “(G)(i) No person described in clause (ii) may  
5       disclose any record, report, document, or other infor-  
6       mation referred to in subparagraph (A)(i) without  
7       the permission of the President (or the State, as the  
8       case may be).

9           “(ii) A person described in this clause is any  
10       person—

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

13           “(II) who, by virtue of the person’s duties  
14       under a contract or cooperative agreement with  
15       the United States under this section to perform  
16       work for the United States Government or im-  
17       plement the requirements of this Act, has re-  
18       ceived information obtained under this section  
19       (or any record, report, or document containing  
20       such information) which, if requested from the  
21       United States Government pursuant to section  
22       552 of title 5, United States Code, would be ex-  
23       empt from disclosure by reason of subsection  
24       (b) of such section.”.

1 (d) CONFIDENTIALITY IN GENERAL.—Subparagraph  
2 (A) of section 104(e)(7) is amended to read as follows:

3 “(A) Any records, reports, documents, or infor-  
4 mation obtained from any person under this section  
5 (including records, reports, documents, or informa-  
6 tion obtained by representatives of the President (or  
7 the State as the case may be) and records, reports,  
8 documents, or information obtained pursuant to a  
9 contract, grant, or other agreement to perform work  
10 pursuant to this section) shall be available to the  
11 public not later than 45 days after the records, re-  
12 ports, or information is obtained, except as follows:

13 “(i) Upon a showing satisfactory to the  
14 President (or the State, as the case may be) by  
15 any person that records, reports, documents, or  
16 information, or any particular part thereof  
17 (other than health or safety effects data), to  
18 which the President (or the State, as the case  
19 may be) or any officer, employee, or representa-  
20 tive has access under this section if made public  
21 would divulge information entitled to protection  
22 under section 1905 of title 18, United States  
23 Code, such information or particular portion  
24 thereof shall be considered confidential in ac-  
25 cordance with the purposes of that section, ex-

cept as otherwise provided in this clause. Any such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States carrying out this Act, when relevant in any proceeding under this Act, including any allocator appointed pursuant to section 128. If such records, reports, documents, or information are obtained or submitted to the United States (or the State, as the case may be) pursuant to a contract, grant, or other agreement to perform work pursuant to this section, such record, report, document, or information may be disclosed to persons from whom the President seeks to recover costs pursuant to this Act.

“(ii) This section does not require that information which is exempt from disclosure pursuant to section 552(a) of title 5, United States Code, by reason of subsection (b) of such section, be available to the public. The disclosure of any such information pursuant to this section shall not authorize disclosure to other parties or be deemed to waive any confidentiality privilege available under any Federal or State law.”.

1 (e) AVAILABILITY OF INFORMATION TO CONGRESS.—  
 2 Subsection 104(e) is further amended by adding after  
 3 paragraph (7) the following new paragraph:

4 “(8) AVAILABILITY OF INFORMATION TO CON-  
 5 GRESS.—Nothing in this subsection shall be con-  
 6 strued to authorize any person, including any allo-  
 7 cator appointed pursuant to section 128, to withhold  
 8 any documents or information from Congress, or any  
 9 duly authorized Committee thereof, or limit in any  
 10 manner the right of Congress, or any duly author-  
 11 ized Committee thereof, to obtain such documents or  
 12 information.”.

13 **SEC. 302. AMENDMENTS TO SECTION 106.**

14 (a) ADMINISTRATIVE ORDERS.—Section 106(a) (42  
 15 U.S.C. 9606(a)) is amended by adding at the end the fol-  
 16 lowing: “No order may be issued under this section  
 17 against any person who would not be liable for costs or  
 18 damages referred to in section 107(a). In any case in  
 19 which the President issues an order to a person under this  
 20 subsection, the President shall provide information con-  
 21 cerning the evidence that indicates that each element of  
 22 liability contained in section 107(a) is present.”.

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

25 (1) by inserting “(A)” after “(b)(1)”;



1           (2) by striking “to enforce such order”;

2           (3) by inserting before the period “, or be re-  
3       quired to comply with such order, or both, even if  
4       another person has complied, or is complying, with  
5       the terms of the same order or another order per-  
6       taining to the same facility and release or threatened  
7       release”; and

8           (4) by inserting at the end the following:

9       “(B) For purposes of this subsection and section  
10     107(c)(3), a ‘sufficient cause’ includes an objectively rea-  
11     sonable belief by the person to whom the order is issued  
12     that—

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

15           “(ii) that the action to be performed pursuant  
16     to the order is inconsistent with the national contin-  
17     gency plan.”.

18       (c) REIMBURSEMENT.—Subsection (b) of section 106  
19     (42 U.S.C. 9606(b)) is further amended in the first sen-  
20     tence of paragraph (2)(A) by striking “completion of” and  
21     inserting “the President determines that such person has  
22     completed”.

1 **SEC. 303. AMENDMENTS TO SECTION 107(a).**

2 (a) IN GENERAL.—Section 107 (42 U.S.C. 9607) is  
3 amended by striking the section heading, the section des-  
4 ignation, and subsection (a) and inserting the following:

5 **“SEC. 107. LIABILITY.**

6 “(a) GENERAL RULE.—

7 “(1) PERSONS LIABLE.—Notwithstanding any  
8 other provision or rule of law and subject only to the  
9 defenses set forth in subsection (b) of this section  
10 and the exemptions set forth in subsections (n) and  
11 (o), in the case of a facility or vessel from which  
12 there is a release, or a threatened release, of a haz-  
13 ardous substance that causes the incurrence of re-  
14 sponse costs—

15 “(A) the owner or operator of the vessel or  
16 the facility,

17 “(B) any person who at the time of dis-  
18 posal of any hazardous substance owned or op-  
19 erated any facility at which such hazardous  
20 substances were disposed of,

21 “(C) any person who by contract, agree-  
22 ment, or otherwise arranged for disposal or  
23 treatment, or arranged with a transporter for  
24 transport for disposal or treatment, of hazard-  
25 ous substances owned or possessed by such per-  
26 son, by any other party or entity, at any facility

1 or incineration vessel owned or operated by an-  
2 other party or entity and containing such haz-  
3 ardous substances, and

4 “(D) any person who accepts or accepted  
5 any hazardous substances for transport to dis-  
6 posal or treatment facilities, incineration vessels  
7 or sites selected by such person,  
8 shall be liable for the cost and damages described in  
9 paragraph (2).

10 “(2) COSTS AND DAMAGES.—The liability of a  
11 person under paragraph (1) shall be for—

12 “(A) all costs of removal or remedial action  
13 incurred by the United States Government or a  
14 State or an Indian tribe not inconsistent with  
15 the national contingency plan;

16 “(B) any necessary costs of response in-  
17 curred by any person (other than the United  
18 States, a State, or an Indian tribe) consistent  
19 with the national contingency plan;

20 “(C) damages for injury to, destruction of,  
21 or loss of natural resources, including the rea-  
22 sonable costs of assessing such injury, destruc-  
23 tion, or loss resulting from the release; and

1           “(D) the costs of any health assessment or  
2           health effects study carried out under section  
3           104(i).

4           “(3) INTEREST.—The amounts recoverable in  
5           an action under this section shall include interest on  
6           the amounts recoverable under paragraph (2). Such  
7           interest shall accrue from the later of (A) the date  
8           payment of a specified amount is demanded in writ-  
9           ing, or (B) the date of the expenditure concerned.  
10          The rate of interest on the outstanding unpaid bal-  
11          ance of the amounts recoverable under this section  
12          shall be the same rate as is specified for interest on  
13          investments of the Hazardous Substance Superfund  
14          established under subchapter A of chapter 98 of the  
15          Internal Revenue Code of 1986. For purposes of ap-  
16          plying such amendments to interest under this sub-  
17          section, the term ‘comparable maturity’ shall be de-  
18          termined with reference to the date on which inter-  
19          est accruing under this subsection commences.”.

20          (b) CONFORMING AMENDMENTS.—The Act is further  
21          amended—

22                 (1) in section 101 (42 U.S.C. 9601)—

23                         (A) in paragraph (20) by striking “section  
24                         107(a)(3) or (4)” each place it appears and in-

1           serting “section 107(a)(1)(C) or 107(a)(2)(D”;  
2           and

3                 (B) in paragraph (35)(C) by striking  
4           “107(a)(1)” and inserting “107(a)(1)(A”;  
5           (2) in section 107 (42 U.S.C. 9607)—

6                 (A) in subsection (d)(3) by striking “the  
7           provisions of paragraph (1), (2), (3), or (4) of  
8           subsection (a) of this section” and inserting  
9           “subsection (a)”;

10                (B) in subsection (f)(1) by striking “sub-  
11           paragraph (C) of subsection (a)” each place it  
12           appears and inserting “subsection (a)(2)(C)”;

13                (C) in subsection (l)(1) by striking “para-  
14           graph (1)” and inserting “paragraph (1)(A”;  
15           and

16                (D) in subsection (m) by striking “sub-  
17           section (a)(1)” and inserting “subsection  
18           (a)(1)(A”;

19           (3) in section 108(a)(1) (42 U.S.C. 9608(a)(1))  
20           by striking “paragraph (1)” and inserting “para-  
21           graph (1)(A”;

22                (4) in section 114(c)(1) (42 U.S.C.  
23           9614(c)(1))—

24                (A) by striking “(a)(3) or (a)(4)” and in-  
25           serting “(a)(1)(C) or (a)(1)(D)”;

1 (B) by striking “(a)(1) or (a)(2)” and in-  
 2 serting “(a)(1)(A) or (a)(1)(B)”;

3 (5) in section 119(d) (42 U.S.C. 9619(d)) by  
 4 striking “(1), (2), (3) or (4)” and inserting “(1)(A),  
 5 (1)(B), (1)(C), or (1)(D)”;

6 (6) in section 122(j)(2) (42 U.S.C. 9622(j)(2))  
 7 by striking “107(a)(4)(C)” and inserting  
 8 “107(a)(2)(C)”;

9 (7) in section 124(b)(2) (42 U.S.C. 9624(b)(2))  
 10 by striking “(1), (2), (3), or (4)” and inserting  
 11 “(1)(A), (1)(B), (1)(C), or (1)(D)”.

12 **SEC. 304. INNOCENT PARTIES.**

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

16 “(b) DEFENSES TO LIABILITY.—

17 “(1) IN GENERAL.—There shall be no liability  
 18 under subsection (a) of this section for a person oth-  
 19 erwise liable who can establish by a preponderance  
 20 of the evidence that the release or threat of release  
 21 of a hazardous substance and the damages resulting  
 22 therefrom were caused solely by—

23 “(A) an act of God;

24 “(B) an act of war;

1           “(C) an act or omission of a third party  
2           other than an employee or agent of the defend-  
3           ant, or than one whose act or omission occurs  
4           in connection with a contractual relationship,  
5           existing directly or indirectly, with the defend-  
6           ant (except where the sole contractual arrange-  
7           ment arises exclusively from a contract for car-  
8           riage by a common carrier by rail), if the de-  
9           fendant establishes by a preponderance of the  
10          evidence that (i) the defendant exercised due  
11          care with respect to the hazardous substance  
12          concerned, taking into consideration the charac-  
13          teristics of such hazardous substance, in light  
14          of all relevant facts and circumstances, and (ii)  
15          the defendant took precautions against foresee-  
16          able acts or omissions of any such third party  
17          and the consequences that could foreseeably re-  
18          sult from such acts or omissions; or

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

21          “(2) LIABILITY RELIEF FOR INNOCENT PAR-  
22          TIES.—There shall be no liability under subsection  
23          (a) of this section for a person otherwise liable who  
24          can establish by a preponderance of the evidence  
25          that such person is one or more of the following:

1           “(A) INNOCENT OWNERS OR OPERA-  
2           TORS.—A person whose liability is based solely  
3           on the person’s status as a current or former  
4           owner or operator of the facility or vessel and  
5           who can establish by a preponderance of the  
6           evidence that—

7                   “(i) the person did not, by any act or  
8                   omission, cause or contribute to the release  
9                   or threatened release of hazardous sub-  
10                  stances that caused the incurrence of re-  
11                  sponse costs;

12                  “(ii) the person exercised due care  
13                  with respect to the hazardous substances  
14                  concerned, including precautions against  
15                  foreseeable acts of third parties, taking  
16                  into consideration the characteristics of  
17                  such hazardous substances, in light of all  
18                  relevant facts and circumstances; and

19                  “(iii) in any case in which the person  
20                  acquired ownership of the facility or vessel  
21                  after December 11, 1980, the person, prior  
22                  to such acquisition, made all appropriate  
23                  inquiry into the previous ownership and  
24                  uses of the facility or vessel and any real  
25                  property in accordance with the generally



1           accepted commercial and customary stand-  
2           ards and practices of the time of acquisi-  
3           tion.

4           “(B) INNOCENT RECIPIENTS OF PROPERTY  
5           BY INHERITANCE OR BEQUEST.—A person  
6           whose liability is based solely on the person’s  
7           status as a current or former owner or operator  
8           of the facility or vessel and who can establish  
9           by a preponderance of the evidence that the  
10          person meets the requirements of clauses (i)  
11          and (ii) of subparagraph (A) and that the per-  
12          son acquired the property by inheritance or be-  
13          quest.

14          “(C) INNOCENT RECIPIENTS OF PROPERTY  
15          BY CHARITABLE DONATION.—A person whose  
16          liability is based solely on the person’s status as  
17          a current or former owner or operator of the fa-  
18          cility or vessel and who can establish by a pre-  
19          ponderance of the evidence that the person  
20          meets the requirements of clauses (i) and (ii) of  
21          subparagraph (A) and the person holding title,  
22          either outright or in trust, to the vessel or facil-  
23          ity is an organization described in section  
24          501(c)(3) of the Internal Revenue Code of 1986  
25          and exempt from tax under section 501(a) of

1 such Code and holds such title as a result of  
2 a charitable donation that qualifies under sec-  
3 tion 170, 2055, or 2522 of such Code.

4 “(D) INNOCENT GOVERNMENTAL ENTI-  
5 TLES.—A person who is a government entity,  
6 who acquired the facility by escheat or through  
7 any other involuntary transfer or acquisition or  
8 through the exercise of eminent domain author-  
9 ity by purchase or condemnation, and who can  
10 establish by a preponderance of the evidence  
11 that the person meets the requirements of  
12 clauses (i) and (ii) of subparagraph (A).

13 “(E) INNOCENT CONSTRUCTION CONTRAC-  
14 TORS.—A person who is a construction contrac-  
15 tor (other than a response action contractor  
16 covered by section 119) and who can establish  
17 by a preponderance of the evidence that—

18 “(i) the person’s liability is based sole-  
19 ly on construction activities that were spe-  
20 cifically directed by and carried out in ac-  
21 cordance with a contract with an owner or  
22 operator of the facility;

23 “(ii) the person did not know or have  
24 reason to know of the presence of hazard-

1           ous substances at the facility concerned be-  
2           fore beginning construction activities; and

3           “(iii) the person exercised due care  
4           with respect to the hazardous substances  
5           discovered in the course of performing the  
6           construction activity, including precautions  
7           against foreseeable acts of third parties,  
8           taking into consideration the characteris-  
9           tics of such hazardous substance, in light  
10          of all relevant facts and circumstances.

11          “(F) CONTIGUOUS PROPERTY OWNERS.—

12          A person who owns or operates real property  
13          which is contiguous to, or onto which a release  
14          has migrated from, real property on which there  
15          has been a release or threatened release of a  
16          hazardous substance and who can establish by  
17          a preponderance of the evidence that—

18                 “(i) the person meets the require-  
19                 ments of clauses (i) and (ii) of subpara-  
20                 graph (A); and

21                 “(ii) the person’s real property is or  
22                 may be contaminated by a release or  
23                 threatened release of hazardous substances  
24                 on property that is owned and operated by

1 persons who are not affiliated with such  
2 person.

3 “(3) ALL APPROPRIATE INQUIRY.—

4 “(A) SITE-SPECIFIC BASIS.—The deter-  
5 mination whether or not a person has made all  
6 appropriate inquiry into the previous ownership  
7 and uses of a facility or vessel within the mean-  
8 ing of paragraph (2)(A)(iii) shall be made on a  
9 site-specific basis.

10 “(B) SAFE HARBOR.—A person who has  
11 acquired real property shall be deemed to have  
12 made all appropriate inquiry within the mean-  
13 ing of paragraph (2)(A)(iii) if the person—

14 “(i) establishes that an environmental  
15 site assessment has been conducted as de-  
16 scribed in subparagraph (C); and

17 “(ii) maintains a compilation of the  
18 information reviewed and gathered in the  
19 course of the environmental site assess-  
20 ment.

21 “(C) ASTM STANDARD.—For purposes of  
22 subparagraph (B), an environmental site as-  
23 sessment is an assessment conducted in accord-  
24 ance with the standards set forth in the Amer-  
25 ican Society for Testing and Materials Stand-

1           ard E1527–94, entitled ‘Standard Practice for  
2           Environmental Site Assessments: Phase I Envi-  
3           ronmental Site Assessment Process’ or with al-  
4           ternative standards issued by rule by the Ad-  
5           ministrator or promulgated or developed by oth-  
6           ers and designated by rule by the Adminis-  
7           trator.

8           “(4) LIMITATIONS.—No defense shall be avail-  
9           able under this subsection to—

10               “(A) a person who obtained actual knowl-  
11               edge of a release or threat of release of a haz-  
12               ardous substance at a facility when such person  
13               owned the real property and subsequently  
14               transferred ownership of the property to an-  
15               other person without disclosing such knowledge;

16               “(B) a person who knowingly and willfully  
17               impedes the performance of a response action  
18               or natural resource restoration at the facility;

19               “(C) a person who did not provide all le-  
20               gally required notices with respect to the discov-  
21               ery or release of any hazardous substances at  
22               the facility; and

23               “(D) a person (other than a person de-  
24               scribed in paragraph (2)(B)) who is affiliated  
25               with any other person liable for response costs

1 at the facility, through any direct or indirect  
2 familial relationship, or any contractual, cor-  
3 porate, or financial relationship other than that  
4 created by the instruments by which title to the  
5 facility is conveyed or financed or by a contract  
6 for the sale of goods or services.

7 “(5) WINDFALL LIENS.—

8 “(A) IN GENERAL.—In any case in which  
9 there are unrecovered response costs incurred  
10 by the United States at a facility for which an  
11 owner of the facility is not liable by reason of  
12 paragraph (2), and the conditions described in  
13 subparagraph (C) are met, the United States  
14 shall have a lien upon such facility for such un-  
15 recovered costs.

16 “(B) SPECIAL RULES.—A lien under this  
17 paragraph—

18 “(i) shall not exceed the increase in  
19 fair market value of the property attrib-  
20 utable to the response action at the time of  
21 a subsequent sale or other disposition of  
22 the property;

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

1 “(iii) shall be subject to the require-  
2 ments for notice and validity established in  
3 paragraph (3) of subsection (l); and

4 “(iv) shall continue until the earlier of  
5 satisfaction of the lien or recovery of all re-  
6 sponse costs incurred at the facility.

7 “(C) CONDITIONS.—The conditions re-  
8 ferred to in subparagraph (A) are the following:

9 “(i) A response action for which there  
10 are unrecovered costs is carried out at the  
11 facility.

12 “(ii) Such response action increases  
13 the fair market value of the facility above  
14 the fair market value of the facility that  
15 existed in the 6-month period preceding  
16 the date that response action began.

17 “(D) LIMITATIONS.—No lien under this  
18 paragraph shall arise (i) with respect to prop-  
19 erty for which the property owner preceding the  
20 current owner is not a liable party or has re-  
21 solved its liability under this Act, or (ii) in any  
22 case in which an environmental assessment gave  
23 the owner or operator no reason to know of the  
24 release of hazardous substances.”.

1       (c) CONFORMING AMENDMENT TO DEFINITIONS.—  
2 Section 101 (42 U.S.C. 9601) is amended by striking  
3 paragraph (35).

4 **SEC. 305. LIABILITY RELIEF FOR SMALL BUSINESSES AND**  
5 **DE MINIMIS PARTIES.**

6       (a) LIMITATION ON LIABILITY FOR SMALL BUSI-  
7 NESSES.—Section 107 (42 U.S.C. 9607) is amended by  
8 adding at the end the following new subsection:

9       “(n) LIMITATION ON LIABILITY FOR SMALL BUSI-  
10 NESSES.—

11           “(1) IN GENERAL.—With respect to actions  
12 taken before October 23, 1997, a small business  
13 concern may be liable under subsection (a) for re-  
14 sponse costs or damages at a facility or vessel on the  
15 National Priorities List only if—

16           “(A) the small business concern is an  
17 owner or operator or former owner or operator  
18 of the facility or vessel and the hazardous sub-  
19 stances disposed of at the facility or vessel dur-  
20 ing the small business concern’s ownership or  
21 operation contributed significantly, or could  
22 contribute significantly, to the cost of a re-  
23 sponse or to natural resources damages at the  
24 facility or vessel; or



1           “(B) the small business concern is an ar-  
2           ranger or transporter for disposal and the haz-  
3           ardous substances the person arranged for dis-  
4           posal or transported for disposal at the facility  
5           or vessel contributed significantly, or could con-  
6           tribute significantly, to the cost of a response or  
7           to natural resources damages at the facility or  
8           vessel.

9           “(2) SMALL BUSINESS CONCERN DEFINED.—In  
10          this subsection, the term ‘small business concern’  
11          means a business entity that—

12               “(A) on average over the previous 3 years,  
13               has no more than 75 full-time employees or the  
14               equivalent thereof; and

15               “(B) in its taxable year preceding the date  
16               of notification by the President that the busi-  
17               ness entity is a potential responsible party, has  
18               \$3,000,000 or less in gross revenues or a net  
19               profit margin of less than 3 percent.”.

20          (b) DE MINIMIS THRESHOLDS FOR SUPERFUND LI-  
21          ABILITY.—Section 107 is further amended by adding at  
22          the end the following:

23               “(o) DE MINIMIS LIABILITY THRESHOLDS.—

24               “(1) ARRANGER OR TRANSPORTER.—Subject to  
25          paragraph (4), with respect to actions taken before

1       October 23, 1997, a person that arranged or trans-  
2       ported for the disposal at a facility on the National  
3       Priorities List shall not be liable for response costs  
4       or damages under subsection (a)(1)(C) or (a)(1)(D)  
5       to the extent that materials containing hazardous  
6       substances that the person arranged or transported  
7       for such disposal consist of de minimis toxicity mate-  
8       rials or de minimis volume materials.

9               “(2) OWNER OR OPERATOR.—Subject to para-  
10       graph (4), with respect to actions taken before Octo-  
11       ber 23, 1997, a person that owned or operated a fa-  
12       cility on the National Priorities List shall not be lia-  
13       ble for response costs or damages under subsection  
14       (a)(1)(A) or (a)(1)(B) if the materials containing  
15       hazardous substances that were disposed of at the  
16       facility during the person’s ownership or operation  
17       of the facility consist only of de minimis toxicity ma-  
18       terials or de minimis volume materials.

19               “(3) MIXTURES OF EXEMPT MATERIALS.—The  
20       determinations under paragraphs (1) and (2) of  
21       whether or not a person is liable for response costs  
22       or damage shall be made without regard to whether  
23       de minimis toxicity materials are mixed with de  
24       minimis volume materials or de minimis volume ma-  
25       terials are mixed with de minimis toxicity materials.

1           “(4) LIMITATION.—If de minimis volume mate-  
2       rials disposed of at a facility contribute significantly,  
3       or could contribute significantly to the cost of re-  
4       sponse or to natural resource damages at the facil-  
5       ity, paragraphs (1) and (2) shall not apply to the  
6       person who arranged for disposal at the facility or  
7       transported the materials to the facility for disposal  
8       or who owned or operated the facility at the time of  
9       disposal.

10           “(5) DEFINITIONS.—In this section, the follow-  
11       ing definitions apply:

12           “(A) DE MINIMIS TOXICITY MATERIALS.—

13       The term ‘de minimis toxicity materials’  
14       means—

15           “(i) municipal solid waste;

16           “(ii) municipal sewage sludge; or

17           “(iii) materials that, regardless of  
18       whether the source is a household, institu-  
19       tion, commercial enterprise, industrial fa-  
20       cility, or any other generator, contains con-  
21       centrations of hazardous substances that  
22       are no greater than, and no more toxic  
23       than, such municipal solid waste.

1           “(B) DE MINIMIS VOLUME MATERIALS.—

2           The term ‘de minimis volume materials’  
3           means—

4                   “(i) conditionally exempt small quan-  
5                   tity generator waste under regulations is-  
6                   sued pursuant to section 3001(d) of the  
7                   Solid Waste Disposal Act (42 U.S.C.  
8                   6921(d)), regardless of when generated; or

9                   “(ii) materials that are not subject to  
10                  regulation under subtitle C of such Act, re-  
11                  gardless of when generated, and that con-  
12                  stitute less than 1 percent of the volume of  
13                  those materials disposed of at the facility  
14                  or vessel that are not de minimis toxicity  
15                  materials.

16           “(C) MUNICIPAL SEWAGE SLUDGE.—The  
17           term ‘municipal sewage sludge’ means solid,  
18           semisolid, or liquid residue removed during the  
19           treatment of municipal waste water, domestic  
20           sewage, or other waste water at or by publicly  
21           owned treatment works, federally owned treat-  
22           ment works, or treatment works that, regard-  
23           less of ownership, primarily treat municipal  
24           waste water or domestic sewage.

1           “(D) MUNICIPAL SOLID WASTE.—The  
2           term ‘municipal solid waste’ means all waste  
3           materials generated by households, including  
4           single and multi-family residences, and hotels  
5           and motels, and waste materials generated by  
6           commercial, institutional, and industrial  
7           sources, to the extent such materials (i) are  
8           substantially similar to waste materials nor-  
9           mally generated by households, notwithstanding  
10          differences in volume, or (ii) are collected and  
11          disposed of with other municipal solid waste or  
12          municipal sewage sludge as part of normal mu-  
13          nicipal solid waste collection services. The term  
14          includes food and yard waste, paper, clothing,  
15          appliances, consumer product packaging, dis-  
16          posable diapers, office supplies, cosmetics, glass  
17          and metal food containers, elementary or sec-  
18          ondary school science laboratory waste, and  
19          household hazardous waste. The term does not  
20          include combustion ash generated by resource  
21          recovery facilities or municipal incinerators or  
22          waste the disposal of which is regulated under  
23          subtitle C of the Solid Waste Disposal Act, re-  
24          gardless of when generated.”.

1 (c) INELIGIBILITY FOR EXEMPTIONS.—Section 107  
2 is further amended by adding at the end the following:

3 “(p) INELIGIBILITY FOR EXEMPTIONS.—

4 “(1) IMPEDING RESPONSE OR RESTORATION.—

5 The exemptions and limitations set forth in sub-  
6 sections (n) and (o) and section 127 shall not apply  
7 to any person with respect to a facility if such per-  
8 son impedes the performance of a response action or  
9 natural resource restoration at the facility.

10 “(2) FAILURE TO RESPOND TO INFORMATION  
11 REQUEST.—The exemptions and limitations set forth  
12 in subsections (n) and (o) and section 127 shall not  
13 apply to any person who—

14 “(A) willfully fails to submit a complete  
15 and timely response to an information request  
16 under section 104(e) or 128(i)(2); or

17 “(B) knowingly makes any false or mis-  
18 leading material statement or representation in  
19 any such response.

20 “(3) FAILURE TO PROVIDE COOPERATION AND  
21 FACILITY ACCESS.—The exemptions and limitations  
22 set forth in subsections (n) and (o) and section 127  
23 shall not apply to any owner or operator of a facility  
24 who does not provide reasonable cooperation and fa-

1 cility access to persons authorized to conduct re-  
2 sponse actions at the facility.”.

3 (d) SMALL BUSINESS OMBUDSMAN.—The Adminis-  
4 trator shall establish a small business Superfund assist-  
5 ance section within the small business ombudsman office  
6 at the Environmental Protection Agency. Such section  
7 shall carry out the following functions:

8 (1) Act as a clearinghouse of information for  
9 small businesses regarding the Comprehensive Envi-  
10 ronmental Response, Compensation, and Liability  
11 Act of 1980. Such information shall be comprehen-  
12 sible to a lay person and shall include information  
13 regarding the exemptions to liability under section  
14 107 of such Act, the allocation process under section  
15 128 of such Act, requirements and procedures for  
16 expedited settlements pursuant to section 122(g) of  
17 such Act, and de minimis status and ability-to-pay  
18 procedures.

19 (2) Provide general advice and assistance to  
20 small businesses as to their questions and problems  
21 concerning liability and the exemptions to liability  
22 under such Act and the allocation and settlement  
23 processes, except that such advice and assistance  
24 shall not include any legal advice as to liability or

1 any other legal representation. The ombudsman  
2 shall not participate in the allocation process.

3 **SEC. 306. AMENDMENTS TO SECTION 113.**

4 (a) PETITIONS.—Section 113(a) (42 U.S.C. 9613(a))  
5 is amended as follows:

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

9 (2) By striking “application shall be made” and  
10 inserting “petition shall be filed”.

11 (b) PERIOD IN WHICH ACTION MAY BE BROUGHT.—  
12 Section 113(g) (42 U.S.C. 9613(g)) is amended by strik-  
13 ing paragraphs (2) and (3) and inserting the following:

14 “(2) ACTIONS FOR RECOVERY OF COSTS.—(A)  
15 Except as provided in subparagraph (C), an initial  
16 action for recovery of costs referred to in section  
17 107 must be commenced—

18 “(i) for a removal action, within 3 years  
19 after completion of all removal action taken  
20 with respect to the facility, including off-site  
21 disposal of any removed materials, except that  
22 if physical on-site construction of the remedial  
23 action is initiated within 3 years after the com-  
24 pletion of all removal action taken with respect  
25 to the facility, costs incurred for removal action



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

3           “(ii) for a remedial action, within 6 years  
4           after initiation of physical on-site construction  
5           of the remedial action.

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

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

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

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

4 “(I) the date of judgment in any ac-  
5 tion under this Act for recovery of such  
6 costs or damages; or

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

11 (c) LIMITATIONS ON CONTRIBUTION ACTIONS.—Sec-  
12 tion 113(f) (42 U.S.C. 9613(f)) is amended as follows:

13 (1) In paragraph (1)—

14 (A) by striking “Any person” in the first  
15 sentence and inserting “Except as provided in  
16 paragraph (4), any person who is liable or po-  
17 tentially liable under section 107(a)”;

18 (B) by striking “, during or following any  
19 civil action under section 106 or under section  
20 107(a).” and inserting “in a claim asserted  
21 under section 107(a).”;

22 (C) by striking “this section” in the second  
23 sentence and inserting “section 107(a), this sec-  
24 tion,”; and

1 (D) by striking the sentence beginning  
2 with “Nothing in this subsection”.

3 (2) By striking paragraph (2) and inserting the  
4 following:

5 “(2) SETTLEMENTS.—A person who has re-  
6 solved its liability to the United States in an admin-  
7 istrative or judicially approved settlement shall not  
8 be liable for contribution or any other claims by any  
9 person other than a State acting under section  
10 107(a)(2)(A) (and not as a potentially responsible  
11 party) regarding response actions, response costs, or  
12 damages addressed in the settlement. A person who  
13 has resolved its liability to a State or an Indian tribe  
14 in an administrative or judicially approved settle-  
15 ment shall not be liable for contribution or any other  
16 claims by persons other than the United States Gov-  
17 ernment acting under section 107(a)(2)(A) (and not  
18 as a potentially responsible party) regarding re-  
19 sponse actions, response costs or damages addressed  
20 in the settlement for which the State or Indian tribe  
21 has a claim under this title. Such settlement does  
22 not discharge any other potentially responsible per-  
23 sons unless its terms so provide, but it reduces the  
24 potential liability of such other persons by the  
25 amount of the settlement. The protection afforded

1 by this subsection shall include protection against  
2 claims, under Federal or State law, that may be as-  
3 serted against the settling party for recovery of re-  
4 sponse costs or damages incurred or paid by another  
5 person, if such costs or damages are addressed in  
6 the settlement, but shall not include protection  
7 against claims based on contractual indemnification  
8 or other express contractual agreements to pay such  
9 costs or damages.”.

10 (3) By adding at the end the following new  
11 paragraph:

12 “(4) LIMITATIONS ON CONTRIBUTION AC-  
13 TIONS.—(A) There shall be no right of contribution  
14 under this subsection in any of the following cir-  
15 cumstances:

16 “(i) The person asserting the right of con-  
17 tribution has waived the right in a settlement  
18 pursuant to this Act.

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

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

1           “(B) Any person who commences an action for  
 2           contribution shall be liable to the person against  
 3           whom the claim of contribution is brought for all  
 4           reasonable costs of defending against the claim, in-  
 5           cluding all reasonable attorneys’ and expert witness  
 6           fees, if—

7                       “(i) the action is barred by subparagraph  
 8           (A);

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

13                      “(iii) the action is brought during the mor-  
 14           atorium pursuant to section 128 (relating to al-  
 15           location).”.

16 **SEC. 307. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

17           (a) EXTENSION OF NEGLIGENCE STANDARD.—Sub-  
 18           section (a) of section 119 (42 U.S.C. 9619(a)) is amended  
 19           as follows:

20                      (1) In paragraph (1) by striking “title or under  
 21           any other Federal law” and inserting “title, under  
 22           any other Federal law or under the law of any State  
 23           or political subdivision of a State”.

24                      (2) By adding at the end of paragraph (1) the  
 25           following: “Notwithstanding the preceding sentence,

1       this section shall not apply in determining the liabil-  
2       ity of a response action contractor under the law of  
3       any State or political subdivision thereof if the State  
4       has enacted a law determining the liability of a re-  
5       sponse action contractor.”.

6           (3) By adding at the end of paragraph (2) the  
7       following: “Such conduct shall be evaluated based on  
8       the generally accepted standards and practices in ef-  
9       fect at the time and place that the conduct oc-  
10      curred.”.

11       (b) CLARIFICATION OF LIABILITY.—Section 119(a)  
12   (42 U.S.C. 9219(a)) is amended by inserting after para-  
13   graph (4) the following:

14           “(5) LIABILITY.—Notwithstanding any other  
15       provision of this Act, any liability of a response ac-  
16       tion contractor under this Act shall be determined  
17       solely in accordance with this section.”.

18       (c) EXTENSION OF INDEMNIFICATION AUTHORITY.—  
19   Section 119(c) is amended by adding at the end of para-  
20   graph (1) the following: “Any such agreement may apply  
21   to claims for negligence arising under Federal law or  
22   under the law of any State or political subdivision of a  
23   State.”.

24       (d) INDEMNIFICATION FOR THREATENED RE-  
25   LEASES.—Section 119(c)(5) is amended in subparagraph

1 (A) by inserting “or threatened release” after “release”  
2 each place it appears.

3 (e) EXTENSION OF COVERAGE TO ALL RESPONSE  
4 ACTIONS.—Section 119(e)(1) is amended as follows:

5 (1) By striking “carrying out an agreement  
6 under section 106 or 122”.

7 (2) By striking “any remedial action under this  
8 Act at a facility listed on the National Priorities  
9 List, or any removal action under this Act,” and in-  
10 serting “any response as defined by section  
11 101(25),”.

12 (f) EXTENSION RELATING TO SURETIES.—Section  
13 119 is amended—

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

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

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

20 “(h) LIMITATION ON ACTIONS AGAINST RESPONSE  
21 ACTION CONTRACTORS.—No action to recover for any in-  
22 jury to property, real or personal, or for bodily injury or  
23 wrongful death, or any other expenses or costs arising out  
24 of the performance of services under a response action  
25 contract, nor any action for contribution or indemnity for

1 damages sustained as a result of such injury, shall be  
2 brought against any response action contractor more than  
3 6 years after the completion of work at any site under  
4 such contract. Notwithstanding the preceding sentence,  
5 this section shall not—

6 “(1) bar recovery for a claim caused by the con-  
7 duct of the response action contractor that is grossly  
8 negligent or that constitutes intentional misconduct;

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

13 “(3) apply in any State or political subdivision  
14 thereof if the State has enacted a statute of repose  
15 determining the liability of a response action con-  
16 tractor.”.

17 **SEC. 308. AMENDMENTS TO SECTION 122.**

18 (a) ENHANCEMENT OF SETTLEMENT AUTHORI-  
19 TIES.—Section 122 (42 U.S.C. 9622) is amended as fol-  
20 lows:

21 (1) By striking the last 2 sentences of sub-  
22 section (a).

23 (2) By adding at the end of subsection (d)(1)  
24 the following:



1           “(D) DISPUTE RESOLUTION.—Any consent  
2           decree shall require the parties to attempt expe-  
3           ditiously to resolve disagreements concerning  
4           implementation of the remedial action infor-  
5           mally with the appropriate Federal and State  
6           agencies. Each consent decree shall provide au-  
7           thority for the Federal district court with juris-  
8           diction over the decree to resolve any disagree-  
9           ments not resolved by the parties.”.

10           (3) By adding at the end of subsection (e)(1)  
11           the following:

12           “(D) For each potentially responsible  
13           party, the evidence that indicates that each ele-  
14           ment of liability contained in section 107(a) is  
15           present.”.

16           (4) By striking paragraph (6) of subsection (e)  
17           and inserting the following:

18           “(6) NOTIFICATION OF PROCEDURES NOT  
19           USED.—If the President decides not to use the pro-  
20           cedures in this section, the President shall notify in  
21           writing potentially responsible parties at the facility  
22           of such decision and the reasons why use of the pro-  
23           cedures is inappropriate. A decision of the President  
24           to use or not to use the procedures in this section  
25           is not subject to judicial review.”.

1           (5) By adding at the end the following:

2           “(n) INCONSISTENT RESPONSE ACTION.—When ei-  
3 ther the President, or a potentially responsible party pur-  
4 suant to an administrative order or consent decree under  
5 this Act, has initiated a remedial investigation and fea-  
6 sibility study for a particular facility under this Act, no  
7 potentially responsible party may undertake any response  
8 action at the facility unless such response action has been  
9 authorized by the President or the State under applicable  
10 law.

11          “(o) RETENTION OF FUNDS.—

12           “(1) INTEREST BEARING ACCOUNTS.—If, as  
13 part of any settlement agreement under this Act, a  
14 potentially responsible party will be paying amounts  
15 to the President for carrying out any response ac-  
16 tion, the President may retain such amounts in in-  
17 terest bearing accounts, and use such amounts, to-  
18 gether with accrued interest, without further appro-  
19 priation, to conduct or enable other persons to con-  
20 duct such response action.

21           “(2) FINANCIAL INSTRUMENTS.—If, as part of  
22 any settlement agreement for carrying out a re-  
23 sponse action under this Act, a potentially respon-  
24 sible party will be paying amounts to the President,  
25 the Administrator is authorized to accept ownership

1 of a financial instrument running irrevocably to the  
2 benefit of the United States to conduct, or enable  
3 other persons to conduct, such response actions. For  
4 the purposes of this paragraph, the term ‘financial  
5 instrument’ means an annuity contract, funding  
6 agreement, or similar instrument acceptable to the  
7 Secretary of the Treasury, that is purchased by one  
8 or more potentially responsible parties, and has a  
9 defined schedule of periodic payments which coin-  
10 cides with the obligations set forth in the settlement  
11 agreement. Periodic payments under such a financial  
12 instrument will be made to the owner, or as the  
13 owner directs, for response costs at the facility which  
14 is the subject of the settlement agreement.

15 “(p) CHALLENGE TO COST RECOVERY COMPONENT  
16 OF SETTLEMENT.—Notwithstanding the limitations on re-  
17 view in section 113(h), and except as provided in sub-  
18 section (g) of this section, a person whose potential claim  
19 for response costs or contribution is limited as a result  
20 of contribution protection afforded by an administrative  
21 settlement under this section may challenge the cost recov-  
22 ery component of such settlement. Such a challenge may  
23 be made only by filing a complaint against the Adminis-  
24 trator in the United States District Court within 60 days  
25 after such settlement becomes final. Venue shall lie in the

1 district in which the principal office of the appropriate re-  
2 gion of the Environmental Protection Agency is located.  
3 Any review of an administrative settlement shall be limited  
4 to the administrative record, and the settlement shall be  
5 upheld unless the objecting party can demonstrate on that  
6 record that the decision of the President to enter into the  
7 administrative settlement was arbitrary, capricious, or  
8 otherwise not in accordance with law.

9 “(q) UNSUCCESSFUL CHALLENGERS LIABLE FOR  
10 ATTORNEYS’ FEES.—Any party who challenges any settle-  
11 ment entered into between the President and any poten-  
12 tially responsible party under this Act, and who is not suc-  
13 cessful in overturning or modifying the settlement, shall  
14 be liable to the United States and any settling party for  
15 all reasonable attorneys’ fees and costs incurred in defend-  
16 ing the settlement.”.

17 (b) MIXED FUNDING.—Paragraph (1) of section  
18 122(b) (42 U.S.C. 9622(b)) is amended to read as follows:

19 “(1) MIXED FUNDING.—

20 “(A) SETTLEMENTS.—Where an agree-  
21 ment under this section requires parties to the  
22 agreement to perform response actions at sites  
23 on the National Priorities List the costs of  
24 which will exceed the aggregate equitable shares  
25 of response costs of the parties to the agree-

1           ment, the President shall reimburse such par-  
2           ties from the Fund for such costs, in proportion  
3           to their percentage equitable shares of response  
4           costs, as determined under section 128, or as  
5           agreed to by the parties and the President. If  
6           such agreement was entered into before October  
7           23, 1997, the President's obligation to provide  
8           reimbursement under this subparagraph shall  
9           apply as provided in section 311 of the  
10          Superfund Acceleration, Fairness, and Effi-  
11          ciency Act.

12                 “(B) ADMINISTRATIVE ORDERS.—Where  
13          an administrative order under section 106 re-  
14          quires parties receiving the order to perform re-  
15          sponse actions at sites on the National Prior-  
16          ities List the cost of which will exceed the ag-  
17          gregate equitable shares of response costs of the  
18          parties receiving the order, the President shall  
19          reimburse such parties from the Fund for such  
20          costs, in proportion to their percentage equi-  
21          table shares or response costs, as determined  
22          under section 128, or as agreed to by the par-  
23          ties and the President. If such order was issued  
24          before October 23, 1997, the President's obliga-  
25          tion to provide reimbursement under this sub-

1 paragraph shall apply as provided in section  
2 311 of the Superfund Acceleration, Fairness,  
3 and Efficiency Act.

4 “(C) COST RECOVERY.—In any case in  
5 which the President provides funding under  
6 subparagraph (A) or (B) (referred to in this  
7 paragraph as ‘mixed funding’), the President  
8 shall make all reasonable efforts to recover the  
9 amount of such monies under section 107 or  
10 under other relevant authorities from persons  
11 who are liable for such costs under section  
12 107(a) and are not parties to the settlement  
13 agreement. The provision of mixed funding  
14 shall not be contingent on the recovery by the  
15 United States of response costs from such per-  
16 sons.

17 “(D) PAYMENT.—Mixed funding shall be  
18 paid out during the course of the response ac-  
19 tion, using reasonable progress payments at sig-  
20 nificant milestones. A reimbursement payment  
21 is subject to equitable offset or recoupment by  
22 the Administrator at any time the party fails to  
23 perform the work in a proper and timely man-  
24 ner.

1           “(E) SOURCE OF FUNDS.—Payments made  
2           under this paragraph shall be paid from  
3           amounts made available by section 111(a)(1). If  
4           funds are unavailable in any fiscal year to pro-  
5           vide all payments required under this para-  
6           graph, the President may delay payment until  
7           funds are available. Interest shall be paid on  
8           unpaid balances at the rate equal to that of the  
9           current average market yield on outstanding  
10          marketable obligations of the United States  
11          with a maturity of 1 year. Priority shall be  
12          given based on timing of completion of the re-  
13          sponse actions for which reimbursement is  
14          sought. The President’s decisions regarding  
15          availability and priority of funding in any fiscal  
16          year shall not be subject to judicial review.”.

17          (c) REVIEWABILITY.—Section 122(b) (42 U.S.C.  
18 9622(b)) is amended—

19               (1) by striking paragraphs (2) and (3); and

20               (2) by redesignating paragraph (4) as para-  
21          graph (2).

22          (d) FINAL COVENANTS.—Section 122(f) is amended  
23 as follows:

24               (1) By striking paragraph (1) and inserting the  
25          following:

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

9           “(A) The settling party agrees to perform,  
10       or there are other adequate assurances of the  
11       performance of, a final remedial action author-  
12       ized by the Administrator for the release or  
13       threat of release that is the subject of the set-  
14       tlement.

15          “(B) The settlement agreement has been  
16       reached prior to the commencement of litigation  
17       against the settling party under section 106 or  
18       107 of this Act with respect to this facility.

19          “(C) The settling party waives all contribu-  
20       tion rights against other potentially responsible  
21       parties at the facility.

22          “(D) The settling party pays a premium  
23       that compensates for the risks of remedy fail-  
24       ure; future liability resulting from unknown  
25       conditions; and unanticipated increases in the



1 cost of any uncompleted response action, unless  
2 the settling party is performing the response ac-  
3 tion. The President shall have sole discretion to  
4 determine the appropriate amount of any such  
5 premium, and such determinations are commit-  
6 ted to the President's discretion. The President  
7 has discretion to waive or reduce the premium  
8 payment for persons who demonstrate an in-  
9 ability to pay such a premium.

10 “(E) The remedial action does not rely on  
11 institutional controls to ensure continued pro-  
12 tection of human health and the environment.

13 “(F) The settlement is otherwise accept-  
14 able to the United States.”.

15 (2) In paragraph (2) by striking “remedial”  
16 each place it appears and inserting “response”.

17 (3) By striking paragraph (3) and inserting the  
18 following:

19 “(3) DISCRETIONARY COVENANTS.—For settle-  
20 ments under this Act for which covenants under  
21 paragraph (1) are not available, the President may,  
22 in his discretion, provide any person with a covenant  
23 not to sue concerning any liability to the United  
24 States under this Act, if the covenant not to sue is  
25 in the public interest. Such covenants shall be sub-

1       ject to the requirements of paragraph (5). The  
2       President may include any conditions in such cov-  
3       enant not to sue, including the additional condition  
4       referred to in paragraph (5). In determining whether  
5       such conditions or covenants are in the public inter-  
6       est, the President shall consider the nature and  
7       scope of the commitment by the settling party under  
8       the settlement, the effectiveness and reliability of the  
9       response action, the nature of the risks remaining at  
10      the facility, the strength of evidence, the likelihood  
11      of cost recovery, the reliability of any response ac-  
12      tion or actions to restore, replace, or acquire the  
13      equivalent of injured natural resources, the extent to  
14      which performance standards are included in the  
15      order or decree, the extent to which the technology  
16      used in the response action is demonstrated to be ef-  
17      fective, and any other factors relevant to the protec-  
18      tion of human health and the environment.”.

19           (4) By striking paragraph (4) and redesignat-  
20      ing paragraphs (5) and (6) as paragraphs (4) and  
21      (5), respectively.

22           (5) In subparagraph (A) of paragraph (5) (as  
23      so redesignated)—

24                   (A) by striking “remedial” and inserting  
25                   “response”;

1 (B) by striking “paragraph (2)” in the  
2 first sentence and inserting “paragraph (1) or  
3 (2)”;

4 (C) by striking “de minimis settlements”  
5 and inserting “de minimis and other expedited  
6 settlements pursuant to subsection (g) of this  
7 section”; and

8 (D) by striking “the President certifies  
9 under paragraph (3) that remedial action has  
10 been completed at the facility concerned”, and  
11 inserting “that the response action that is the  
12 subject of the settlement agreement is se-  
13 lected”.

14 (6) In subparagraph (B) of paragraph (5) (as  
15 so redesignated)—

16 (A) by striking “In extraordinary cir-  
17 cumstances, the” and inserting “The”;

18 (B) by striking “those referred to in para-  
19 graph (4) and”;

20 (C) by striking “if other terms,” and in-  
21 serting “, if the agreement containing the cov-  
22 enant not to sue provides for payment of a pre-  
23 mium to address possible remedy failure or any  
24 releases that may result from unknown condi-  
25 tions, and if other terms,”; and

1 (D) by adding at the end the following:

2 “The President may waive or reduce the pre-  
3 mium payment for persons who demonstrate an  
4 inability to pay such a premium.”.

5 (e) EXPEDITED FINAL SETTLEMENTS.—Section 122  
6 is further amended as follows:

7 (1) In subsection (g) by striking “(g)” and all  
8 that follows through the period at the end of sub-  
9 paragraph (A) of paragraph (1) and inserting the  
10 following:

11 “(g) EXPEDITED FINAL SETTLEMENT.—

12 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-  
13 TLEMENT.—The President shall, as promptly as pos-  
14 sible, offer to reach a final administrative or judicial  
15 settlement with potentially responsible parties who,  
16 in the judgment of the President, meet one or more  
17 of the following conditions for eligibility for an expe-  
18 dited settlement:

19 “(A) The potentially responsible party’s in-  
20 dividual contribution to the release of hazard-  
21 ous substances at the facility as an owner or  
22 operator, arranger for disposal, or transporter  
23 for disposal is de minimis. The contribution of  
24 hazardous substance to a facility by a poten-

1 tially responsible party is de minimis if both of  
2 the following conditions are met:

3 “(i) The potentially responsible par-  
4 ty’s volumetric contribution of materials  
5 containing hazardous substances is mini-  
6 mal in comparison to the total volumetric  
7 contributions of materials containing haz-  
8 ardous substances at the facility; such indi-  
9 vidual contribution is presumed to be mini-  
10 mal if it is one percent or less of the total  
11 volumetric contribution at the facility, un-  
12 less the Administrator identifies a different  
13 threshold based on site-specific factors.

14 “(ii) The potentially responsible par-  
15 ty’s hazardous substances do not present  
16 toxic or other hazardous effects that are  
17 significantly greater than those of other  
18 hazardous substances at the facility.”.

19 (2) In subsection (g) by inserting after subpara-  
20 graph (B) of paragraph (1) the following:

21 “(C)(i) The potentially responsible party is  
22 a natural person, a small business, or a munici-  
23 pality and can demonstrate to the United  
24 States an inability or limited ability to pay re-  
25 sponse costs. A party who enters into a settle-

1           ment pursuant to this subparagraph shall be  
2           deemed to have resolved its liability under this  
3           Act to the United States for all matters ad-  
4           dressed in the settlement.

5           “(ii) For purposes of this subparagraph,  
6           the following provisions apply:

7                   “(I) In the case of a small business,  
8                   the President shall take into consideration  
9                   the ability to pay of the business, if re-  
10                  quested by the business. The term ‘ability  
11                  to pay’ means the President’s reasonable  
12                  expectation of the ability of the small busi-  
13                  ness to pay its total settlement amount  
14                  and still maintain its basic business oper-  
15                  ations. Such consideration shall include the  
16                  business’s overall financial condition and  
17                  demonstrable constraints on its ability to  
18                  raise revenues.

19                  “(II) Any business requesting such  
20                  consideration shall promptly provide the  
21                  President with all relevant information  
22                  needed to determine the business’s ability  
23                  to pay.

24                  “(III) If the President determines  
25                  that a small business is unable to pay its

1 total settlement amount immediately, the  
2 President shall consider alternative pay-  
3 ment methods as may be necessary or ap-  
4 propriate. The methods to be considered  
5 may include installment payments to be  
6 paid during a period of not to exceed 10  
7 years and the provision of in-kind services.

8 “(iii) Any municipality which is a poten-  
9 tially responsible party may submit for consid-  
10 eration by the President an evaluation of the  
11 potential impact of the settlement on essential  
12 services that the municipality must provide, and  
13 the feasibility of making delayed payments or  
14 payments over time. If a municipality asserts  
15 that it has additional environmental obligations  
16 besides its potential liability under this Act,  
17 then the municipality may create a list of the  
18 obligations, including an estimate of the costs  
19 of complying with such obligations.

20 “(iv) Any municipality which is a poten-  
21 tially responsible party may establish an inabil-  
22 ity to pay through an affirmative showing that  
23 such payment of its liability under this Act  
24 would either—

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

8           “(II) necessitate a violation of legal  
9           requirements or limitations of general ap-  
10          plicability concerning the assumption and  
11          maintenance of fiscal municipal obliga-  
12          tions.

13          “(v) This subparagraph does not limit or  
14          affect the President’s authority to evaluate any  
15          person’s ability to pay or to enter into settle-  
16          ments with any person based on that person’s  
17          inability to pay.”.

18          (3) By striking paragraphs (2) and (3) of sub-  
19          section (g) and inserting the following:

20          “(2) BASIS OF DETERMINATION.—Any person  
21          who enters into a settlement pursuant to this sub-  
22          section shall provide any information requested by  
23          the President or by an allocator in accordance with  
24          section 128(l)(1) or section 104(e). The determina-  
25          tion of whether a person is eligible for an expedited



1 settlement shall be made on the basis of all informa-  
2 tion available to the President at the time the deter-  
3 mination is made. The President’s determination as  
4 to the eligibility of a party that is not a department,  
5 agency, or instrumentality of the United States for  
6 settlement pursuant to this section shall not be sub-  
7 ject to judicial review. If the President determines  
8 that a party is not eligible for a settlement pursuant  
9 to this section, the President shall explain the basis  
10 for that determination in writing to any person who  
11 requests such a settlement.

12 “(3) ADDITIONAL FACTORS RELEVANT TO SET-  
13 TLEMENTS WITH MUNICIPALITIES.—In any settle-  
14 ment with a municipality pursuant to this Act, the  
15 President may take additional equitable factors into  
16 account in determining an appropriate settlement  
17 amount, including the limited resources available to  
18 that party, and any in-kind services that the party  
19 may provide to support the response action at the  
20 facility. In considering the value of in-kind services,  
21 the President shall consider the fair market value of  
22 those services.”.

23 (4) In subsection (g)(4) by striking “\$500,000”  
24 and inserting “\$2,000,000”.

1           (5) By striking paragraph (5) of subsection (g)  
2           and inserting the following:

3           “(5) DEFINITIONS.—In this subsection, the fol-  
4           lowing definitions apply:

5                   “(A) MUNICIPALITY.—The term ‘muni-  
6                   cipality’ means a political subdivision of a State,  
7                   including a city, county, village, town, township,  
8                   borough, parish, school district, sanitation dis-  
9                   trict, water district, or other public entity per-  
10                  forming local governmental functions. The term  
11                  also includes a natural person acting in the ca-  
12                  pacity of an official, employee, or agent of any  
13                  entity referred to in the preceding sentence in  
14                  the performance of governmental functions.

15                  “(B) SMALL BUSINESS.—The term ‘small  
16                  business’ refers to any business entity that em-  
17                  ploys no more than 100 individuals and is a  
18                  ‘small business concern’ as defined under the  
19                  Small Business Act (15 U.S.C. 631 et seq.).”.

20           (6) In subsection (h)—

21                   (A) by striking the subsection heading and  
22                   inserting the following: “AUTHORITY TO SET-  
23                   TLE CLAIMS FOR FINES, CIVIL PENALTIES,  
24                   PUNITIVE DAMAGES, AND COST RECOVERY.—  
25                   ”;

1 (B) by striking “costs incurred” in the  
2 first sentence of paragraph (1) and inserting  
3 “past and future costs incurred or that may be  
4 incurred”:

5 (C) by inserting after “if the claim has not  
6 been referred to the Department of Justice for  
7 further action.” in the first sentence of para-  
8 graph (1) the following: “The head of any de-  
9 partment or agency with the authority to seek  
10 fines, civil penalties, or punitive damages under  
11 this Act may consider, compromise, and settle  
12 claims for any such fines, civil penalties, or pu-  
13 nitive damages which may otherwise be assessed  
14 in civil administrative or judicial proceedings if  
15 the claim has not been referred to the Depart-  
16 ment of Justice for further action. If the total  
17 claim for response costs, fines, civil penalties, or  
18 punitive damages exceeds \$3,000,000, such  
19 claim may be compromised and settled only  
20 with the prior written approval of the Attorney  
21 General.”;

22 (D) by striking “\$500,000 (excluding in-  
23 terest), any claim referred to in the preceding  
24 sentence” in the second sentence of paragraph  
25 (1) and inserting “\$2,000,000 (excluding inter-

1           est), any claim for response costs referred to in  
2           this subsection”; and

3           (E) by striking paragraph (4).

4   **SEC. 309. CLARIFICATION OF LIABILITY FOR RECYCLING**  
5           **TRANSACTIONS.**

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

8   **“SEC. 127. RECYCLING TRANSACTIONS.**

9           “(a) LIABILITY CLARIFICATION.—As provided in  
10 subsections (b), (c), (d), (e), and (f), a person who ar-  
11 ranged for the recycling of recyclable material or trans-  
12 ported such material shall not be liable under sections  
13 107(a)(1)(C) and 107(a)(1)(D) with respect to a facility  
14 on the National Priorities List.

15          “(b) RECYCLABLE MATERIAL DEFINED.—For pur-  
16 poses of this section, the term ‘recyclable material’  
17 means—

18           “(1) scrap paper, plastic, glass, textiles, rubber  
19           (other than whole tires), and metal, as well as minor  
20           amounts of material incident to or adhering to the  
21           scrap material as a result of its normal and cus-  
22           tomary use prior to becoming scrap;

23           “(2) spent lead-acid, spent nickel-cadmium, and  
24           other spent batteries; and

25           “(3) used oil.

1       “(c) TRANSACTIONS INVOLVING SCRAP PAPER,  
2 PLASTIC, GLASS, TEXTILES, OR RUBBER.—

3           “(1) IN GENERAL.—Transactions involving  
4 scrap paper, scrap plastic, scrap glass, scrap textiles,  
5 or scrap rubber (other than whole tires) shall be  
6 deemed to be arranging for recycling if the person  
7 who arranged for the transaction (by selling recycla-  
8 ble material or otherwise arranging for the recycling  
9 of recyclable material) can demonstrate by a prepon-  
10 derance of the evidence that all of the following cri-  
11 teria were met at the time of the transaction:

12           “(A) The recyclable material met a com-  
13 mercial specification grade.

14           “(B) A market existed for the recyclable  
15 material.

16           “(C) A substantial portion of the recyclable  
17 material was made available for use as a feed-  
18 stock for the manufacture of a new saleable  
19 product.

20           “(D) The recyclable material could have  
21 been a replacement or substitute for a virgin  
22 raw material, or the product to be made from  
23 the recyclable material could have been a re-  
24 placement or substitute for a product made, in  
25 whole or in part, from a virgin raw material.

1           “(E) For transactions occurring on or  
2           after the 90th day following the date of the en-  
3           actment of this section, the person exercised  
4           reasonable care to determine that the facility  
5           where the recyclable material would be handled,  
6           processed, reclaimed, or otherwise managed by  
7           another person (hereinafter in this section re-  
8           ferred to as a ‘consuming facility’) was in com-  
9           pliance with substantive (not procedural or ad-  
10          ministrative) provisions of any Federal, State,  
11          or local environmental law or regulation, or  
12          compliance order or decree issued pursuant  
13          thereto, applicable to the handling, processing,  
14          reclamation, storage, or other management ac-  
15          tivities associated with the recyclable material.

16          “(2) REASONABLE CARE.—For purposes of this  
17          subsection, ‘reasonable care’ shall be determined  
18          using criteria that include—

19                 “(A) the price paid in the recycling trans-  
20                 action;

21                 “(B) the ability of the person to detect the  
22                 nature of the consuming facility’s operations  
23                 concerning its handling, processing, reclama-  
24                 tion, or other management activities associated  
25                 with the recyclable material; and

1           “(C) the result of inquiries made to the ap-  
2           propriate Federal, State, or local environmental  
3           agency (or agencies) regarding the consuming  
4           facility’s past and current compliance with sub-  
5           stantive (not procedural or administrative) pro-  
6           visions of any Federal, State, or local environ-  
7           mental law or regulation, or compliance order  
8           or decree issued pursuant thereto, applicable to  
9           the handling, processing, reclamation, storage,  
10          or other management activities associated with  
11          the recyclable material.

12          “(3) TREATMENT OF CERTAIN REQUIREMENTS  
13          AS SUBSTANTIVE PROVISIONS.—For purposes of this  
14          subsection, a requirement to obtain a permit applica-  
15          ble to the handling, processing, reclamation, or other  
16          management activities associated with the recyclable  
17          materials shall be deemed to be a substantive provi-  
18          sion.

19          “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

20               “(1) IN GENERAL.—Transactions involving  
21          scrap metal shall be deemed to be arranging for re-  
22          cycling if the person who arranged for the trans-  
23          action (by selling recyclable material or otherwise ar-  
24          ranging for the recycling of recyclable material) can

1 demonstrate by a preponderance of the evidence that  
2 at the time of the transaction—

3 “(A) the person met the criteria set forth  
4 in subsection (c) with respect to the scrap  
5 metal;

6 “(B) the person was in compliance with  
7 any applicable regulations or standards regard-  
8 ing the storage, transport, management, or  
9 other activities associated with the recycling of  
10 scrap metal that the Administrator issues under  
11 the Solid Waste Disposal Act (42 U.S.C. 6901  
12 et seq.) after the date of the enactment of this  
13 section and with regard to transactions occur-  
14 ring after the effective date of such regulations  
15 or standards; and

16 “(C) the person did not melt the scrap  
17 metal prior to the transaction.

18 “(2) MELTING OF SCRAP METAL.—For pur-  
19 poses of paragraph (1)(C), melting of scrap metal  
20 does not include the thermal separation of 2 or more  
21 materials due to differences in their melting points  
22 (referred to as ‘sweating’).

23 “(3) SCRAP METAL DEFINED.—In this sub-  
24 section, the term ‘scrap metal’ means bits and pieces  
25 of metal parts (such as bars, turnings, rods, sheets,



1 and wire) or metal pieces that may be combined to-  
2 gether with bolts or soldering (such as radiators,  
3 scrap automobiles, and railroad box cars) which  
4 when worn or superfluous can be recycled, except for  
5 scrap metals that the Administrator excludes from  
6 this definition by regulation and shipping containers  
7 of a capacity from 30 liters to and including 3,000  
8 liters, whether intact or not, having any hazardous  
9 substances (but not metal bits or pieces) contained  
10 in or adhering thereto.

11 “(e) TRANSACTIONS INVOLVING BATTERIES.—

12 “(1) IN GENERAL.—Transactions involving  
13 spent lead-acid batteries, spent nickel-cadmium bat-  
14 teries, or other spent batteries shall be deemed to be  
15 arranging for recycling if the person who arranged  
16 for the transaction (by selling recyclable material or  
17 otherwise arranging for the recycling of recyclable  
18 material) can demonstrate by a preponderance of the  
19 evidence that at the time of the transaction—

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

1           “(B)(i) with respect to transactions involv-  
2           ing lead-acid batteries, the person was in com-  
3           pliance with applicable Federal environmental  
4           regulations or standards, and any amendments  
5           thereto, regarding the storage, transport, man-  
6           agement, or other activities associated with the  
7           recycling of spent lead-acid batteries;

8           “(ii) with respect to transactions involving  
9           nickel-cadmium batteries, Federal environ-  
10          mental regulations or standards are in effect re-  
11          garding the storage, transport, management, or  
12          other activities associated with the recycling of  
13          spent nickel-cadmium batteries, and the person  
14          was in compliance with applicable regulations or  
15          standards or any amendments thereto; or

16          “(iii) with respect to transactions involving  
17          other spent batteries, Federal environmental  
18          regulations or standards are in effect regarding  
19          the storage, transport, management, or other  
20          activities associated with the recycling of such  
21          batteries, and the person was in compliance  
22          with applicable regulations or standards or any  
23          amendments thereto.

24          “(2) RECOVERY OF VALUABLE BATTERY COM-  
25          PONENTS.—For purposes of paragraph (1)(A), a

1 person who, by contract, arranges or pays for proc-  
2 essing of batteries by an unrelated third person and  
3 receives from such third person materials reclaimed  
4 from such batteries shall not thereby be deemed to  
5 recover the valuable components of such batteries.

6 “(f) TRANSACTIONS INVOLVING USED OIL.—

7 “(1) IN GENERAL.—Transactions involving  
8 used oil shall be deemed to be arranging for recy-  
9 cling if the person who arranged for the transaction  
10 (by selling recyclable material or otherwise arranging  
11 for the recycling of recyclable material) can dem-  
12 onstrate by a preponderance of the evidence that at  
13 the time of the transaction—

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

18 “(B) the recyclable material was not mixed  
19 with any material that is a hazardous waste  
20 under section 3001 of the Solid Waste Disposal  
21 Act (42 U.S.C. 6921), regardless of when gen-  
22 erated;

23 “(C) the person met the criteria specified  
24 in subparagraphs (D) and (E) of subsection

1 (c)(1), as modified by paragraphs (2) and (3)  
2 of subsection (c), with respect to used oil;

3 “(D) the person was in compliance with  
4 any regulations or standards for the manage-  
5 ment of used oil promulgated under the Solid  
6 Waste Disposal Act (42 U.S.C. 6901 et seq.)  
7 that were in effect on the date of the trans-  
8 action; and

9 “(E) the transaction was not for the pur-  
10 pose of recycling used oil by using it for dust  
11 suppression.

12 “(2) USED OIL DEFINED.—In this subsection,  
13 the term ‘used oil’ means any oil that has been re-  
14 fined from crude oil, or any synthetic oil, that has  
15 been used or stored. Such term does not include any  
16 oil that is subject to regulation under section  
17 6(e)(1)(A) of the Toxic Substances Control Act (15  
18 U.S.C. 2605(e)(1)(A)), relating to regulations pre-  
19 scribing methods for disposal of polychlorinated  
20 biphenyls.

21 “(g) EXCLUSIONS.—

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

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

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

6                   “(ii) in the case of recyclable mate-  
7                   rials other than used oil, the recyclable ma-  
8                   terial would be burned as fuel or for en-  
9                   ergy recovery or incineration; or

10                  “(iii) for transactions occurring on or  
11                  before the 90th day following the date of  
12                  the enactment of this section, the consum-  
13                  ing facility was not in compliance with a  
14                  substantive (not a procedural or adminis-  
15                  trative) provision of any Federal, State, or  
16                  local environmental law or regulation, or  
17                  compliance order or decree issued pursuant  
18                  thereto, applicable to the handling, proc-  
19                  essing, reclamation, or other management  
20                  activities associated with the recyclable  
21                  material;

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

1           “(C) the person failed to exercise reason-  
2           able care with respect to the management and  
3           handling of the recyclable material (including  
4           adhering to customary industry practices cur-  
5           rent at the time of the recycling transaction de-  
6           signed to minimize, through source control, con-  
7           tamination of the recyclable material by hazard-  
8           ous substances); or

9           “(D) the recyclable material—

10           “(i)       contained       polychlorinated  
11           biphenyls at a concentration in excess of  
12           the threshold for regulation under section  
13           6(e)(1)(A) of the Toxic Substances Control  
14           Act (15 U.S.C. 2605(e)(1)(A)), relating to  
15           regulations prescribing methods for dis-  
16           posal of polychlorinated biphenyls, as in ef-  
17           fect on the date of the transaction; or

18           “(ii) contained at the time of the recy-  
19           cling transaction a concentration of a solid  
20           waste that has been determined by the Ad-  
21           ministrator, after notice and comment, to  
22           be inherently waste-like pursuant to sec-  
23           tion 261.2(d) of title 40, Code of Federal  
24           Regulations.

1           “(2) OBJECTIVELY REASONABLE BASIS.—For  
2           purposes of paragraph (1)(A), an objectively reason-  
3           able basis for belief shall be determined using cri-  
4           teria that include the size of the person’s business,  
5           customary industry practices (including customary  
6           industry practices current at the time of the recy-  
7           cling transaction designed to minimize, through  
8           source control, contamination of the recyclable mate-  
9           rial by hazardous substances), the price paid in the  
10          recycling transaction, and the ability of the person  
11          to detect the nature of the consuming facility’s oper-  
12          ations concerning its handling, processing, reclama-  
13          tion, or other management activities associated with  
14          the recyclable material.

15          “(3) TREATMENT OF CERTAIN REQUIREMENTS  
16          AS SUBSTANTIVE PROVISIONS.—For purposes of this  
17          subsection, a requirement to obtain a permit applica-  
18          ble to the handling, processing, reclamation, or other  
19          management activities associated with recyclable ma-  
20          terial shall be deemed to be a substantive provision.

21          “(h) EFFECT ON OTHER LIABILITY.—Nothing in  
22          this section shall be deemed to affect the liability of a per-  
23          son under subparagraph (A) or (B) of section 107(a)(1).

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

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

6           “(2) the ability of the Administrator to promul-  
 7           gate regulations under any other statute, including  
 8           the Solid Waste Disposal Act (42 U.S.C. 6901 et  
 9           seq.).

10          “(j) ALLOCATIONS.—Any person relieved from liabil-  
 11       ity for recycling transactions under this section at a facil-  
 12       ity on the National Priorities List shall be deemed an ex-  
 13       empt party for purposes of section 128(n)(4).”.

14       **SEC. 310. ALLOCATION.**

15       Title I is amended by adding at the end the following  
 16       new section:

17       **“SEC. 128. ALLOCATION.**

18       “(a) RESPONSE ACTIONS SUBJECT TO ALLOCA-  
 19       TION.—

20               “(1) RESPONSE ACTIONS NOT SUBJECT TO A  
 21       SETTLEMENT OR ORDER.—Upon request of 2 or  
 22       more potentially responsible parties at a facility or  
 23       vessel on the National Priorities List, the President  
 24       shall initiate an allocation under this section for a  
 25       response action at the facility or vessel if—



1           “(A) the performance of such response ac-  
2           tion is not the subject of a consent decree en-  
3           tered before October 23, 1997, or an adminis-  
4           trative order issued before October 23, 1997;  
5           and

6           “(B) the aggregate costs of all response  
7           actions at the facility or vessel are estimated by  
8           the President to exceed \$5,000,000.

9           “(2) RESPONSE ACTIONS SUBJECT TO SETTLE-  
10          MENT OR ORDER.—Upon request of 2 or more po-  
11          tentially responsible parties at a facility or vessel on  
12          the National Priorities List, the President shall initi-  
13          ate an allocation under this section for response ac-  
14          tions that are undergoing construction pursuant to  
15          a consent decree entered before October 23, 1997, or  
16          an administrative order issued before October 23,  
17          1997, if such allocation is provided for under section  
18          311(d) of the Superfund Acceleration, Fairness, and  
19          Efficiency Act.

20          “(b) EXCLUDED FACILITIES.—The allocation process  
21          under this section shall not apply to any facility or vessel  
22          owned or operated by the United States and any facility  
23          or vessel—

24                 “(1) for which there is only one potentially re-  
25          sponsible party; or

1           “(2) for which there has been a final settle-  
2           ment, decree, or order that determines the allocated  
3           shares of all potentially responsible parties with re-  
4           spect to such response costs.

5           “(c) INITIATION OF ALLOCATION.—The President  
6           shall initiate the allocation process under this section by  
7           identifying all potentially responsible parties at the facility  
8           or vessel, notifying them that response costs at the facility  
9           or vessel shall be subject to an allocation, and informing  
10          them of their rights and obligations under this section.

11          “(d) EARLY OFFER OF SETTLEMENT.—As soon as  
12          practicable and prior to the selection of an allocator, the  
13          President shall provide an estimate of the aggregate Fund  
14          share in accordance with subsection (n)(4). The President  
15          shall offer to provide mixed funding to settling parties on  
16          the basis of this estimate.

17          “(e) REPRESENTATION OF THE UNITED STATES AND  
18          AFFECTED STATES.—The Administrator or the Attorney  
19          General, as a representative of the Fund, and a represent-  
20          ative of any State that is or may be responsible pursuant  
21          to section 104(c)(3) for any costs of a response action that  
22          is the subject of an allocation shall be entitled to partici-  
23          pate in the allocation proceeding to the same extent as  
24          any allocation party.

1       “(f) SCOPE OF ALLOCATIONS.—Each allocation  
2 under this section shall apply to the costs of all response  
3 actions at a facility unless, the allocator determines, in  
4 the allocator’s sole discretion, that it should apply only  
5 to one or more of such response actions at the facility.

6       “(g) MORATORIUM ON LITIGATION.—

7               “(1) MORATORIUM ON LITIGATION.—No person  
8 may commence any civil action or assert any claim  
9 under this Act seeking recovery of any response  
10 costs, or contribution toward such costs, in connec-  
11 tion with any response action for which the Presi-  
12 dent has initiated an allocation under this section,  
13 until 150 days after issuance of the allocator’s re-  
14 port or of a second or subsequent report under this  
15 section.

16               “(2) STAY.—If any action or claim referred to  
17 in paragraph (1) is pending on the date of enact-  
18 ment of this section or on the date of initiation of  
19 an allocation, such action or claim (including any  
20 pendant claim under State law over which a court is  
21 exercising jurisdiction) shall be stayed until 150  
22 days after the issuance of the allocator’s report or  
23 of a second or subsequent report under this section,  
24 unless the court determines that a stay will result in  
25 manifest injustice.

1           “(3) TOLLING OF LIMITATIONS PERIOD.—Any  
2       applicable limitations period with respect to actions  
3       subject to paragraph (1) shall be tolled from the ear-  
4       lier of—

5           “(A) the date of listing of the facility on  
6       the National Priorities List, where such listing  
7       occurs after the date of enactment of this sec-  
8       tion; or

9           “(B) the commencement of the allocation  
10      process pursuant to this section, until 180 days  
11      after rejects or waives its right to reject the  
12      allocator’s report.

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

18       “(i) SELECTION OF ALLOCATOR.—

19           “(1) IN GENERAL.—The person selected to  
20      serve as allocator in an allocation process shall be a  
21      neutral third party who is not an employee of any  
22      potentially responsible party at the facility or of the  
23      United States. The allocator shall be selected by the  
24      potentially responsible parties or by the President in  
25      accordance with this subsection.

1           “(2) LIST OF ALLOCATORS.—The President  
2       shall prepare, publish, and periodically revise a list  
3       of neutral allocators who the President determines  
4       are qualified to perform allocations under this sec-  
5       tion.

6           “(3) SELECTION BY PARTIES.—The potentially  
7       responsible parties shall select an allocator and no-  
8       tify the President of such selection. If the allocator  
9       is not on the list published by the President, the  
10      President may reject such selection.

11          “(4) SELECTION BY THE PRESIDENT.—If an al-  
12      locator is not selected as provided in paragraph (3)  
13      within 60 days after the date on which the President  
14      receives a request to initiate an allocation process,  
15      the President shall promptly select a person to serve  
16      as allocator. The President’s act of selecting an allo-  
17      cator shall not be subject to judicial review.

18          “(j) RETENTION OF ALLOCATOR.—Upon selection of  
19      an allocator, the President shall promptly—

20           “(1) enter into a contract with the allocator to  
21      provide allocation services in accordance with this  
22      section for reasonable compensation, in a manner  
23      that does not restrict the allocator’s discretion to  
24      conduct the allocation process in a fair, efficient,  
25      and impartial manner;

1           “(2) notify all potentially responsible parties at  
2           the facility that the allocator has been retained, and  
3           make available to them, within 30 days of the reten-  
4           tion of the allocator, all responses to information re-  
5           quests, as well as all other relevant information re-  
6           lating to the facility, including the information speci-  
7           fied in section 122(e)(1); and

8           “(3) provide to the allocator all information ob-  
9           tained under section 104(e), including information  
10          entitled to protection under section 1905 of title 18,  
11          United States Code, or exempt from disclosure pur-  
12          suant to section 552(a) of title 5, United States  
13          Code.

14          “(k) ALLOCATION LIST.—The President shall pro-  
15          vide the allocator with a list of potentially responsible par-  
16          ties, at the facility, to be known as the allocation list. To  
17          the extent practicable, the President shall identify—

18               “(1) exempt parties (parties who are exempt  
19               from liability);

20               “(2) settlement parties (parties who have set-  
21               tled all their liability with respect to the site and  
22               have contribution protection for all response costs);

23               “(3) nonviable parties (parties that are bank-  
24               rupt, insolvent, or defunct); and

1           “(4) allocation parties (all other parties identi-  
2       fied on the list).

3       “(1) AUTHORITIES OF ALLOCATOR.—

4           “(1) INFORMATION GATHERING.—

5           “(A) IN GENERAL.—To gather such infor-  
6       mation as is necessary to conduct a fair, effi-  
7       cient and impartial allocation, an allocator is  
8       authorized to exercise the information-gathering  
9       authority conferred upon the President under  
10      sections 122(e)(3)(B) and 104(e)(2). The allo-  
11     cator may also request the Administrator to ex-  
12     ercise any information gathering authority  
13     under this Act, and may request the Attorney  
14     General to enforce any information request or  
15     subpoena issued by the allocator. A party from  
16     whom information is sought under this section  
17     shall not assert any privilege as a basis for  
18     withholding any information from the allocator.  
19     Notwithstanding any other provision of law, the  
20     allocator shall not be considered an agency of  
21     the United States Government subject to the  
22     requirements of section 552 of title 5, United  
23     States Code.

24           “(B) SUMMARY.—Each information re-  
25     quest issued by the allocator shall be accom-

1           panied by a summary that explains (i) the obli-  
2           gation of the person to provide a full and timely  
3           response to the request, (ii) each of the ele-  
4           ments of the required certification, and (iii) the  
5           defenses to liability under the statute.

6           “(C) DOCUMENT REPOSITORY.—The allo-  
7           cator shall establish and maintain a document  
8           repository containing copies of all documents  
9           and information provided by the President or  
10          any allocation party pursuant to this section or  
11          generated by the allocator during the allocation.  
12          The documents and information in the docu-  
13          ment repository shall be available only to the al-  
14          location parties for review and copying at their  
15          own expense, subject to the confidentiality pro-  
16          visions of subsection (r).

17          “(2) AMENDMENT OF ALLOCATION LIST.—

18                 “(A) IN GENERAL.—Based on the informa-  
19                 tion obtained or developed by the allocator, the  
20                 allocator, after consultation with the President,  
21                 may amend the list of potentially responsible  
22                 parties for the facility provided by the President  
23                 to add, delete, or change the status of such par-  
24                 ties.



1           “(B) NOMINATION OF PARTIES.—Alloca-  
2           tion parties may submit to the allocator the  
3           names of additional potentially responsible par-  
4           ties and the allocator may add such persons to  
5           the allocation list into the appropriate category,  
6           after consultation with the President. Any allo-  
7           cation party that is added to the allocation list  
8           as an allocation party following submission of  
9           the person’s name to the allocator by an alloca-  
10          tion party, but is assigned a zero share by the  
11          allocator or is later removed from the allocation  
12          list by the allocator, that other party’s costs of  
13          participating in the allocation (including reason-  
14          able attorney’s fees) shall be borne by the party  
15          who submitted the person’s name to the allo-  
16          cator.

17           “(C) NOTICE.—The allocator shall prompt-  
18          ly inform the President of any changes made to  
19          the allocation list.

20           “(D) STATUS OF DECISIONS.—A decision  
21          of the allocator with respect to the allocation  
22          list under this paragraph shall apply only with-  
23          in the allocation process and shall not estop any  
24          claims made by the United States or any other

1 person, and shall not be subject to judicial re-  
2 view.

3 “(m) EXPEDITED SETTLEMENTS.—The allocator  
4 shall notify the President of any allocation party who the  
5 allocator has determined is eligible for an expedited settle-  
6 ment under section 122(g). The President shall offer an  
7 expedited settlement to such party within 120 days of the  
8 date of the notice, unless the President determines such  
9 party is not eligible for an expedited settlement. If the  
10 President does not make the determination before the last  
11 day of the 120-day period and does not offer the party  
12 an expedited settlement within that period, the party shall  
13 have no further liability under this Act and shall be treat-  
14 ed as an exempt party for the purposes of this section.

15 “(n) ALLOCATION DETERMINATION.—

16 “(1) ALLOCATION PROCESS.—The allocator  
17 shall determine the equitable share of response costs  
18 of each potentially responsible party at the facility  
19 and the Fund, based on the factors and consider-  
20 ations in paragraph (3).

21 “(2) CONDUCT OF ALLOCATION PROCESS.—The  
22 allocator shall conduct the allocation process and  
23 render a decision based solely on the provisions of  
24 this section. Each allocation party, including the  
25 representative of the Fund, shall be afforded an op-

1 opportunity to be heard (orally or in writing, or both),  
2 and an opportunity to comment on a draft allocation  
3 report.

4 “(3) EQUITABLE FACTORS FOR ALLOCATION.—  
5 In determining the equitable share of response costs  
6 attributable to each potentially responsible party, the  
7 allocator shall consider the following:

8 “(A) The amount of hazardous substances  
9 contributed by each allocation party.

10 “(B) The degree of toxicity of the hazard-  
11 ous substances contributed by each allocation  
12 party.

13 “(C) The mobility of the hazardous sub-  
14 stances contributed by each allocation party.

15 “(D) The degree of involvement of each al-  
16 location party in the generation, transportation,  
17 treatment, storage, disposal, or release of the  
18 hazardous substances.

19 “(E) The degree of care exercised by each  
20 allocation party with respect to the hazardous  
21 substances, taking into account the characteris-  
22 tics of the hazardous substances.

23 “(F) The degree to which the allocation  
24 party caused, contributed to, or consented to

1 the release or threat of release of hazardous  
2 substances at the facility.

3 “(G) The cooperation of each allocation  
4 party in the performance of any response ac-  
5 tion, in the provision of complete and timely in-  
6 formation to the allocator and the President,  
7 and in the orderly conduct of the allocation  
8 process.

9 “(H) Such other equitable factors as the  
10 allocator determines are appropriate based on  
11 site-specific circumstances.

12 “(4) FUND SHARE.—For each response action  
13 that is the subject of an allocation under this sec-  
14 tion, the allocator shall determine, based on the fac-  
15 tors in paragraph (3), the share of response costs,  
16 if any, to be allocated to the Fund. Such amount  
17 shall be used to determine the amount of mixed  
18 funding provided under section 122(b). The Fund  
19 share shall consist of the sum of following amounts:

20 “(A) The amount attributable to the ag-  
21 gregate share of response costs that the allo-  
22 cator determines to be attributable to nonviable  
23 parties who are not affiliated with any alloca-  
24 tion party.

1           “(B) The amount attributable to the dif-  
2           ference in the aggregate share of response costs  
3           that the allocator determines to be attributable  
4           to settlement parties who have resolved their li-  
5           ability to the United States for the response  
6           and the amount actually assumed by those par-  
7           ties in any settlement for the response action  
8           with the United States. Except where such set-  
9           tlements include a consideration of ability to  
10          pay, the allocator may presume that the  
11          amount accepted by the United States in a set-  
12          tlement is that party’s equitable share.

13           “(C) The amount attributable to the ag-  
14          gregate share of response costs that the allo-  
15          cator determines to be attributable to persons  
16          who are entitled to an exemption from liability  
17          under subsection (n) or (o) of section 107 or  
18          section 127.

19           “(5) UNATTRIBUTABLE SHARE.—The share at-  
20          tributable to the aggregate share of response costs  
21          incurred to respond to materials containing hazard-  
22          ous substances for which no generator, transporter,  
23          or owner or operator at the time of disposal can be  
24          identified shall be divided pro rata among the alloca-

1       tion parties and the Fund share determined under  
2       paragraph (4).

3       “(o) EXPEDITED ALLOCATION.—At the request of  
4 the allocation parties or the United States, to assist in  
5 reaching settlement, the allocator may, prior to reaching  
6 a final allocation of response costs among all parties, first  
7 provide an estimate of the aggregate Fund share, in ac-  
8 cordance with subsection (n)(4), and an estimate of the  
9 aggregate share of the allocation parties.

10       “(p) ALLOCATION REPORT.—Unless all allocation  
11 parties settle their liability prior to the completion of the  
12 allocation process, the allocator shall issue an allocation  
13 report identifying the share of response costs attributable  
14 to each potentially responsible party at the facility, indi-  
15 vidually and by category of party, and the share of re-  
16 sponse costs to be paid by the Fund, in accordance with  
17 subsection (n)(4).

18       “(q) SETTLEMENT BEFORE ALLOCATION DETER-  
19 MINATION.—

20       “(1) SETTLEMENT OF ALL RESPONSE COSTS.—

21       At any time before the issuance of an allocation re-  
22 port or of a second or subsequent report, any group  
23 of allocation parties may submit to the allocator a  
24 private allocation for any response action that is  
25 within the scope of the allocation. If such private al-

1 location meets each of the following criteria, the allo-  
2 cator shall promptly adopt it as the allocation re-  
3 port:

4 “(A) The private allocation is a binding al-  
5 location of 100 percent of the past, present,  
6 and future costs of the response action.

7 “(B) The private allocation does not allo-  
8 cate any share to any person who is not a sig-  
9 natory to the private allocation.

10 “(C) The signatories to the private alloca-  
11 tion waive their rights to seek recovery of re-  
12 sponse costs or contribution under this Act with  
13 respect to the response action from any other  
14 party at the facility.

15 “(2) OTHER SETTLEMENTS.—The President  
16 may use the authority under section 122(g) to enter  
17 into settlement agreements with respect to any re-  
18 sponse action that is the subject of an allocation at  
19 any time. Any allocation party that enters into such  
20 a settlement agreement shall be a settlement party  
21 for the purposes of this section and shall no longer  
22 be an allocation party.

23 “(r) CONFIDENTIALITY.—Except to the extent that  
24 such documents, materials, or records of information are  
25 also contained in the administrative record established

1 pursuant to section 113(k), all documents and materials  
2 submitted to the allocator or placed in the document re-  
3 pository established under subsection (l)(1), together with  
4 the record of any information generated or obtained by  
5 the allocator during the allocation process, shall be con-  
6 fidential, as follows:

7           “(1) NO DISCLOSURE UNDER SECTION 552 OF  
8       TITLE 5.—Notwithstanding any other provision of  
9       law, such documents, materials, or records shall not  
10      be subject to disclosure to any person under section  
11      552 of title 5, United States Code.

12           “(2) PROHIBITION ON USE IN OTHER MAT-  
13      TERS.—The allocator, each allocation party, the Ad-  
14      ministrator, and the Attorney General may not use  
15      such documents, materials, or records in any other  
16      matter or proceeding or for any other purpose other  
17      than the allocation process itself, and such docu-  
18      ments, materials, or records shall not be discoverable  
19      or admissible in any other matter or proceeding or  
20      for any purpose other than the allocation process it-  
21      self, except—

22           “(A) a new allocation for the same re-  
23           response action;



1           “(B) an initial allocation pursuant to this  
2           section for a different response action at the  
3           same facility;

4           “(C) a penalty proceeding for noncompli-  
5           ance with an information request or subpoena  
6           for the purpose of establishing the fact of the  
7           violation;

8           “(D) a judicial proceeding for the purpose  
9           of approving a settlement; or

10          “(E) as may be required by court order.

11          “(3) REQUIREMENT TO ENSURE CONFIDEN-  
12          TIALITY.—The allocator and all parties to the alloca-  
13          tion shall take such measures as are necessary to en-  
14          sure that the confidentiality provisions of this para-  
15          graph are maintained.

16          “(4) DISCOVERABILITY AND ADMISSIBILITY.—  
17          If the original of any document or material submit-  
18          ted to the allocator or placed in the document repos-  
19          itory was, in the hands of the party that provided  
20          it, otherwise discoverable or admissible, then such  
21          original document, if subsequently sought from such  
22          party, shall remain so. If a fact generated or ob-  
23          tained during the allocation was, in the hands of a  
24          witness, otherwise discoverable or admissible, then

1 such testimony, if subsequently sought from such  
2 other party, shall remain so.

3 “(5) NO WAIVER OF PRIVILEGE.—The submis-  
4 sion of testimony, documents, or information pursu-  
5 ant to the allocation process shall not constitute a  
6 waiver of any privilege applicable to the testimony,  
7 documents, or information under any Federal or  
8 State law or rule of discovery or evidence.

9 “(s) REJECTION OF ALLOCATION REPORT.—

10 “(1) WRITTEN DETERMINATION.—The Admin-  
11 istrator and the Attorney General may jointly reject  
12 an allocator’s report only if they jointly publish in  
13 the Federal Register, within 150 days after receipt  
14 of the report, a written determination that—

15 “(A) no rational interpretation of the facts  
16 before the allocator, in light of the factors re-  
17 quired to be considered, would form a reason-  
18 able basis for the shares assigned to the parties;  
19 or

20 “(B) the allocation process was affected by  
21 bias, substantial procedural error, fraud, or un-  
22 lawful conduct.

23 “(2) WAIVER OF RIGHT TO REJECT ALLOCA-  
24 TION REPORT.—The Administrator and the Attorney  
25 General shall waive the right to reject the allocation

1 report and such report shall be deemed to be the  
2 basis for allocating response costs, including costs to  
3 be paid by the Fund—

4 “(A) after the 150th day following its issu-  
5 ance, if no written determination under para-  
6 graph (1) has been published;

7 “(B) after the United States has accepted  
8 a settlement offer based on the allocation; or

9 “(C) after the Administrator provides writ-  
10 ten notice to any allocation party that the Unit-  
11 ed States accepts the allocation report as the  
12 basis for allocating shares of responsibility for  
13 a response action.

14 “(3) JUDICIAL REVIEW.—The determinations of  
15 the Administrator and the Attorney General under  
16 this subsection shall not be subject to judicial re-  
17 view.

18 “(t) SECOND AND SUBSEQUENT ALLOCATIONS.—If  
19 the United States rejects an allocator’s report in accord-  
20 ance with subsection (s), the allocation parties shall select  
21 an allocator pursuant to this subsection to perform, on  
22 an expedited basis, a new allocation based on the same  
23 record available to the previous allocator, unless the Unit-  
24 ed States rejection of the previous allocation was based  
25 in whole or in significant part on deficiencies in the record.

1 The moratorium and stay periods provided in subsection  
2 (f) shall be extended until 150 days after issuance of the  
3 new allocation report, and the tolling period provided in  
4 subsection (f) shall be extended until 180 days after the  
5 President rejects or waive his right to object to the second  
6 or subsequent allocation report. The allocation parties  
7 may select an allocator that performed one or more pre-  
8 vious allocations at the same facility, unless the United  
9 States rejection of the previous allocation was based, in  
10 whole or in part, on bias, fraud, or unlawful conduct by  
11 the allocator.

12 “(u) SETTLEMENTS BASED ON ALLOCATIONS.—

13 “(1) IN GENERAL.—

14 “(A) Subject to subparagraph (B), the  
15 President shall accept an offer of settlement of  
16 liability for a response action that is the subject  
17 of an allocation if—

18 “(i) the offer is made within 90 days  
19 after issuance of the allocator’s report; and

20 “(ii) the offer is based on the share of  
21 response costs specified by the allocator  
22 and contains the terms and conditions set  
23 forth in paragraph (2) and such other  
24 terms and conditions (other than the allo-

1 cated share of response costs) as are ac-  
2 ceptable to the President.

3 “(B) The requirement of subparagraph (A)  
4 to accept an offer of settlement shall not apply  
5 if the Administrator and the Attorney General  
6 reject the allocation report pursuant to sub-  
7 section (s).

8 “(2) SETTLEMENT PROVISIONS.—The President  
9 may enter into a settlement with respect to a re-  
10 sponse action that is the subject of an allocation in  
11 accordance with this section. Each settlement shall  
12 include the following provisions:

13 “(A) Protection from claims for contribu-  
14 tion in accordance with section 113(f)(2).

15 “(B) Provisions through which each set-  
16 tling party shall receive mixed funding in ac-  
17 cordance with section 122(b)(1).

18 “(C) Covenants not to sue, consistent with  
19 section 122(f).

20 “(v) ADMINISTRATIVE ORDERS.—Any allocation  
21 party who, following the completion of the allocation, is  
22 issued an order under section 106 with respect to the re-  
23 sponse action that is the subject of the allocation, who  
24 complies with such order, and who incurs costs in excess  
25 of the person’s allocated percentage share of response

1 costs, shall receive mixed funding as provided in section  
 2 122(b)(1) in the amount of such excess.

3 “(w) POST-SETTLEMENT LITIGATION.—Following  
 4 expiration of the moratorium periods under subsection (e),  
 5 the United States may commence an action under this Act  
 6 against any allocation party that has not resolved its liabil-  
 7 ity to the United States following an allocation, seeking  
 8 to recover response costs that are not recovered through  
 9 settlements with other persons. All such actions shall be  
 10 governed by the principles of liability under this Act as  
 11 determined by the courts of the United States.

12 “(x) RESPONSE COSTS.—

13 “(1) DESCRIPTION.—The following costs shall  
 14 be considered response costs for purposes of this  
 15 Act:

16 “(A) Costs incurred by the United States  
 17 of implementing the allocation procedure set  
 18 forth in this section, including reasonable fees  
 19 and expenses of the allocator.

20 “(B) Costs incurred by the United States  
 21 for any mixed funding under section 122(b).

22 “(2) SETTLED PARTIES.—Any costs of alloca-  
 23 tion described in paragraph (1)(A) and incurred  
 24 after a party has settled all of its liability with re-  
 25 spect to the response action or actions that are the

1 subject of the allocation may not be recovered from  
2 such party.

3 “(y) FEDERAL, STATE, AND LOCAL AGENCIES.—All  
4 Federal, State, and local governmental departments, agen-  
5 cies, or instrumentalities that are identified as allocation  
6 parties shall be subject to, and be entitled to the benefits  
7 of, the allocation process and allocation determination pro-  
8 vided by this section to the same extent as any other party.

9 “(z) SAVINGS PROVISIONS.—Except as otherwise ex-  
10 pressly provided, nothing in this section shall limit or af-  
11 fect the following:

12 “(1) The President’s—

13 “(A) authority to exercise the powers con-  
14 ferred by sections 103, 104, 105, 106, 107, or  
15 122;

16 “(B) authority to commence an action  
17 against a party where there is a contempora-  
18 neous filing of a judicial consent decree resolv-  
19 ing that party’s liability;

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

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

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

4           “(2) The ability of any person to resolve its li-  
5           ability at a facility to any other person at any time  
6           before or during the allocation process.

7           “(3) The validity, enforceability, finality, or  
8           merits of any judicial or administrative order, judg-  
9           ment, or decree issued, signed, lodged, or entered,  
10          before the date of enactment of this paragraph with  
11          respect to liability under this Act, or authority to  
12          modify any such order, judgment, or decree with re-  
13          gard to the response action addressed in the order,  
14          judgment or decree.

15          “(4) The validity, enforceability, finality, or  
16          merits of any pre-existing contract or agreement re-  
17          lating to any allocation of responsibility or any in-  
18          demnity for, or sharing of, any response costs under  
19          this Act.”.

20   **SEC. 311. TRANSITION RULES.**

21          (a) **VALIDITY OF EXISTING SETTLEMENTS AND OR-**  
22   **DERS.**—All settlements, consent decrees, and judicial and  
23   administrative orders entered into or issued before the  
24   date of the enactment of this Act and any allocations of  
25   response costs under such settlements, judgments, consent



1 decrees, and administrative orders shall remain in full  
2 force and effect.

3 (b) VALIDITY OF EXISTING CONTRACTS AND AGREE-  
4 MENTS.—All existing contracts and agreements relating to  
5 any allocation of responsibility or indemnity for response  
6 costs entered into before the date of the enactment of this  
7 Act shall remain in full force and effect.

8 (c) MIXED FUNDING FOR PERFORMING PARTIES.—  
9 Notwithstanding subsections (a) and (b), parties who are  
10 responsible for carrying out a response action pursuant  
11 to a consent decree entered into before October 23, 1997,  
12 under section 122 of the Comprehensive Environmental  
13 Response, Compensation, and Liability Act of 1980 or  
14 pursuant to an administrative order issued under section  
15 106 of such Act before October 23, 1997, shall be entitled  
16 to mixed funding under section 122(b)(1) of such Act with  
17 respect to that response action in the amount of—

18 (1) the total shares of response costs attrib-  
19 utable to any party exempted from liability under  
20 section 107(n), 107(o), or 127 of such Act, if such  
21 parties have not resolved their liability with respect  
22 to such costs on or before October 23, 1997; and

23 (2) the total shares of response costs incurred  
24 after the date of the enactment of this Act attrib-  
25 utable to any party who is bankrupt, insolvent, or

1       defunct if such party has not resolved such party's  
2       liability with respect to such costs on or before Octo-  
3       ber 23, 1997.

4       (d) ALLOCATIONS AT FACILITIES UNDER ORDER OR  
5       DECREE.—The total amount of the mixed funding pro-  
6       vided under subsection (c) shall be determined by agree-  
7       ment between the President and the parties who are carry-  
8       ing out a response action to which subsection (c) applies,  
9       or, if no such agreement is entered into within 120 days  
10      of the date of the enactment of this Act, by an allocator  
11      described in section 128 of the Comprehensive Environ-  
12      mental Response, Compensation, and Liability Act of  
13      1980, using the equitable factors described in section  
14      128(n) of such Act. If requested by 50 percent of such  
15      parties, such allocation shall address the relative shares  
16      of response costs of all potentially responsible parties with  
17      respect to the facility. The United States may commence  
18      an action under this Act against any potentially respon-  
19      sible party that has not resolved its liability with respect  
20      to such response costs following the allocation, seeking to  
21      recover those response costs that are not recovered  
22      through settlements with other persons, including costs of  
23      mixed funding provided under this section.

24      (e) CONTRIBUTION CLAIMS AGAINST NONSETTLING  
25      PARTIES.—Parties who are incurring or have incurred re-

1 sponse costs with respect to the remedial action or actions  
 2 that are the subject of an order or decree described in  
 3 subsection (a) shall retain all rights to seek contribution  
 4 to such costs from parties who have not resolved their li-  
 5 ability with respect to such costs and who are not exempt  
 6 from liability under section 107(n), 107(o), or 127 of the  
 7 Comprehensive Environmental Response, Compensation,  
 8 and Liability Act of 1980, and are not bankrupt, insolvent,  
 9 or defunct.

## 10 **TITLE IV—BROWNFIELDS** 11 **REVITALIZATION**

### 12 **SEC. 401. BROWNFIELDS.**

13 (a) IN GENERAL.—Title I (42 U.S.C. 9601 et seq.),  
 14 as amended by section 109 of this Act, is further amended  
 15 by adding at the end the following:

### 16 **“SEC. 129. BROWNFIELDS.**

17 “(a) DEFINITIONS.—In this section, the following  
 18 definitions apply:

19 “(1) ADMINISTRATIVE COST.—The term ‘ad-  
 20 ministrative cost’ does not include the cost of—

21 “(A) site inventories;

22 “(B) investigation and identification of the  
 23 extent of contamination;

24 “(C) design and performance of a response  
 25 action; or

1 “(D) monitoring of natural resources.

2 “(2) BROWNFIELD FACILITY.—

3 “(A) IN GENERAL.—The term ‘brownfield  
4 facility’ means real property with respect to  
5 which expansion or redevelopment is com-  
6 plicated by the presence or potential presence of  
7 a hazardous substance.

8 “(B) EXCLUDED FACILITIES.—The term  
9 ‘brownfield facility’ does not include—

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

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

16 “(iii) a land disposal unit with respect  
17 to which—

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

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

1 “(iv) any portion of real property with  
2 respect to which a cleanup is proceeding  
3 under a permit, an administrative order, or  
4 a judicial consent decree entered into by  
5 the United States or an authorized State  
6 under this Act, the Solid Waste Disposal  
7 Act (42 U.S.C. 6901 et seq.), the Federal  
8 Water Pollution Control Act (33 U.S.C.  
9 1251 et seq.), the Toxic Substances Con-  
10 trol Act (15 U.S.C. 2601 et seq.), or the  
11 Safe Drinking Water Act (42 U.S.C. 300f  
12 et seq.);

13 “(v) a facility that is owned or oper-  
14 ated by a department, agency, or instru-  
15 mentality of the United States, except a  
16 facility located on lands held in trust for  
17 an Indian tribe; or

18 “(vi) a portion of a facility for which  
19 assistance for response activity has been  
20 obtained under subtitle I of the Solid  
21 Waste Disposal Act (42 U.S.C. 6991 et  
22 seq.) from the Leaking Underground Stor-  
23 age Tank Trust Fund established under  
24 section 9508 of the Internal Revenue Code  
25 of 1986.

1 “(3) ELIGIBLE ENTITY.—

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

4 “(i) a State or a political subdivision  
5 of a State, including—

6 “(I) a general purpose unit of  
7 local government; and

8 “(II) a regional council or group  
9 of general purpose units of local gov-  
10 ernment;

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

14 “(iii) an Indian tribe.

15 “(B) EXCLUDED ENTITIES.—The term ‘el-  
16 igible entity’ does not include any entity that is  
17 not in full compliance with the requirements of  
18 an administrative order or a judicial consent de-  
19 cree which has been entered into by the United  
20 States or an authorized State under this Act,  
21 the Solid Waste Disposal Act (42 U.S.C. 6901  
22 et seq.), the Federal Water Pollution Control  
23 Act (33 U.S.C. 1251 et seq.), the Toxic Sub-  
24 stances Control Act (15 U.S.C. 2601 et seq.),  
25 or the Safe Drinking Water Act (42 U.S.C.

1           300f et seq.) with respect to the real property  
2           or portion thereof which is the subject of the  
3           order or judicial consent decree.

4           “(b) BROWNFIELD ASSESSMENT GRANT PRO-  
5 GRAM.—

6           “(1) ESTABLISHMENT OF PROGRAM.—The  
7           President shall establish a program to provide  
8           grants to eligible entities for inventory and assess-  
9           ment of brownfield facilities.

10          “(2) ASSISTANCE FOR SITE ASSESSMENT.—On  
11          approval of an application made by an eligible entity,  
12          the President may make grants to the eligible entity  
13          to be used for developing an inventory and conduct-  
14          ing an assessment of 1 or more brownfield facilities.

15          “(3) APPLICATIONS.—

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

21                 “(B) APPLICATION REQUIREMENTS.—An  
22                 application for a grant under this subsection  
23                 shall include information relevant to the rank-  
24                 ing criteria established under paragraph (4) for

1 the facility or facilities for which the grant is  
2 requested.

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

7 “(A) The demonstrated need for Federal  
8 assistance.

9 “(B) The extent to which a grant will  
10 stimulate the availability of other funds for en-  
11 vironmental remediation and subsequent rede-  
12 velopment of the area in which the brownfield  
13 facilities are located.

14 “(C) The estimated extent to which a  
15 grant would facilitate the identification of or fa-  
16 cilitate a reduction in health and environmental  
17 risks.

18 “(D) The potential to stimulate economic  
19 development of the area, such as the following:

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

23 “(ii) The potential of a grant to cre-  
24 ate new or expand existing business and



1 employment opportunities on completion of  
2 any necessary response action.

3 “(iii) The estimated additional tax  
4 revenues expected to be generated by eco-  
5 nomic redevelopment in the area in which  
6 a brownfield facility is located.

7 “(E) The financial involvement of the  
8 State and local government in any response ac-  
9 tion planned for a brownfield facility and the  
10 extent to which the response action and the  
11 proposed redevelopment is consistent with any  
12 applicable State or local community economic  
13 development plan.

14 “(F) The extent to which the site assess-  
15 ment and subsequent development involves the  
16 active participation and support of the local  
17 community.

18 “(5) MAXIMUM GRANT AMOUNT PER FACIL-  
19 ITY.—A grant made to an eligible entity under this  
20 subsection shall not exceed \$200,000 with respect to  
21 any brownfield facility covered by the grant.

22 “(c) BROWNFIELD REMEDIATION GRANT PRO-  
23 GRAM.—

24 “(1) ESTABLISHMENT OF PROGRAM.—The  
25 President shall establish a program to provide

1 grants to eligible entities to be used for capitaliza-  
2 tion of revolving loan funds for remedial actions at  
3 brownfield facilities.

4 “(2) ASSISTANCE FOR SITE REMEDIATION.—

5 Upon approval of an application made by an eligible  
6 entity, the President may make grants to the eligible  
7 entity to be used for establishing a revolving loan  
8 fund. Any fund established using such grants shall  
9 be used to make loans to a State, a site owner, or  
10 a site developer for the purpose of carrying out re-  
11 medial actions at 1 or more brownfield facilities.

12 “(3) APPLICATIONS.—

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

17 “(B) APPLICATION REQUIREMENTS.—An  
18 application under this section shall include in-  
19 formation relevant to the ranking criteria estab-  
20 lished under paragraph (4).

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

1           “(A) The adequacy of the financial con-  
2           trols and resources of the eligible entity to ad-  
3           minister a revolving loan fund in accordance  
4           with this title.

5           “(B) The ability of the eligible entity to  
6           monitor the use of funds provided to loan re-  
7           cipients under this title.

8           “(C) The ability of the eligible entity to en-  
9           sure that a remedial action funded by the grant  
10          will be conducted under the authority of a State  
11          cleanup program that ensures that the remedial  
12          action is protective of human health and the en-  
13          vironment.

14          “(D) The ability of the eligible entity to  
15          ensure that any cleanup funded under this Act  
16          will comply with all laws that apply to the  
17          cleanup.

18          “(E) The need of the eligible entity for fi-  
19          nancial assistance to clean up brownfield sites  
20          that are the subject of the application, taking  
21          into consideration the financial resources avail-  
22          able to the eligible entity.

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

1           “(G) The plans of the eligible entity for  
2           using the grant to stimulate economic develop-  
3           ment or creation of recreational areas on com-  
4           pletion of the cleanup.

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

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

13          “(5) MAXIMUM GRANT AMOUNT.—A grant  
14          made to an eligible entity under this subsection may  
15          not exceed \$1,000,000.

16          “(d) GENERAL PROVISIONS.—

17               “(1) SUNSET.—No amount shall be available  
18               from the Fund for purposes of this section after the  
19               fifth fiscal year after the date of the enactment of  
20               this section.

21               “(2) PROHIBITION.—No part of a grant under  
22               this section may be used for the payment of pen-  
23               alties, fines, or administrative costs.

24               “(3) AUDITS.—The President shall audit an ap-  
25               propriate number of grants made under subsections

1 (b) and (c) to ensure that funds are used for the  
2 purposes described in this section.

3 “(4) AGREEMENTS.—

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

7 “(i) requires the eligible entity to  
8 comply with all applicable Federal and  
9 State laws;

10 “(ii) requires the eligible entity to use  
11 the grant exclusively for the purposes spec-  
12 ified in subsection (b)(2) or (c)(2);

13 “(iii) in the case of an application by  
14 a State under subsection (c)(2), requires  
15 payment by the State of a matching share,  
16 of at least 50 percent of the amount of the  
17 grant, from other sources of funding;

18 “(iv) requires that grants under this  
19 section will not supplant State or local  
20 funds normally provided for the purposes  
21 specified in subsection (b)(2) or (c)(2); and

22 “(v) contains such other terms and  
23 conditions as the President determines to  
24 be necessary to ensure proper administra-  
25 tion of the grants.

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

5           “(5) LEVERAGING.—An eligible entity that re-  
6           ceives a grant under this section may use the funds  
7           for part of a project at a brownfield facility for  
8           which funding is received from other sources, includ-  
9           ing other Federal sources, but the grant shall be  
10          used only for the purposes described in subsection  
11          (b)(2) or (c)(2).

12          “(e) APPROVAL.—

13               “(1) INITIAL GRANT.—Before the expiration of  
14               the fourth quarter of the first fiscal year following  
15               the date of the enactment of this section, the Presi-  
16               dent shall make grants under this section to eligible  
17               entities and States that submit applications, before  
18               the expiration of the second quarter of such year,  
19               that the President determines have the highest  
20               rankings under the ranking criteria established  
21               under subsection (b)(4) or (c)(4).

22               “(2) SUBSEQUENT GRANTS.—Beginning with  
23               the second fiscal year following the date of enact-  
24               ment of this section, the President shall make an an-  
25               nual evaluation of each application received during

1 the prior fiscal year and make grants under this sec-  
 2 tion to eligible entities and States that submit appli-  
 3 cations during the prior year that the President de-  
 4 termines have the highest rankings under the rank-  
 5 ing criteria established under subsection (e)(3) or  
 6 (f)(3).”.

7 (b) FUNDING.—Section 111 (42 U.S.C. 9611) is  
 8 amended by adding at the end the following:

9 “(q) BROWNFIELD ASSESSMENTS AND REMEDIATION  
 10 GRANT PROGRAMS.—

11 “(1) BROWNFIELD ASSESSMENT GRANT PRO-  
 12 GRAM.—For each of fiscal years 1998 through 2002,  
 13 not more than \$20,000,000 of the amounts available  
 14 in the Fund may be used to carry out section  
 15 129(b).

16 “(2) BROWNFIELD REMEDIATION GRANT PRO-  
 17 GRAM.—For each of fiscal years 1998 through 2002,  
 18 not more than \$65,000,000 of the amounts available  
 19 in the Fund may be used to carry out section  
 20 129(c).”.

21 **SEC. 402. ASSISTANCE FOR VOLUNTARY CLEANUP PRO-**  
 22 **GRAMS.**

23 (a) STATE RESPONSE PROGRAMS.—Title I (42  
 24 U.S.C. 9601 et seq.) is further amended by adding at the  
 25 end the following:

1 **“SEC. 130. STATE VOLUNTARY CLEANUP PROGRAMS.**

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

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

8 “(1) Providing technical assistance for response  
9 actions.

10 “(2) Providing adequate opportunities for pub-  
11 lic participation, including prior notice and oppor-  
12 tunity for comment in appropriate circumstances, in  
13 selecting response actions.

14 “(3) Developing streamlined procedures to en-  
15 sure expeditious response actions.

16 “(4) Providing oversight and enforcement of re-  
17 sponse actions.

18 “(c) PROHIBITION ON CONDITIONS.—A State may  
19 request assistance under this section for 1 or more eligible  
20 purposes. The President may require that such assistance  
21 be used to carry out the eligible purposes for which the  
22 assistance is provided, but may not require as a condition  
23 of such assistance that the State take actions unrelated  
24 to such purposes.”.

25 (b) FUNDING.—Section 111 (42 U.S.C. 9611) is fur-  
26 ther amended by adding at the end the following:



1       “(r) STATE VOLUNTARY CLEANUP PROGRAM.—For  
2 each of fiscal years 1998 through 2002, not more than  
3 \$25,000,000 of the amounts available in the Fund may  
4 be used for assistance to States to maintain, establish, and  
5 administer State voluntary cleanup programs during the  
6 first 5 full fiscal years following the date of enactment  
7 of this subsection. The amount of such assistance shall  
8 be distributed among each of the States that notifies the  
9 Administrator of the State’s intent to establish a State  
10 voluntary cleanup program and each of the States with  
11 a State voluntary cleanup program. For each fiscal year  
12 there shall be available to each State voluntary cleanup  
13 program a grant in the amount of at least \$250,000.”.

14   **SEC. 403. ENFORCEMENT IN CASES OF A RELEASE SUBJECT**  
15                   **TO A STATE PLAN.**

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

18   **“SEC. 131. ENFORCEMENT IN CASES OF A RELEASE SUB-**  
19                   **JECT TO A STATE PLAN.**

20       “(a) ENFORCEMENT.—Except as provided in sub-  
21 paragraph (B), in the case of a facility that is not listed  
22 or proposed for listing on the National Priorities List and  
23 at which there is a release or threatened release of a haz-  
24 ardous substance, neither the President nor any other per-

1 son (other than a State) may use any authority under this  
2 Act—

3 “(1) to take an administrative enforcement ac-  
4 tion;

5 “(2) to take a judicial enforcement action; or

6 “(3) to bring a private civil action against any  
7 person regarding any release or threatened release  
8 that is within the scope of the plan,  
9 if a voluntary response action is being conducted under  
10 a plan approved by a State or a response action has been  
11 certified as complete by a State.

12 “(b) EXCEPTIONS.—The President may bring an ad-  
13 ministrative enforcement action or a judicial enforcement  
14 action with respect to a facility under this Act if—

15 “(1) the State requests the President to take  
16 such action;

17 “(2) the President determines that—

18 “(A) response actions are immediately re-  
19 quired to prevent, limit, or mitigate an emer-  
20 gency;

21 “(B) there is an immediate risk to public  
22 health or welfare or the environment; and

23 “(C) the State will not take the necessary  
24 response actions in a timely manner;

1 “(3) the Agency for Toxic Substances and Dis-  
 2 ease Registry issues a public health advisory with re-  
 3 spect to the facility; or

4 “(4) the President determines that contamina-  
 5 tion has migrated across a State line, resulting in  
 6 the need for further response action to protect  
 7 human health or the environment.”.

## 8 **TITLE V—STATE ROLE**

### 9 **SEC. 501. STATE DELEGATION AT NPL FACILITIES.**

10 (a) STATE DELEGATION.—Title I (42 U.S.C. 9601  
 11 et seq.) is amended—

12 (1) by inserting after the heading for title I the  
 13 following:

### 14 **“Subtitle A—General Provisions”;**

15 and

16 (2) by adding at the end the following:

### 17 **“Subtitle B—State Role**

### 18 **“SEC. 151. STATE DELEGATION AT NPL FACILITIES.**

19 “(a) STATE AUTHORITY.—

20 “(1) ACTIONS FOR WHICH AUTHORITY MAY BE  
 21 DELEGATED.—The Administrator may, in accord-  
 22 ance with this section, delegate authority to a State  
 23 to take any or all of the following actions at any or  
 24 all facilities within the State that are listed on the  
 25 National Priorities List:

1                   “(A) Response actions under section 104.

2                   “(B) Actions under sections 106, 107, 122,  
3                   and 128.

4                   “(C) Authority under subsections (e) and  
5                   (h) (other than subsection (h)(2)) of section  
6                   120.

7                   “(D) Remedy selections under section 121.

8                   “(E) Community participation activities  
9                   under section 117.

10                  “(2) APPLICATION FOR STATE AUTHORITY.—

11                  The Governor of a State may submit to the Admin-  
12                  istrator an application for State delegation of 1 or  
13                  more of the authorities listed in paragraph (1) with  
14                  respect to 1 or more facilities, and may seek amend-  
15                  ments to its delegated authority to add or delete fa-  
16                  cilities or actions for which authority is delegated.  
17                  Any such application shall contain the following:

18                         “(A) A list of facilities on the National  
19                         Priorities List within the State for which au-  
20                         thority is requested and the actions under para-  
21                         graph (1) with respect to such facilities for  
22                         which authority is requested.

23                         “(B) A certification, with adequate sup-  
24                         porting documentation, that the State has ade-  
25                         quate legal authority, financial resources, and

1 personnel resources to request, accept, admin-  
2 ister, and enforce the authority requested.

3 “(C) In the case of a State that is not au-  
4 thorized to administer and enforce corrective  
5 action requirements pursuant to section 3006 of  
6 the Solid Waste Disposal Act, a certification,  
7 with supporting documentation, that the State  
8 has the organization and expertise to admin-  
9 ister and enforce the authority requested.

10 “(D) If the delegation includes facilities at  
11 which source, special nuclear, or byproduct ma-  
12 terials have been released or at which there is  
13 a threat of such a release, a certification, with  
14 supporting documentation, that the State has  
15 expertise in radionuclides.

16 “(3) NOTICE AND COMMENT.—The Adminis-  
17 trator shall provide notice and an opportunity for  
18 public comment with respect to an application sub-  
19 mitted under paragraph (2).

20 “(4) APPROVAL AND DISAPPROVAL OF APPLICA-  
21 TION.—

22 “(A) IN GENERAL.—On the last day of the  
23 120-day period beginning on the date the Ad-  
24 ministrator receives an application made in ac-  
25 cordance with paragraph (2), the application is

1 deemed to be approved unless within such 120-  
2 day period the Administrator disapproves the  
3 application by making 1 of the following find-  
4 ings:

5 “(i) A finding that the State does not  
6 have adequate legal authority, financial re-  
7 sources, or personnel resources to request,  
8 accept, administer, or enforce the authority  
9 requested.

10 “(ii) In the case of an application sub-  
11 mitted by a State required to make the  
12 certification described in paragraph (2)(C),  
13 a finding that the State does not have the  
14 organization or expertise to administer and  
15 enforce the authority requested.

16 “(B) FINDING WITH RESPECT TO EXPER-  
17 TISE IN RADIONUCLIDES.—If the Administrator  
18 finds that the State does not have expertise in  
19 radionuclides, the Administrator may dis-  
20 approve that portion of the application which  
21 includes facilities at which source, special nu-  
22 clear, or byproduct materials have been released  
23 or at which there is a threat of such a release.

24 “(C) TERMS AND CONDITIONS PROHIB-  
25 ITED.—The Administrator may not, as a condi-

tion of granting an application for delegation, include any term or condition unrelated to the authority being delegated, except that the Administrator may include terms and conditions to ensure timely and effective recovery by the State of response costs paid by funds from the Fund and to ensure adequate information and documentation by the State to allow such cost recovery.

“(D) EXPLANATION AND RESUBMITTAL.—

If the Administrator disapproves an application by making 1 of the findings in clause (i) or (ii) of subparagraph (A), or a portion of the application by making a finding under subparagraph (B), the Administrator shall notify the Governor in writing of the disapproval and explain the basis for such finding within 90 days after receiving the application. A notification under this subparagraph is final agency action for purposes of judicial review. A Governor may submit a revised application any time after receiving notice of disapproval.

“(b) STATE REMEDY SELECTION RESPONSIBILITIES

AND AUTHORITIES.—

1           “(1) IN GENERAL.—When selecting a remedy at  
2           a facility for which the State has been delegated au-  
3           thority to take such action pursuant to subsection  
4           (a), a State shall select a remedy pursuant to section  
5           121.

6           “(2) PERMIT WAIVERS.—The State selecting a  
7           remedy in accordance with paragraph (1) shall have  
8           the authority to waive procedural requirements ap-  
9           plicable to remedial actions in accordance with sec-  
10          tion 121(d).

11          “(c) STATE ENFORCEMENT RESPONSIBILITIES AND  
12          AUTHORITIES.—

13           “(1) IN GENERAL.—When determining liability  
14           for response costs and damages at a facility for  
15           which the State has been delegated authority to take  
16           such action pursuant to subsection (a), the State  
17           shall make such determinations in accordance with  
18           section 107.

19           “(2) EXPEDITED SETTLEMENTS.—A State for  
20           which authority has been delegated under subsection  
21           (a) shall provide for expedited settlements in accord-  
22           ance with section 122.

23           “(3) USE OF ALLOCATION PROCEDURES.—

24           “(A) IN GENERAL.—When the State has  
25           been delegated authority to take enforcement



1 action at a facility for which an allocation is re-  
2 quired under section 128, the State shall con-  
3 duct such allocation in accordance with section  
4 128. In addition, the State shall—

5 “(i) complete a potentially responsible  
6 party search for the site and make the re-  
7 sults of the search available to the allo-  
8 cator and the potentially responsible par-  
9 ties; and

10 “(ii) notify Federal, State, tribal, and  
11 foreign natural resources trustees of the  
12 commencement of the allocation process  
13 and, pursuant to section 104(b)(2), of po-  
14 tential natural resources damages.

15 “(B) ALLOCATION REPORT.—When con-  
16 ducting an allocation under subparagraph (A),  
17 a State may accept or reject the allocation re-  
18 port on the same basis as provided in section  
19 128(s). If the State does not reject the alloca-  
20 tion, the State shall use the allocator’s report  
21 as the basis of State settlements. The State  
22 may recover the costs of the allocation pursuant  
23 to the provisions of this Act.

24 “(C) PARTICIPATION BY PRESIDENT.—The  
25 President, acting through either the Adminis-

1           trator or the Attorney General, may participate  
2           in any phase of an allocation proceeding con-  
3           ducted by a State under subparagraph (A) if a  
4           Fund share is identified pursuant to section  
5           128(n)(4).

6           “(D) APPLICATION FOR FUNDING.—If a  
7           State accepts an allocation report as the basis  
8           for the State’s settlements in accordance with  
9           subparagraph (B), and the allocation report  
10          identifies a Fund share, the State shall apply  
11          for such funding by certifying each of the fol-  
12          lowing to the Administrator and the Attorney  
13          General:

14               “(i) The allocation presents a reason-  
15               able basis for resolving responsibility for  
16               the facility.

17               “(ii) The assignment of the Fund  
18               share is in accordance with section  
19               128(n)(4).

20          “(E) APPROVAL OF APPLICATION.—The  
21          Administrator and the Attorney General shall  
22          approve a State’s application for mixed funding  
23          supported by an allocation report and the cer-  
24          tification described in subparagraph (D), unless  
25          the Administrator and Attorney General deter-

mine, within 120 days after such request by the State, that the allocation does not meet the standards set forth in section 128. Such determination shall be made in the same manner, and shall be subject to the same limitations, as set forth in section 128.

“(F) USE OF MIXED FUNDING.—A State may use mixed funding only to fund response actions through settlement or to reimburse parties performing work in excess of the share assigned to the parties in allocation. No such reimbursement may exceed the levels available under section 122(b)(1).

“(G) RECOVERY OF FUNDS.—The State may recover funds provided through mixed funding from nonsettling responsible parties pursuant to the provisions of this Act.

“(4) COVENANTS.—In a case in which a State, acting pursuant to delegated authority, under this section enters an administrative or judicial settlement to resolve the liability of responsible parties at the facility, the State shall confer a covenant not to sue in accordance with section 122(f), which may preclude some or all administrative or judicial action by both the President and the State to recover re-

1        sponse costs or to compel response actions at the fa-  
2        cility with respect to matters addressed in the settle-  
3        ment, except that such covenants shall not be bind-  
4        ing on the governmental entity that did not confer  
5        the covenant to the extent that—

6                “(A) the covenant purports to address nat-  
7                ural resource damages;

8                “(B) the President has not been provided  
9                notice of, and an opportunity to participate in,  
10              the settlement concerning the response action;  
11              or

12              “(C) the President objects to the settle-  
13              ment within 120 days of the date of the signa-  
14              ture for the record of decision or receipt of no-  
15              tice of the settlement, whichever is later.

16              “(5) COST RECOVERY.—

17              “(A) RECOVERY BY A TRANSFEREE  
18              STATE.—Of the amount of any response costs  
19              recovered from a responsible party by a State  
20              that is transferred responsibility under section  
21              107—

22              “(i) 25 percent of the amount of any  
23              Federal response cost recovered with re-  
24              spect to a facility, plus an amount equal to  
25              the amount of response costs incurred by

1 the State with respect to the facility, may  
2 be retained by the State for use in carry-  
3 ing out other response actions within the  
4 State; and

5 “(ii) the remainder shall be deposited  
6 in the Fund.

7 “(B) RECOVERY BY THE ADMINIS-  
8 TRATOR.—

9 “(i) IN GENERAL.—The Administrator  
10 may take action under section 107 to re-  
11 cover response costs from a potentially re-  
12 sponsible party for a facility for which re-  
13 sponsibility is transferred to a State if—

14 “(I) the State notifies the Ad-  
15 ministrator in writing that the State  
16 does not intend to pursue action for  
17 recovery of response costs under sec-  
18 tion 107 against the potentially re-  
19 sponsible party; or

20 “(II) the State fails to take ac-  
21 tion to recover response costs within a  
22 reasonable time in light of applicable  
23 statutes of limitation.

24 “(ii) NOTICE.—If the Administrator  
25 proposes to commence an action for recov-

1           ery of response costs under section 107,  
2           the Administrator shall give the State writ-  
3           ten notice and allow the State at least 90  
4           days after receipt of the notice to com-  
5           mence the action.

6           “(iii) STATE INTERVENTION.—If the  
7           Administrator takes action against a po-  
8           tentially responsible party under section  
9           107 relating to a release from a facility  
10          after providing a State notice under clause  
11          (ii), the State may not take any other ac-  
12          tion for recovery of response costs relating  
13          to that release under this Act or any other  
14          Federal or State law but may intervene in  
15          the action brought by the Administrator as  
16          a matter of right.

17          “(6) FEDERAL INTERVENTION.—In any action  
18          commenced in a court of the United States by a  
19          State to recover costs described in this paragraph,  
20          the Administrator may intervene as a matter of  
21          right.

22          “(7) DELISTING OF NATIONAL PRIORITIES LIST  
23          FACILITIES.—

24                 “(A) DELISTING REQUEST.—A State may  
25                 request that the Administrator remove from the

1 National Priorities List all or part of a facility  
2 for which responsibility has been transferred to  
3 the State under this section.

4 “(B) ACTION BY THE ADMINISTRATOR.—  
5 The Administrator shall—

6 “(i) promptly consider a request  
7 under subparagraph (A); and

8 “(ii) remove the facility or part of the  
9 facility from the National Priorities List  
10 unless the delisting would be inconsistent  
11 with a requirement of this Act.

12 “(C) DENIAL OF REQUEST.—If the Admin-  
13 istrator decides to deny a request for delisting  
14 under subparagraph (A), the Administrator  
15 shall publish the decision in the Federal Reg-  
16 ister with an explanation of the reasons for the  
17 denial.

18 “(D) REPORT.—At the end of each cal-  
19 endar year, the Administrator shall submit to  
20 Congress a report describing actions taken  
21 under this paragraph during the year.

22 “(d) CERTIFICATION AND REVIEW OF USE OF  
23 FUNDS.—

24 “(1) CERTIFICATION OF USE OF FUNDS.—Not  
25 later than 1 year after a State receives funds pursu-

1 ant to section 153, and annually thereafter for as  
2 long as the State receives such funds, the Governor  
3 of the State shall submit to the Administrator the  
4 following:

5 “(A) A certification that the State has  
6 used the funds in accordance with the require-  
7 ments of this section and this Act.

8 “(B) Information describing the manner in  
9 which the State has used the funds.

10 “(C) Such other information about the use  
11 of the funds as the Administrator considers  
12 necessary.

13 “(2) REVIEW OF USE OF FUNDS.—The Admin-  
14 istrator shall review any certification submitted by a  
15 Governor pursuant to paragraph (1). If the Adminis-  
16 trator finds that funds were used in a manner that  
17 is inconsistent with the provisions of this Act, the  
18 Administrator shall notify the Governor in writing  
19 within 180 days after receiving the Governor’s cer-  
20 tification. If the Governor fails to demonstrate with-  
21 in 60 days after receiving such notice that the Ad-  
22 ministrator’s finding is in error or that the incon-  
23 sistency is being corrected, the Administrator may  
24 request reimbursement of such sums as the Adminis-  
25 trator has found to be used in a manner inconsistent



1 with this Act or bring an action in the appropriate  
2 United States district court to recover the amount  
3 of funds used in a manner inconsistent with the pro-  
4 visions of this Act.

5 “(e) WITHDRAWAL OF DELEGATION.—

6 “(1) CERTIFIED STATES.—If the Administrator  
7 finds that a State does not meet the requirements  
8 for a delegation of authority under subsection (a)(2),  
9 or is exercising such authority in a manner incon-  
10 sistent with the requirements of this Act, the Ad-  
11 ministrator may withdraw all of the State’s dele-  
12 gated authority after providing notice and an oppor-  
13 tunity to correct deficiencies pursuant to paragraph  
14 (2). If the Administrator finds that the State is fail-  
15 ing to meet the cost recovery requirements pre-  
16 scribed by the Administrator pursuant to subsection  
17 (a)(3)(C), the Administrator may withdraw all of the  
18 enforcement authority delegated to the State under  
19 subsection (a)(1)(B).

20 “(2) NOTICE AND OPPORTUNITY TO RECTIFY.—

21 The Administrator shall notify a State in writing  
22 prior to withdrawing authority delegated pursuant to  
23 subsection (a). If the State has not addressed the  
24 deficiencies listed in the Administrator’s notification

1 within 120 days after receiving the notification, the  
2 authority may be withdrawn.

3 “(f) RETAINED FEDERAL AUTHORITY.—

4 “(1) GENERAL RULE.—Except as provided in  
5 paragraph (2) and subsections (c) and (e), the Presi-  
6 dent is prohibited from taking any action under sec-  
7 tion 104 (other than section 104(e)), 106, 107, 117,  
8 121, 122, or 128, or under subsection (e) or (h)  
9 (other than subsection (h)(2)) of section 120, at any  
10 facility on the National Priorities List for which au-  
11 thority to take such actions has been delegated to a  
12 State under this section.

13 “(2) EXCEPTIONS.—The President may take an  
14 action under this Act, notwithstanding a delegation  
15 of the Federal authority to take such action to a  
16 State under this section, if—

17 “(A) the State requests the President to  
18 take such action;

19 “(B) the President determines that—

20 “(i) response actions are immediately  
21 required to prevent, limit, or mitigate an  
22 emergency;

23 “(ii) there is an immediate risk to  
24 public health or welfare or the environ-  
25 ment; and

1 “(iii) the State will not take the nec-  
2 essary response actions in a timely man-  
3 ner;

4 “(C) the Agency for Toxic Substances and  
5 Disease Registry issues a public health advisory  
6 with respect to the facility; or

7 “(D) the President determines that con-  
8 tamination has migrated across a State line, re-  
9 sulting in the need for further response action  
10 to protect human health or the environment.

11 “(g) RELATIONSHIP TO COOPERATIVE AGREE-  
12 MENTS.—Nothing in this section shall affect the authority  
13 of the Administrator under section 104(d)(1) to enter into  
14 a cooperative agreement with a State, a political subdivi-  
15 sion, or an Indian tribe.”.

16 (b) RELATIONSHIP TO OTHER LAWS.—Section  
17 114(a) (42 U.S.C. 9614(a)) is amended by striking  
18 “Nothing” and inserting the following: “Except as pro-  
19 vided in paragraphs (1) and (2) of section 151(b), noth-  
20 ing”.

21 (c) CONFORMING AMENDMENT.—Section 106(a) (42  
22 U.S.C. 9606(a)) is amended by inserting after “Attorney  
23 General of the United States” the following: “(or, in the  
24 case of a State delegation under section 151, the appro-  
25 priate State official)”.

1 **SEC. 502. STATE AUTHORIZATION AT NPL FACILITIES.**

2 Subtitle B of title I, as added by section 501 of this  
3 Act, is amended by adding at the end the following:

4 **“SEC. 152. STATE AUTHORIZATION AT NPL FACILITIES.**

5 **“(a) STATE AUTHORITY.—**

6 **“(1) ACTIONS FOR WHICH A STATE MAY RE-**  
7 **CEIVE AUTHORIZATION.—**The Administrator may, in  
8 accordance with this section, authorize a State to  
9 implement the State’s hazardous substance response  
10 program in lieu of the response action authorities of  
11 this Act at any or all of the facilities within the  
12 State that are listed on the National Priorities List.  
13 Except as provided by this section, a State author-  
14 ized under this section shall have sole authority  
15 under this Act to take or secure all necessary re-  
16 sponse actions for the release or threatened release  
17 of a hazardous substance at facilities for which the  
18 State has received authorization.

19 **“(2) APPLICATION FOR STATE AUTHORIZA-**  
20 **TION.—**The Governor of a State may submit to the  
21 Administrator an application for State authorization  
22 with respect to 1 or more facilities, and may seek  
23 amendments to its authorization to add or delete fa-  
24 cilities. Any such application shall contain the fol-  
25 lowing:

1           “(A) A list of facilities on the National  
2           Priorities List within the State for which au-  
3           thorization is requested.

4           “(B) Information sufficient to demonstrate  
5           that the State has adequate legal authority, fi-  
6           nancial and personnel resources, organization,  
7           and expertise to administer and enforce State  
8           hazardous substance response program at the  
9           facilities for which authorization is requested.

10          “(C) If the authorization includes facilities  
11          at which source, special nuclear, or byproduct  
12          materials have been released or at which there  
13          is a threat of such a release, a demonstration  
14          that the State has expertise in radionuclides.

15          “(D) A request for delegation under sec-  
16          tion 151(a)(1)(B) of Federal enforcement au-  
17          thority with respect to any facility for which the  
18          State seeks authorization.

19          “(E) Information sufficient to demonstrate  
20          that response actions to be taken by the State  
21          under the authorization will protect human  
22          health and the environment.

23          “(F) A certification, with adequate sup-  
24          porting documentation, that the State has pro-

1           cedures to provide meaningful opportunities for  
2           public participation.

3           “(3) NOTICE AND COMMENT.—The Adminis-  
4           trator shall provide notice and an opportunity for  
5           public comment with respect to an application sub-  
6           mitted under paragraph (2).

7           “(4) APPROVAL AND DISAPPROVAL OF APPLICA-  
8           TION.—

9           “(A) IN GENERAL.—On or before the last  
10          day of the 180-day period beginning on the date  
11          the Administrator receives an application made  
12          in accordance with paragraph (2), the Adminis-  
13          trator shall approve or disapprove the applica-  
14          tion. If the Administrator disapproves the appli-  
15          cation, the Administrator shall make 1 of the  
16          following findings:

17          “(i) A finding that the State does not  
18          have adequate legal authority, financial  
19          and personnel resources, organization, or  
20          expertise to administer or enforce the  
21          State hazardous substance response pro-  
22          gram at the facilities for which authoriza-  
23          tion is requested.

24          “(ii) With respect to a request for au-  
25          thorization for a facility at which source,

1 special nuclear, or byproduct materials  
2 have been released or at which there is a  
3 threat of such a release, a finding that the  
4 State does not have expertise in radio-  
5 nuclides.

6 “(iii) A finding that the State has not  
7 requested delegation of Federal enforce-  
8 ment authority under section 151(a)(1)(B)  
9 or that the State is ineligible to receive  
10 such authority under section 151(a)(3)(A).

11 “(iv) A finding that response actions  
12 to be taken by the State under the author-  
13 ization will not protect human health and  
14 the environment.

15 “(v) A finding that the State does not  
16 have procedures to provide meaningful op-  
17 portunities for public participation.

18 “(B) FINDINGS WITH RESPECT TO EXPER-  
19 TISE IN RADIONUCLIDES.—If the Administrator  
20 finds that the State does not have expertise in  
21 radionuclides, the Administration may dis-  
22 approve that portion of the application which  
23 includes facilities at which source, special nu-  
24 clear, or byproduct materials have been released  
25 or at which there is a threat of such a release.

1           “(C) TERMS AND CONDITIONS PROHIB-  
2           ITED.—The Administrator may not, as a condi-  
3           tion of granting an application for State au-  
4           thorization, place any terms or conditions on an  
5           authorization made pursuant to this section, ex-  
6           cept that the Administrator may prescribe re-  
7           quirements to ensure timely and effective recov-  
8           ery by the State of response costs paid by funds  
9           from the Fund and to ensure adequate informa-  
10          tion and documentation by the State to allow  
11          such cost recovery.

12          “(D) EXPLANATION AND RESUBMITTAL.—  
13          If the Administrator disapproves an application  
14          by making 1 of the findings in subparagraph  
15          (A), or a portion of the application by making  
16          a finding under subparagraph (B), the Admin-  
17          istrator shall notify the Governor in writing of  
18          the disapproval and explain the basis for such  
19          finding within 180 days after receiving the ap-  
20          plication. A notification under this subpara-  
21          graph is final agency action for purposes of ju-  
22          dicial review. A Governor may submit a revised  
23          application any time after receiving notice of  
24          disapproval.



1           “(5) FAILURE TO ACT.—If the Administrator  
2       does not make a determination under paragraph (3)  
3       with respect to an application on or before the last  
4       day of the 180-day period specified in paragraph  
5       (3), on such last day the application is deemed to be  
6       denied and the State shall be entitled to judicial re-  
7       view of such denial under section 113(b).

8           “(6) EXPEDITED AUTHORIZATION.—

9           “(A) PILOT PROGRAM.—Notwithstanding  
10       paragraph (4), the Administrator shall provide  
11       an expedited process for the evaluation of the  
12       applications of not more than 6 States qualified  
13       for authorization under this section. The Ad-  
14       ministrator shall identify such States not later  
15       than 30 days after the date of the enactment of  
16       this section.

17          “(B) APPROVAL AND DISAPPROVAL.—An  
18       application submitted by a State identified by  
19       the Administrator under subparagraph (A) on  
20       or before the last day of the 12-month period  
21       beginning on the date of the enactment of this  
22       section shall be deemed to be approved on the  
23       last day of the 180-day period specified in para-  
24       graph (3) unless, on or before such last day, the  
25       Administrator publishes in the Federal Register

1 an explanation of why such State does not meet  
2 the criteria for authorization established under  
3 this section.

4 “(C) NOTICE AND COMMENT.—The Ad-  
5 ministrator shall provide notice and an oppor-  
6 tunity for public comment with respect to an  
7 application submitted under this paragraph.

8 “(D) REPORT TO CONGRESS.—Not later  
9 than 3 years after the date of the enactment of  
10 this section, the Administrator shall transmit to  
11 Congress a report on the status of any facilities  
12 for which a State has received authorization  
13 under this section.

14 “(E) REGULATIONS.—Not later than 4  
15 years after the date of the enactment of this  
16 section, the Administrator shall issue regula-  
17 tions providing criteria for expedited authoriza-  
18 tion of States under this section.

19 “(b) STATE RESPONSIBILITIES AND AUTHORITIES.—

20 “(1) CERTIFICATION OF USE OF FUNDS.—Not  
21 later than 1 year after a State receives funds pursu-  
22 ant to section 153, and annually thereafter for as  
23 long as the State receives such funds, the Governor  
24 of the State shall submit to the Administrator the  
25 following:

1           “(A) A certification that the State has  
2           used the funds in accordance with the require-  
3           ments of this section and State law.

4           “(B) Information describing the manner in  
5           which the State has used the funds.

6           “(C) Such other information about the use  
7           of the funds as the Administrator considers  
8           necessary.

9           “(2) DELISTING OF NATIONAL PRIORITIES LIST  
10          FACILITIES.—After notice and an opportunity for  
11          public comment, a State authorized pursuant to sub-  
12          section (a) with respect to a facility may delist the  
13          facility, or portion thereof, from the National Prior-  
14          ities List if—

15               “(A) the State finds that no further action  
16               to address the contamination at the facility (or  
17               portion thereof) is necessary to adequately pro-  
18               tect public health and the environment; or

19               “(B) cleanup is proceeding at the facility  
20               under the Solid Waste Disposal Act.

21           “(3) ENFORCEMENT.—Any State that receives  
22          approval of an application made under subsection  
23          (a)(2) shall receive delegation of enforcement au-  
24          thorities under section 151(a)(1)(B) and shall imple-

1       ment such authorities in accordance with section  
2       151(c).

3       “(c) FEDERAL RESPONSIBILITIES AND AUTHORI-  
4 TIES.—

5               “(1) REVIEW OF USE OF FUNDS.—The Admin-  
6       istrator shall review any certification submitted by a  
7       Governor pursuant to subsection (b)(1). If the Ad-  
8       ministrator finds that funds were used in a manner  
9       that is inconsistent with the provisions of this sec-  
10      tion, the Administrator shall notify the Governor in  
11      writing within 180 days after receiving the Gov-  
12      ernor’s certification. If the Governor fails to dem-  
13      onstrate within 60 days after receiving such notice  
14      that the Administrator’s finding is in error, or that  
15      the inconsistency is being corrected, the Adminis-  
16      trator may request reimbursement of such sums as  
17      the Administrator has found to be used in a manner  
18      inconsistent with this section or bring an action in  
19      the appropriate United States district court to re-  
20      cover the amount of funds used in a manner incon-  
21      sistent with the provisions of this section.

22               “(2) WITHDRAWAL OF AUTHORIZATION.—

23               “(A) CERTIFIED STATES.—If the Adminis-  
24      trator finds that a State does not meet the re-  
25      quirements for authorization under subsection

1 (a)(2), or fails to meet terms and conditions for  
2 authorization added pursuant to subsection  
3 (a)(4)(C), or is exercising such authority in a  
4 manner inconsistent with the requirements of  
5 this section, the Administrator may withdraw  
6 the State's authorization after providing notice  
7 and an opportunity to correct deficiencies pur-  
8 suant to subparagraph (B).

9 “(B) NOTICE AND OPPORTUNITY TO REC-  
10 TIFY.—The Administrator shall notify a State  
11 in writing prior to withdrawing authorization  
12 approved pursuant to subsection (a). If the  
13 State has not addressed the deficiencies listed  
14 in the Administrator's notification in a timely  
15 manner after receiving the notification, the au-  
16 thority may be withdrawn.

17 “(3) PROHIBITED ACTIONS.—

18 “(A) IN GENERAL.—Except as provided in  
19 this paragraph or in subsections (b)(3) and (d),  
20 the Administrator is prohibited from taking any  
21 actions under this Act at any facility on the  
22 National Priorities List for which authorization  
23 has been granted under this section.

24 “(B) EXCEPTIONS.—The President may  
25 take action under this Act, notwithstanding an

1 authorization of a State under this section to  
2 take such action in lieu of Federal action, if—

3 “(i) the State requests the President  
4 to take such action;

5 “(ii) the President determines that—

6 “(I) response actions are imme-  
7 diately required to prevent, limit, or  
8 mitigate an emergency;

9 “(II) there is an immediate risk  
10 to public health or welfare or the envi-  
11 ronment; and

12 “(III) the State will not take the  
13 necessary response actions in a timely  
14 manner;

15 “(iii) the Agency for Toxic Substances  
16 and Disease Registry issues a public health  
17 advisory with respect to the facility; or

18 “(iv) the President determines that  
19 contamination has migrated across a State  
20 line, resulting in the need for further re-  
21 sponse action to protect human health or  
22 the environment.

23 “(d) RELATIONSHIP TO COOPERATIVE AGREE-  
24 MENTS.—Nothing in this section shall affect the authority  
25 of the Administrator under section 104(d)(1) to enter into

1 a cooperative agreement with a State or political subdivi-  
2 sion or Indian tribe.”.

3 **SEC. 503. FEDERAL FUNDING OF STATE ACTIONS UNDER**  
4 **STATE DELEGATION OR STATE AUTHORIZA-**  
5 **TION.**

6 Subtitle B of title I, as added by section 501 of this  
7 Act, is further amended by adding at the end the follow-  
8 ing:

9 **“SEC. 153. FEDERAL FUNDING.**

10 “(a) IN GENERAL.—The Administrator shall provide  
11 grants to, or enter into contracts or cooperative agree-  
12 ments with, States to which responsibility has been trans-  
13 ferred under section 151 or section 152.

14 “(b) LEVEL OF FUNDING.—Once every 3 years with  
15 respect to paragraphs (1) and (2), and once each year with  
16 respect to paragraph (3), the Administrator and the State  
17 shall determine the Federal resources necessary for the  
18 State to undertake the responsibilities delegated to the  
19 State under section 151, or for which the State is author-  
20 ized to take action in lieu of the Federal program under  
21 section 152, as follows:

22 “(1) ADMINISTRATIVE COSTS.—The Adminis-  
23 trator shall provide funding for State administration  
24 of the Federal program delegated under section 151,  
25 or for administration of the State response program

1 in lieu of the Federal program under section 152,  
2 based on the number of facilities and the activities  
3 at the facilities for which the State has received del-  
4 egation or authorization. Such funding may be based  
5 on a calculation of the fixed costs of program admin-  
6 istration. In no case shall such funding be less than  
7 the funding levels necessary for Federal administra-  
8 tion of the same activities.

9 “(2) PRECONSTRUCTION COSTS.—The Adminis-  
10 trator and the States shall agree upon funding for  
11 all preconstruction activities for which the State has  
12 received delegation or authorization. Such funding  
13 may be based on anticipated outputs and standard  
14 pricing factors.

15 “(3) REMEDY CONSTRUCTION COSTS.—The Ad-  
16 ministrator shall provide funding for remedy con-  
17 struction at a site for which the State has such au-  
18 thority under section 151 or section 152, if—

19 “(A) the remedial design for the site is  
20 complete; and

21 “(B) in the case of a State with enforce-  
22 ment authority for the site, the State certifies  
23 that—



1 “(i) there are no viable potentially re-  
2 sponsible parties capable of performing the  
3 response action; or

4 “(ii) enforcement measures have been  
5 attempted and the remedial action would  
6 be delayed absent funding from the Fund.

7 “(c) INTEGRATION INTO THE NATIONAL  
8 PRIORITIZATION PANEL PROCESS.—

9 “(1) IN GENERAL.—The Administrator shall in-  
10 clude transferred facilities in the process for allocat-  
11 ing funds among facilities.

12 “(2) CONSIDERATION.—In allocating funding  
13 among facilities, the Administrator—

14 “(A) shall not take into consideration  
15 whether a transfer of responsibility has been  
16 made at any listed facility; and

17 “(B) shall apply the same decisionmaking  
18 criteria and factors (including the need to main-  
19 tain activity at facilities at which construction  
20 has been commenced) in the same manner to all  
21 facilities.

22 “(3) PUBLICATION OF LIST.—The Adminis-  
23 trator shall publish a proposed list of facilities at  
24 which a response action will be taken.

25 “(d) USE OF FUNDS.—

1           “(1) PRE-REMEDIAL FUNDS.—A State may use  
2           funds provided under subsections (b)(1) and (b)(2)  
3           to take any actions or perform any duties necessary  
4           to implement—

5                   “(A) any authority delegated to the State  
6                   under section 151; and

7                   “(B) any State hazardous substance re-  
8                   sponse program activity that the State has re-  
9                   ceived authorization to implement in lieu of the  
10                  Federal program under section 152.

11           “(2) REMEDY CONSTRUCTION FUNDS.—A State  
12           shall use funds provided under subsection (b)(3) to  
13           construct the remedy at the facility for which fund-  
14           ing is provided. If the remedy is completed at a cost  
15           below the estimated cost, a State may retain 50 per-  
16           cent of the excess funds for site remediation under  
17           the State response program.

18           “(e) LIMITATION ON REIMBURSEMENT FOR RE-  
19           MOVAL ACTIONS UNDER SECTION 104.—Reimbursement  
20           to a State for exercising any removal authority under sec-  
21           tion 151 or 152 shall be limited to those facilities for  
22           which removal authority is specifically delegated or au-  
23           thorized under such sections, except as provided in section  
24           123.

1       “(f) COST SHARE.—A State may not use funds pro-  
 2       vided under this section unless the State provides assur-  
 3       ances that it will pay the amount described in section  
 4       104(c)(3). A State may not use funds appropriated to  
 5       carry out the purposes of this section to make such pay-  
 6       ments.”.

7       **SEC. 504. TRANSFER OF AUTHORITIES.**

8       Subtitle B of title I, as added by section 501 of this  
 9       Act, is further amended by adding at the end the follow-  
 10      ing:

11      **“SEC. 154. TRANSFER OF AUTHORITIES.**

12           “A delegation of authority under section 151, or an  
 13      authorization of a State to implement its own laws in lieu  
 14      of this Act under section 152, shall become effective on  
 15      or before the 60th day following the date of the approval  
 16      of such delegation or authorization.”.

17      **SEC. 505. STATE COST SHARE.**

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

20           “(3) STATE COST SHARE.—

21                   “(A) AGREEMENT.—Neither the Adminis-  
 22                   trator nor a State described in subparagraph  
 23                   (B) may provide any remedial action pursuant  
 24                   to this section unless the State first enters into  
 25                   a contract or cooperative agreement with the

1 Administrator providing assurances deemed  
2 adequate by the Administrator that the State  
3 will pay, in cash or through in-kind contribu-  
4 tions, 10 percent of the costs of the remedial  
5 action and the costs of operation and mainte-  
6 nance.

7 “(B) APPLICABILITY.—Subparagraph (A)  
8 shall apply to a State notwithstanding any dele-  
9 gation of authority pursuant to section 151(a)  
10 to take remedial action or any authorization  
11 pursuant to section 152(a) to take remedial ac-  
12 tion.

13 “(C) MIXED FUNDING.—Subparagraph (A)  
14 shall not apply with respect to mixed funding  
15 under section 122(b)(1).”.

16 **SEC. 506. ADDITIONS TO NATIONAL PRIORITIES LIST.**

17 (a) GOVERNORS’ CONCURRENCE REQUIRED.—Sec-  
18 tion 105 (42 U.S.C. 9605) is amended by adding after  
19 subsection (h) of such section, as added by section 224  
20 of this Act, the following:

21 “(i) CONCURRENCE OF GOVERNORS REQUIRED FOR  
22 ADDITIONS TO NATIONAL PRIORITIES LIST.—

23 “(1) IN GENERAL.—The President may add a  
24 facility to the National Priorities List only with the

1 concurrence of the Governor of the State in which  
2 the facility is located.

3 “(2) EXCEPTION.—Notwithstanding paragraph  
4 (1), the President may add a facility to the National  
5 Priorities List without the concurrence of the Gov-  
6 ernor if, as of the date that is 12 months following  
7 the President’s request for concurrence—

8 “(A) the Governor has not taken a re-  
9 sponse action to address the release or threat-  
10 ened release of hazardous substances at the fa-  
11 cility; and

12 “(B) the facility presents sufficient risks  
13 under the Hazard Ranking System to be listed  
14 as a national priority under section  
15 105(a)(8)(B).

16 “(j) NPL DEFERRALS.—

17 “(1) DEFERRALS TO OTHER FEDERAL AUTHOR-  
18 ITY.—The President generally shall defer listing a  
19 facility on the National Priorities List if long-term  
20 remedial action will be conducted under other Fed-  
21 eral authorities, including the Solid Waste Disposal  
22 Act (42 U.S.C. 6901 et seq.), the Surface Mining  
23 Control and Reclamation Act of 1977 (30 U.S.C.  
24 1201 et seq.), the Federal Insecticide, Fungicide,  
25 and Rodenticide Act (7 U.S.C. 136 et seq.), and the

1 Atomic Energy Act of 1954 (42 U.S.C. 2011 et  
2 seq.).

3 “(2) DEFERRAL TO STATE RESPONSE AC-  
4 TION.—The President generally shall defer listing a  
5 facility on the National Priorities List if remedial  
6 action that will provide long-term protection of  
7 human health and the environment is underway at  
8 that facility under a State response program.”.

9 (b) CROSS REFERENCE.—Section 105(a)(8)(B) (42  
10 U.S.C. 9605(a)(8)(B)) is amended by inserting after  
11 “shall revise the list” the following: “, subject to sub-  
12 section (h),”.

13 **SEC. 507. STATE AND LOCAL REIMBURSEMENT FOR RE-**  
14 **SPONSE ACTIONS.**

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

17 **“SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOV-**  
18 **ERNMENTS.**

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

24 “(b) REIMBURSEMENT.—

1           “(1) EMERGENCY RESPONSE.—The President is  
2           authorized to reimburse a State or general purpose  
3           unit of local government for expenses incurred in  
4           carrying out emergency response actions necessary  
5           to prevent or mitigate injury to human health or the  
6           environment associated with the release or threat-  
7           ened release of any hazardous substance or pollutant  
8           or contaminant. Such actions may include, where ap-  
9           propriate, security fencing to limit access, response  
10          to fires and explosions, and other activities which re-  
11          quire immediate response at the State or local level.

12          “(2) STATE OR LOCAL FUNDS NOT SUP-  
13          PLANTED.—Reimbursement under this section shall  
14          not supplant State or local funds normally provided  
15          for response.

16          “(c) AMOUNT.—

17               “(1) REIMBURSEMENT TO STATES AND GEN-  
18               ERAL PURPOSE UNITS OF LOCAL GOVERNMENT.—  
19               The amount of any reimbursement to a State or  
20               general purpose unit of local government under sub-  
21               section (b)(1) may not exceed \$25,000 for a single  
22               response. The reimbursement under this section with  
23               respect to a single facility shall be limited to the  
24               State or general purpose unit of local government

1       having jurisdiction over the political subdivision in  
2       which the facility is located.

3           “(2) LIMITATION.—The amounts allowed for  
4       the State and general purpose units of local govern-  
5       ment may not be combined for any single response  
6       action.

7           “(d) PROCEDURE.—Reimbursements authorized pur-  
8       suant to this section shall be in accordance with rules pro-  
9       mulgated by the Administrator within 1 year after the  
10      date of the enactment of the Superfund Acceleration,  
11      Fairness, and Efficiency Act.”.

12   **SEC. 508. STATE ROLE AT FEDERAL FACILITIES.**

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

15       “(g) STATE ROLE AT FEDERAL FACILITIES.—

16           “(1) ENFORCEMENT AND DISPUTE RESOLU-  
17       TION.—(A) An interagency agreement under this  
18       section between a State and any department, agen-  
19       cy, or instrumentality of the United States shall be  
20       enforceable by the State or the Federal department,  
21       agency, or instrumentality in the United States dis-  
22       trict court for the district in which the facility is lo-  
23       cated. The district court shall have the jurisdiction  
24       to enforce compliance with any provision, standard,  
25       regulation, condition, requirement, order, or final de-



1 termination which has become effective under such  
2 agreement, and to impose any appropriate civil pen-  
3 alty provided for any violation of the agreement, not  
4 to exceed \$25,000 per day.

5 “(B) At a Federal facility in a State to which  
6 the President’s authorities under subsection (e)(4)  
7 have been transferred pursuant to section 151(a), if  
8 the State does not concur in the remedy selection  
9 proposed by the Federal department, agency, or in-  
10 strumentality that owns or operates the facility, the  
11 parties shall enter into dispute resolution as pro-  
12 vided in the interagency agreement. If there is no  
13 interagency agreement, the State shall, not later  
14 than 120 days after the transfer of authorities under  
15 section 151(a), enter into an agreement with the  
16 head of the department, agency, or instrumentality  
17 on a process for resolving disputes regarding remedy  
18 selection for the facility. If a dispute is unresolved  
19 after using the process under the interagency agree-  
20 ment or dispute resolution agreement, the head of  
21 the Federal department, agency, or instrumentality  
22 that owns the Federal facility and the Governor of  
23 the State shall attempt to resolve such dispute by  
24 consensus. If no agreement is reached between the  
25 head of the Federal department, agency, or instru-

1        mentality and the Governor, the State may issue the  
2        final determination. In order to compel implementa-  
3        tion of the State’s selected remedy, the State must  
4        bring a civil action in the appropriate United States  
5        district court. The district court shall have jurisdic-  
6        tion as provided in subparagraph (A) to issue any  
7        relief that may be necessary to implement the reme-  
8        dial action, to impose appropriate civil penalties not  
9        to exceed \$25,000 per day from the date the selected  
10       remedy becomes final, and to review any challenges  
11       to the State’s final determination consistent with the  
12       standards set forth in section 113(j) of this Act.

13            “(2) LIMITATION.—Except as necessary to im-  
14        plement the transfer of the Administrator’s authori-  
15        ties to a State pursuant to section 151(a), nothing  
16        in this subsection shall be construed as altering,  
17        modifying, or impairing in any manner, or authoriz-  
18        ing the unilateral modification of, any terms of any  
19        agreement, permit, administrative or judicial order,  
20        decree, or interagency agreement existing on the ef-  
21        fective date of the Superfund Acceleration, Fairness,  
22        and Efficiency Act. Any other modifications or revi-  
23        sions of an interagency agreement entered into  
24        under this section shall require the consent of all

1 parties to such agreement, and absent such consent  
 2 the agreement shall remain unchanged.

3 “(3) EFFECT ON OTHER AUTHORITIES.—Noth-  
 4 ing in this subsection shall affect the exercise by a  
 5 State of any other authorities that may be applicable  
 6 to Federal facilities in the State.”.

## 7 **TITLE VI—NATURAL RESOURCES** 8 **DAMAGES**

### 9 **SEC. 601. NATURAL RESOURCES DEFINED.**

10 Section 101(16) (42 U.S.C. 9601(16)) is amended by  
 11 striking “belonging to” and all that follows before the pe-  
 12 riod at the end.

### 13 **SEC. 602. CONSULTATION WITH NATURAL RESOURCES** 14 **TRUSTEES.**

15 Section 104(c)(2) is amended by inserting “and the  
 16 affected natural resource trustee or trustees” after “State  
 17 or States”.

### 18 **SEC. 603. LIABILITY.**

19 Section 107(f) (42 U.S.C. 9707(f)) is amended by  
 20 striking “(f)(1)” and all that follows through the period  
 21 at the end of paragraph (1) and inserting the following:

22 “(f) NATURAL RESOURCES LIABILITY.—

23 “(1) LIABILITY.—

24 “(A) LIABILITY TO UNITED STATES,  
 25 STATES, INDIAN TRIBES, AND FOREIGN COUN-

1 TRIES.—Except as provided by subparagraph  
2 (B), in the case of an injury to, destruction of,  
3 or loss of natural resources under subsection  
4 (a)(2)(C), liability shall be—

5 “(i) to the United States Government,  
6 for natural resources belonging to, man-  
7 aged by, or held in trust by the United  
8 States Government or selected for transfer  
9 (but not transferred on or before the date  
10 of the injury, destruction, or loss) to an  
11 Alaska Native Corporation as part of the  
12 acreage entitlement of the Corporation  
13 under the Alaska Native Claims Settlement  
14 Act (43 U.S.C. 1601 et seq.);

15 “(ii) to a State, for natural resources  
16 within the State belonging to, managed by,  
17 or held in trust by the State or allocated  
18 to the State pursuant to an interstate com-  
19 pact to which the State is a signatory;

20 “(iii) to an Indian tribe, for natural  
21 resources belonging to, managed by, grant-  
22 ed rights to by treaty, or held in trust by  
23 the tribe, or belonging to a member of  
24 such tribe if such resources are subject to  
25 a trust restriction on alienation; and

1           “(iv) in any case in which subsection  
2           (n) applies, to the government of a foreign  
3           country for natural resources belonging to,  
4           managed by, or held in trust by the foreign  
5           country.

6           “(B) EXCEPTIONS TO LIABILITY REQUIRE-  
7           MENTS.—No liability to the United States, a  
8           State, an Indian tribe, or a foreign country  
9           shall be imposed under subsection (a)(2)(C)  
10          where the party sought to be charged has dem-  
11          onstrated that the damages to natural resources  
12          complained of were specifically identified as an  
13          irreversible and irretrievable commitment of  
14          natural resources in an environmental impact  
15          statement, or other comparable environment  
16          analysis, and the decision to grant a permit or  
17          license authorizes such commitment of natural  
18          resources, and the facility or project was other-  
19          wise operating within the terms of its permit or  
20          license, so long as, in the case of damages to  
21          an Indian tribe occurring pursuant to a Federal  
22          permit or license, the issuance of that permit or  
23          license was not inconsistent with the fiduciary  
24          duty of the United States with respect to the  
25          Indian tribe.

1           “(C) PUBLIC TRUSTEES OF NATURAL  
2           RESOURCES.—The President, the authorized  
3           representative of a State, or the authorized rep-  
4           resentative of an Indian tribe shall act on be-  
5           half of the public or the Indian tribe, as appro-  
6           priate, as trustee for a natural resource to re-  
7           cover for damages under this section. The au-  
8           thorized representative of a foreign country  
9           shall act on behalf of the public of such country  
10          as trustee for a natural resource to recover for  
11          damages under this section.”.

12 **SEC. 604. DESIGNATION OF TRUSTEES.**

13          (a) DESIGNATION OF INDIAN TRIBE AND FOREIGN  
14 TRUSTEES.—Section 107(f)(2) (42 U.S.C. 9707(f)(2)) is  
15 amended—

16           (1) by striking the paragraph heading and in-  
17           serting the following: “DESIGNATION OF FEDERAL,  
18           STATE, INDIAN TRIBE, AND FOREIGN TRUSTEES.—”;  
19           and

20           (2) by striking subparagraph (C) and inserting  
21           the following:

22           “(C) INDIAN TRIBE.—The elected council  
23           or elected head official of an Indian tribe shall  
24           designate Indian tribe officials who may act on  
25           behalf of the Indian tribe as trustees for natu-

1           ral resources under this Act and section 311 of  
2           the Federal Water Pollution Control Act and  
3           shall notify the President of such designations.  
4           Such Indian tribe officials shall assess damages  
5           to natural resources for the purposes of this  
6           Act and such section 311 for those natural re-  
7           sources under their trusteeship.

8           “(D) FOREIGN TRUSTEES.—The head of  
9           any foreign government may designate the  
10          trustee who shall act on behalf of the govern-  
11          ment as trustee for natural resources under this  
12          Act and section 311 of the Federal Water Pol-  
13          lution Control Act. Such trustee shall assess  
14          damages to natural resources for the purposes  
15          of this Act and such section 311 for those natu-  
16          ral resources under their trusteeship.”.

17          (b) RELATIONSHIP AMONG TRUSTEES.—Section  
18          107(f)(2) (42 U.S.C. 9707(f)(2)) is further amended by  
19          adding at the end the following:

20                  “(E) DESIGNATION OF LEAD DECISION-  
21          MAKING TRUSTEE.—

22                  “(i) IN GENERAL.—If more than one  
23                  trustee is designated for a natural resource  
24                  under this paragraph, the following trustee

1 may elect to serve as the lead decisionmak-  
2 ing trustee for the resource:

3 “(I) The United States, for re-  
4 sources belonging to or held in trust  
5 by the United States or for which the  
6 United States exercises primary man-  
7 agement under the Endangered Spe-  
8 cies Act of 1973 (16 U.S.C. 1531 et  
9 seq.), the Magnuson-Stevens Fishery  
10 Conservation and Management Act  
11 (16 U.S.C. 1801 et seq.), the Migra-  
12 tory Bird Treaty Act (16 U.S.C. 703  
13 et seq.), the Marine Mammal Protec-  
14 tion Act of 1972 (16 U.S.C. 1631 et  
15 seq.), the Wild Free-Roaming Horses  
16 and Burros Act (16 U.S.C. 1331 et  
17 seq.), or the Bald Eagle Protection  
18 Act (16 U.S.C. 668 et seq.).

19 “(II) An Indian tribe, for re-  
20 sources belonging to such tribe or for  
21 which the tribe is the primary man-  
22 ager pursuant to a treaty.

23 “(III) A foreign country for re-  
24 sources belonging to or held in trust  
25 by the foreign country or for which



1 the foreign country is granted rights  
2 by treaty.

3 “(IV) A State, if the State is a  
4 trustee for the resource and subpara-  
5 graphs (I), (II), and (III) do not  
6 apply.

7 “(ii) RESPONSIBILITY OF LEAD DECI-  
8 SIONMAKING TRUSTEE.—A lead decision-  
9 making trustee for a resource designated  
10 under this subparagraph shall be respon-  
11 sible for determining the measurement of  
12 damages for the resource after soliciting  
13 and considering the views of the other  
14 trustees for the resource.

15 “(iii) LIMITATION.—A trustee may  
16 not be designated as a lead decisionmaking  
17 trustee for a resource under this subpara-  
18 graph if the trustee is a potentially respon-  
19 sible party with respect to damages to the  
20 resource.”.

21 **SEC. 605. DETERMINATION OF CAUSATION.**

22 Section 107(f) (42 U.S.C. 9707(f)) is amended by  
23 adding at the end the following:

24 “(3) DETERMINATION OF CAUSATION.—Any de-  
25 termination of whether injury to, destruction of, or

1       loss of a natural resource results from a release  
 2       under subsection (a)(2)(C) shall be made in accord-  
 3       ance with the Restatement (Second) of Torts, as in  
 4       effect on the date of the enactment of this para-  
 5       graph.”.

6   **SEC. 606. MEASURE OF DAMAGES.**

7       Section 107(f) is further amended by adding at the  
 8   end the following:

9               “(4) MEASURE OF DAMAGES.—

10               “(A) IN GENERAL.—The measure of dam-  
 11               ages to a natural resource under subsection  
 12               (a)(2)(C) shall be limited to the following:

13                       “(i) Reasonable costs of restoration of  
 14                       the resource.

15                       “(ii) The loss of use by the public of  
 16                       the resource prior to restoration, except  
 17                       that any such loss before December 11,  
 18                       1980, shall not be recoverable.

19                       “(iii) The costs of reasonable assess-  
 20                       ment of damages to the resource.

21               “(B) PSYCHOLOGICAL DAMAGES.—

22                       “(i) RECOVERY PROHIBITED.—There  
 23                       shall be no recovery under subsection  
 24                       (a)(2)(C) for psychological damages.

1                   “(ii) PSYCHOLOGICAL DAMAGES DE-  
2                   FINED.—In this subparagraph, the term  
3                   ‘psychological damages’ means damages  
4                   based on how a person or group of persons  
5                   feels about or perceives a resource.”.

6 **SEC. 607. DAMAGE ASSESSMENTS.**

7           Section 107(f) (42 U.S.C. 9707(f)) is further amend-  
8 ed by adding at the end the following:

9                   “(5) DAMAGE ASSESSMENTS.—

10                   “(A) IN GENERAL.—To the extent prac-  
11                   ticable, a Federal, State, Indian tribe, or for-  
12                   eign trustee designated under this subsection  
13                   shall base any measure of damages under para-  
14                   graph (4) with respect to a site on an assess-  
15                   ment of the specific conditions and restoration  
16                   requirements at the site.

17                   “(B) ASSESSMENT REQUIREMENTS.—Any  
18                   assessment used by a trustee under subpara-  
19                   graph (A) shall be based on, and performed in  
20                   accordance with, generally accepted scientific  
21                   and technical standards, literature, and meth-  
22                   odologies that ensure the validity, reliability,  
23                   and cost-effectiveness of assessment results.”.

1 **SEC. 608. PROCESS FOR DETERMINING DAMAGES.**

2 Section 107(f) (42 U.S.C. 9707(f)) is further amend-  
3 ed by adding at the end the following:

4 “(6) PROCESS FOR DETERMINING DAMAGES.—

5 “(A) STANDARD OF REVIEW.—All aspects  
6 of the determination or assessment of damages  
7 for injury to, destruction of, or loss of natural  
8 resources made by a Federal, State, Indian  
9 tribe, or foreign trustee for the purposes of this  
10 Act or section 311 of the Federal Water Pollu-  
11 tion Control Act shall be adjudicated in a de  
12 novo trial in a Federal district court.

13 “(B) PUBLIC PARTICIPATION.—Any deter-  
14 mination or assessment of damages to a natural  
15 resource made by a Federal, State, Indian  
16 tribe, or foreign trustee for purposes of this Act  
17 or section 311 of the Federal Water Pollution  
18 Control Act shall be made through a process  
19 which allows for reasonable public participation  
20 as to the scope, extent, and nature of injury to,  
21 destruction of, or loss of natural resources and  
22 the appropriate restoration under this section.

23 “(C) INADMISSIBILITY OF CERTAIN EVI-  
24 DENCE.—If, in providing for public participa-  
25 tion under subparagraph (B), a Federal, State,  
26 Indian tribe, or foreign trustee provides for no-

1           tice and comment and the development of a  
2           public record, and if a party, including a trust-  
3           ee, fails to make available to the public record  
4           any reasonably relevant information related to  
5           the scope, extent, and nature of injury to, de-  
6           struction of, or loss of natural resources and  
7           the appropriate restoration under this section,  
8           such information shall not be admissible by the  
9           party as evidence in any subsequent judicial or  
10          administrative proceeding.”.

11 **SEC. 609. SELECTION OF RESTORATION ALTERNATIVES.**

12          Section 107(f) (42 U.S.C. 9707(f)) is further amend-  
13 ed by adding at the end the following:

14               “(7) SELECTION OF RESTORATION ALTER-  
15 NATIVES.—

16               “(A) IN GENERAL.—In selecting a range of  
17 possible restoration alternatives, a Federal,  
18 State, Indian tribe, or foreign trustee des-  
19 ignated under this subsection shall select meas-  
20 ures that are feasible and cost-effective.

21               “(B) PREFERENCE.—A trustee shall give  
22 preference to any alternatives selected under  
23 subparagraph (A) that meet the following re-  
24 quirements:

1                   “(i) Notwithstanding the limitations  
2                   in paragraph (4), the incremental costs are  
3                   justified by the incremental benefits.

4                   “(ii) Restoration is achieved in a time-  
5                   ly manner.”.

6 **SEC. 610. USE OF SUMS RECOVERED BY TRUSTEES.**

7           Section 107(f) (42 U.S.C. 9707(f)) is further amend-  
8 ed by adding at the end the following:

9                   “(8) USE OF SUMS RECOVERED BY TRUST-  
10           EES.—

11                   “(A) USE OF SUMS RECOVERED BY THE  
12           UNITED STATES.—Sums recovered for damages  
13           to natural resources by the United States Gov-  
14           ernment as a trustee under this subsection shall  
15           be retained by the trustee, without further ap-  
16           propriation, for use only to restore, replace, or  
17           acquire the equivalent of such natural re-  
18           sources.

19                   “(B) USE OF SUMS RECOVERED BY A  
20           STATE, INDIAN TRIBE, OR FOREIGN COUN-  
21           TRY.—Sums recovered for damages to natural  
22           resources by a State, Indian tribe, or foreign  
23           country as a trustee under this subsection shall  
24           be available for use only to restore, replace, or

1           acquire the equivalent of such natural resources  
2           by the State, Indian tribe, or foreign country.”.

3 **SEC. 611. RELATION TO OTHER LAWS; DAMAGES OCCUR-**  
4 **RING BEFORE DECEMBER 11, 1980.**

5           Section 107(f) (42 U.S.C. 9707(f)) is further amend-  
6 ed by adding at the end the following:

7           “(9) RELATION TO OTHER LAWS.—

8           “(A) DOUBLE RECOVERY PROHIBITED.—

9           Any trustee who receives compensation for  
10          damages or claims with respect to a natural re-  
11          source pursuant to this section shall be pre-  
12          cluded from recovering compensation for the  
13          damages or claims with respect to the same  
14          natural resource pursuant to any other State or  
15          Federal law. Any trustee who receives com-  
16          pensation for damages or claims with respect to  
17          a natural resource pursuant to any other Fed-  
18          eral or State law shall be precluded from receiv-  
19          ing compensation for damages or claims with  
20          respect to the same natural resource as pro-  
21          vided in this section.

22          “(B) DOUBLE LIABILITY PROHIBITED.—

23          Any person who pays compensation to one or  
24          more parties for damages or claims with respect  
25          to a natural resource pursuant to this section

1           shall not be required to pay compensation for  
2           damages or claims with respect to the same  
3           natural resource pursuant to this Act or any  
4           other State or Federal law. Any person who  
5           pays compensation for damages or claims with  
6           respect to a natural resource pursuant to any  
7           other Federal or State law shall not be required  
8           to pay compensation for damages or claims with  
9           respect to the same natural resource as pro-  
10          vided in this section.

11                 “(C) PERSON DEFINED.—In this para-  
12           graph, the term ‘person’ has the meaning given  
13           such term by section 101 and also includes an  
14           Indian tribe and a foreign country.

15                 “(10) DAMAGES OCCURRING BEFORE DECEM-  
16           BER 11, 1980.—There shall be no recovery for dam-  
17           ages to natural resources under the authority of sub-  
18           section (a)(2)(C) where such damages and the re-  
19           lease of a hazardous substance from which such  
20           damages resulted have occurred wholly before De-  
21           cember 11, 1980.”.

22   **SEC. 612. RESTORATION.**

23           Section 107(f) (42 U.S.C. 9707(f)) is further amend-  
24   ed by adding at the end the following:

25                 “(11) RESTORATION.—



1           “(A) RESTORATION DEFINED.—In this  
2 subsection, the term ‘restoration’ means actions  
3 to restore, replace, or acquire the equivalent of  
4 an injured natural resource that return the in-  
5 jured natural resource to the condition that  
6 would exist had the release not occurred, as  
7 measured by reinstatement of the consumptive  
8 and nonconsumptive services provided to the  
9 public by the resource.

10           “(B) MEASUREMENT OF RESTORATION OF  
11 CERTAIN RESOURCES.—

12           “(i) RESOURCES PROTECTED UNDER  
13 WILDERNESS ACT OR MARINE PROTECTION,  
14 RESEARCH, AND SANCTUARIES ACT OF  
15 1972.—For purposes of this subsection,  
16 restoration of an injured biological re-  
17 source that is protected under the Wilder-  
18 ness Act (16 U.S.C. 1131 et seq.), or that  
19 is located in a marine sanctuary designated  
20 under the Marine Protection, Research,  
21 and Sanctuaries Act of 1972 (16 U.S.C.  
22 1431 et seq.), may be measured by rein-  
23 statement of populations of such resource  
24 to the condition that would exist had the  
25 release not occurred.

1                   “(ii) RESOURCES PROTECTED UNDER  
 2                   ENDANGERED SPECIES ACT OF 1973.—For  
 3                   purposes of this subsection, restoration of  
 4                   a resource that is protected under the En-  
 5                   dangered Species Act of 1973 (16 U.S.C.  
 6                   1531 et seq.) may be measured by compli-  
 7                   ance with existing or planned recovery  
 8                   plans and requirements developed for such  
 9                   resource under section 1533(f) of such  
 10                  Act.”.

11 **SEC. 613. RECOVERY BY FOREIGN CLAIMANTS.**

12           Section 107 is amended by adding at the end the fol-  
 13   lowing:

14           “(n) RECOVERY BY FOREIGN CLAIMANTS.—

15                   “(1) REQUIRED SHOWING BY FOREIGN CLAIM-  
 16                  ANTS.—

17                           “(A) IN GENERAL.—In addition to satisfy-  
 18                   ing the other requirements of this Act, to re-  
 19                   cover damages under subsection (a)(2)(C) a for-  
 20                   eign claimant shall demonstrate that—

21                                   “(i) the claimant has not been other-  
 22                                   wise compensated for the damages; and

23                                   “(ii) recovery is authorized by a treaty  
 24                                   or executive agreement between the United  
 25                                   States and the claimant’s country, or the

1 Secretary of State, in consultation with the  
 2 Attorney General and other appropriate of-  
 3 ficials, has certified that the claimant's  
 4 country provides a comparable remedy for  
 5 United States claimants.

6 “(2) RELEASES IN FOREIGN COUNTRIES.—A  
 7 foreign claimant may make a claim for damages re-  
 8 sulting from a release, or substantial threat of a re-  
 9 lease, in or on the territorial sea, internal waters, or  
 10 adjacent shoreline of a foreign country, only if the  
 11 release is from—

12 “(A) an Outer Continental Shelf facility or a  
 13 deepwater port;

14 “(B) a vessel in the navigable waters; or

15 “(C) a vessel carrying a hazardous substance  
 16 as cargo between 2 places in the United States.

17 “(3) FOREIGN CLAIMANT DEFINED.—In this sub-  
 18 section, the term ‘foreign claimant’ means—

19 “(A) the government of a foreign country;  
 20 and

21 “(B) an agency or political subdivision of a  
 22 foreign country.”.

23 **SEC. 614. APPLICABILITY.**

24 (a) IN GENERAL.—The amendments made by this  
 25 title shall not apply to an action to recover natural re-

1 source damages under section 107(f) in which a trial has  
 2 begun before July 1, 1997, or in which a final settlement,  
 3 decree, or order has been issued before such date.

4 (b) EXPIRED ACTIONS UNDER SECTION 113(g)(1).—

5 The amendments made by this title shall not be construed  
 6 to affect any action for damages that has expired under  
 7 section 113(g)(1) of the Comprehensive Environmental  
 8 Response, Compensation, and Liability Act of 1980 (42  
 9 U.S.C. 9601 et seq.), as in effect on the day before the  
 10 date of the enactment of this Act.

## 11 **TITLE VII—OIL POLLUTION**

### 12 **SEC. 701. NATURAL RESOURCES DEFINED.**

13 Section 1001(20) of the Oil Pollution Act of 1990  
 14 (33 U.S.C. 2701) is amended by striking “belonging to”  
 15 and all that follows before the semicolon at the end.

### 16 **SEC. 702. LIABILITY.**

17 Section 1006(a) of the Oil Pollution Act of 1990 (33  
 18 U.S.C. 2706(a)) is amended to read as follows:

19 “(a) LIABILITY.—In the case of natural resources  
 20 damages under section 1002(b)(2)(A), liability shall be—

21 “(1) to the United States Government, for nat-  
 22 ural resources belonging to, managed by, or held in  
 23 trust by the United States Government or selected  
 24 for transfer (but not transferred on or before the  
 25 date of the injury, destruction, or loss) to an Alaska

1 Native Corporation as part of the acreage entitle-  
 2 ment of the Corporation under the Alaska Native  
 3 Claims Settlement Act (43 U.S.C. 1601 et seq.);

4 “(2) to a State, for natural resources within the  
 5 State belonging to, managed by, or held in trust by  
 6 the State or allocated to the State pursuant to an  
 7 interstate compact to which the State is a signatory;

8 “(3) to an Indian tribe, for natural resources  
 9 belonging to, managed by, granted rights to by trea-  
 10 ty, or held in trust by the tribe, or belonging to a  
 11 member of the tribe if such resources are subject to  
 12 a trust restriction on alienation; and

13 “(4) in any case in which section 1007 applies,  
 14 to the government of a foreign country, for natural  
 15 resources belonging to, managed by, or held in trust  
 16 by the country.”.

17 **SEC. 703. DESIGNATION OF LEAD DECISIONMAKING TRUST-**  
 18 **EE.**

19 Section 1006(b) of the Oil Pollution Act of 1990 (33  
 20 U.S.C. 2706(b)) is amended by adding at the end the fol-  
 21 lowing:

22 “(6) DESIGNATION OF LEAD DECISIONMAKING  
 23 TRUSTEE.—

24 “(A) IN GENERAL.—If more than one  
 25 trustee is designated for a natural resource

1 under this subsection, the following trustee may  
2 elect to serve as the lead decisionmaking trustee  
3 for the resource:

4 “(i) The United States, for resources  
5 belonging to or held in trust by the United  
6 States or for which the United States is  
7 the primary manager under the Endan-  
8 gered Species Act of 1973 (16 U.S.C.  
9 1531 et seq.), the Magnuson-Stevens Fish-  
10 ery Conservation and Management Act (16  
11 U.S.C. 1801 et seq.), the Migratory Bird  
12 Treaty Act (16 U.S.C. 703 et seq.), the  
13 Marine Mammal Protection Act of 1972  
14 (16 U.S.C. 1631 et seq.), the Wild Free-  
15 Roaming Horses and Burros Act (16  
16 U.S.C. 1331 et seq.), or the Bald Eagle  
17 Protection Act (16 U.S.C. 668 et seq.).

18 “(ii) An Indian tribe, for resources be-  
19 longing to such tribe or for which the tribe  
20 is the primary manager pursuant to a trea-  
21 ty.

22 “(iii) A foreign country, for resources  
23 belonging to or held in trust by the foreign  
24 country or for which the foreign country is  
25 granted rights by treaty.

1                   “(iv) A State, if the State is a trustee  
2                   for the resource and clauses (i), (ii), and  
3                   (iii) do not apply.

4                   “(B) RESPONSIBILITY OF LEAD DECISION-  
5                   MAKING TRUSTEE.—A lead decisionmaking  
6                   trustee for a resource designated under this  
7                   paragraph shall be responsible for determining  
8                   the measurement of damages for the resource  
9                   after soliciting and considering the views of the  
10                  other trustees for the resource.

11                  “(C) LIMITATION.—A trustee may not be  
12                  designated as a lead decisionmaking trustee for  
13                  a resource under this subparagraph if the trust-  
14                  ee is a potentially responsible party with respect  
15                  to damages to the resource.”.

16 **SEC. 704. SELECTION OF RESTORATION ALTERNATIVES.**

17                  Section 1006(c)(5) of the Oil Pollution Act of 1990  
18                  (33 U.S.C. 2706(c)(5)) is amended to read as follows:

19                  “(5) SELECTION OF RESTORATION ALTER-  
20                  NATIVES.—

21                  “(A) IN GENERAL.—In selecting a range of  
22                  possible restoration alternatives, a Federal,  
23                  State, Indian tribe, or foreign trustee des-  
24                  ignated under subsection (b) shall select meas-  
25                  ures that are feasible and cost-effective.

1           “(B) PREFERENCE.—A trustee shall give  
 2           preference to any alternatives selected under  
 3           subparagraph (A) that meet the following re-  
 4           quirements:

5                   “(i) Notwithstanding the limitations  
 6                   in section 1006(d)(2), the incremental  
 7                   costs are justified by the incremental bene-  
 8                   fits.

9                   “(ii) Restoration is achieved in a time-  
 10                  ly manner.”.

11 **SEC. 705. MEASURE OF DAMAGES.**

12           (a) IN GENERAL.—Section 1006(d)(1) of the Oil Pol-  
 13           lution Act of 1990 (33 U.S.C. 2706(d)(1)) is amended to  
 14           read as follows:

15                   “(1) IN GENERAL.—The measure of natural re-  
 16                   sources damages under section 1002(b)(2)(A) shall  
 17                   be limited to the following:

18                           “(A) Reasonable costs of restoration of the  
 19                           resource.

20                           “(B) The loss of use by the public of the  
 21                           resource prior to restoration.

22                           “(C) The costs of reasonable assessment of  
 23                           damages to the resource.”.

24           (b) PSYCHOLOGICAL DAMAGES.—Section 1006(d) of  
 25           such Act (33 U.S.C. 2706(d)) is amended—



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

3           (2) by inserting after paragraph (1) the follow-  
4 ing:

5           “(2) PSYCHOLOGICAL DAMAGES.—

6                 “(A) RECOVERY PROHIBITED.—There  
7 shall be no recovery under section  
8 1002(b)(2)(A) for psychological damages.

9                 “(B) PSYCHOLOGICAL DAMAGES DE-  
10 FINED.—In this paragraph, the term ‘psycho-  
11 logical damages’ means damages based on how  
12 a person or group of persons feels about or per-  
13 ceives a resource.”.

14         (c) RELATION TO OTHER LAWS.—Section 1006(d)(4)  
15 of such Act, as so redesignated, is amended to read as  
16 follows:

17           “(4) RELATION TO OTHER LAWS.—

18                 “(A) DOUBLE RECOVERY PROHIBITED.—

19 Any trustee who receives compensation for  
20 damages or claims with respect to a natural re-  
21 source pursuant to this section shall be pre-  
22 cluded from recovering compensation for the  
23 damages or claims with respect to the same  
24 natural resource pursuant to any other State or  
25 Federal law. Any trustee who receives com-

1       pensation for damages or claims with respect to  
2       a natural resource pursuant to any other Fed-  
3       eral or State law shall be precluded from receiv-  
4       ing compensation for the damages or claims  
5       with respect to the same natural resource as  
6       provided in this section.

7               “(B) DOUBLE LIABILITY PROHIBITED.—  
8       Any person who pays compensation to one or  
9       more parties for damages or claims with respect  
10      to a natural resource pursuant to this section  
11      shall not be required to pay compensation for  
12      the damages or claims with respect to the same  
13      natural resource pursuant to this Act or any  
14      other State or Federal law. Any person who  
15      pays compensation for damages or claims with  
16      respect to a natural resource pursuant to any  
17      other Federal or State law shall not be required  
18      to pay compensation for the damages or claims  
19      with respect to the same natural resource pur-  
20      suant as provided in this section.

21              “(C) PERSON DEFINED.—In this para-  
22      graph, the term ‘person’ has the meaning given  
23      such term by section 1001 and also includes the  
24      United States, an Indian tribe, and a foreign  
25      country.”.

1 **SEC. 706. DAMAGE ASSESSMENTS.**

2 Section 1006(e)(2) of the Oil Pollution Act of 1990  
3 (33 U.S.C. 2706(e)(2)) is amended to read as follows:

4 “(2) DAMAGE ASSESSMENTS.—

5 “(A) IN GENERAL.—To the extent prac-  
6 ticable, a Federal, State, Indian tribe, or for-  
7 eign trustee designated under this subsection  
8 shall base any measure of damages under sec-  
9 tion 1002(b)(2)(A) with respect to a site on an  
10 assessment of the specific conditions and res-  
11 toration requirements at the site.

12 “(B) ASSESSMENT REQUIREMENTS.—Any  
13 assessment used by a trustee under subpara-  
14 graph (A) shall be based on, and performed in  
15 accordance with, generally accepted scientific  
16 and technical standards, literature, and meth-  
17 odologies that ensure the validity, reliability,  
18 and cost-effectiveness of assessment results.”.

19 **SEC. 707. PROCESS FOR DETERMINING DAMAGES.**

20 Section 1006(e) of the Oil Pollution Act of 1990 (33  
21 U.S.C. 2706(e)) is amended by adding at the end the fol-  
22 lowing:

23 “(3) PROCESS FOR DETERMINING DAMAGES.—

24 “(A) STANDARD OF REVIEW.—Any deter-  
25 mination or assessment of damages for injury  
26 to, destruction of, or loss of natural resources

1           made by a Federal, State, Indian tribe, or for-  
2           eign trustee for the purposes of section  
3           1002(b)(2)(A)) shall be adjudicated in a de  
4           novo trial in a Federal district court.

5           “(B) PUBLIC PARTICIPATION.—All aspects  
6           of the determination or assessment of damages  
7           to a natural resource made by a Federal, State,  
8           Indian tribe, or foreign trustee for purposes of  
9           section 1002(b)(2)(A)) shall be made through a  
10          process which allows for reasonable public par-  
11          ticipation as to the scope, extent, and nature of  
12          injury to, destruction of, or loss of natural re-  
13          sources and the appropriate restoration under  
14          this section.

15          “(C) INADMISSIBILITY OF CERTAIN EVI-  
16          DENCE.—If, in providing for public participa-  
17          tion under subparagraph (B), a trustee provides  
18          for notice and comment and the development of  
19          a public record, and if a party, including a  
20          trustee, fails to make available to the public  
21          record any reasonably relevant information re-  
22          lated to the scope, extent, and nature of dam-  
23          ages and the appropriate restoration under this  
24          section, such information shall not be admissi-

1           ble by the party as evidence in any subsequent  
2           judicial or administrative proceeding.”.

3 **SEC. 708. RESTORATION.**

4           Section 1006 of the Oil Pollution Act of 1990 (33  
5 U.S.C. 2706) is amended by adding at the end the follow-  
6 ing:

7           “(h) RESTORATION.—

8                 “(1) RESTORATION DEFINED.—In this section,  
9           the term ‘restoration’ means actions to restore, re-  
10          place, or acquire the equivalent of an injured natural  
11          resource that return the injured natural resource to  
12          the condition that would exist had the release not  
13          occurred, as measured by reinstatement of the con-  
14          sumptive and nonconsumptive services provided to  
15          the public by the resource.

16                 “(2) MEASUREMENT OF RESTORATION OF CER-  
17          TAIN RESOURCES.—

18                 “(A) RESOURCES PROTECTED UNDER WIL-  
19          DERNESS ACT OR MARINE PROTECTION, RE-  
20          SEARCH, AND SANCTUARIES ACT OF 1972.—For  
21          purposes of this subsection, restoration of an  
22          injured biological resource that is protected  
23          under the Wilderness Act (16 U.S.C. 1131 et  
24          seq.), or that is located in a marine sanctuary  
25          designated under the Marine Protection, Re-

1 search, and Sanctuaries Act of 1972 (16 U.S.C.  
2 1431 et seq.), may be measured by reinstatement  
3 of populations of such resource to the  
4 condition that would exist had the release not  
5 occurred.

6 “(B) RESOURCES PROTECTED UNDER EN-  
7 DANGERED SPECIES ACT OF 1973.—For purposes  
8 of this subsection, restoration of a resource  
9 that is protected under the Endangered  
10 Species Act of 1973 (16 U.S.C. 1531 et seq.)  
11 may be measured by compliance with existing  
12 or planned recovery plans and requirements developed  
13 for such resource under section 1533(f)  
14 of such Act.”.

15 **SEC. 709. APPLICABILITY.**

16 (a) IN GENERAL.—The amendments made by this  
17 title shall not apply to an action to recover natural resource  
18 damages under section 1002(b)(2)(A) of the Oil  
19 Pollution Act of 1990 (33 U.S.C. 2702(b)(2)(A)) in which  
20 a trial has begun before July 1, 1997, or in which a final  
21 settlement, decree, or order has been issued before such  
22 date.

23 (b) EXPIRED ACTIONS UNDER SECTION 1017(f).—  
24 The amendments made by this title shall not be construed  
25 to affect any action for damages that has expired under

1 section 1017(f) of the Oil Pollution Act of 1990 (33  
2 U.S.C. 2717(f)), as in effect on the day before the date  
3 of the enactment of this Act.

## 4 **TITLE VIII—MISCELLANEOUS**

### 5 **SEC. 801. TRUST FUND DEFINED.**

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

8 “(11) The term ‘Fund’ or ‘Trust Fund’ means  
9 the Hazardous Substance Superfund established by  
10 section 9507 of the Internal Revenue Code of  
11 1986.”.

### 12 **SEC. 802. INDIAN TRIBES.**

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

15 (1) by striking “and section 105” and inserting  
16 “, section 105”;

17 (2) by inserting before the period at the end the  
18 following: “, section 117 (regarding public participa-  
19 tion), and section 121 (regarding selection of rem-  
20 edies)”; and

21 (3) by adding at the end the following: “In ap-  
22 plying this subsection, any reference contained in a  
23 section identified in the preceding sentence to a fa-  
24 cility located in a State shall include a facility lo-  
25 cated on lands within the jurisdiction of a Federal

1 Indian reservation under the jurisdiction of the  
2 United States government.”.

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

5 “(c) HEALTH IMPACTS.—

6 “(1) STUDY.—The President shall conduct a  
7 study of the health impacts on Indian tribes of pol-  
8 lutants, contaminants, and hazardous substances re-  
9 leased from facilities that have been listed or pro-  
10 posed for listing on the National Priorities List.

11 “(2) REPORT.—Not later than 2 years after the  
12 date of the enactment of the Superfund Accelera-  
13 tion, Fairness, and Efficiency Act, the President  
14 shall transmit to Congress a report on the results of  
15 the study conducted under this subsection.”.

16 **SEC. 803. GRANTS FOR TRAINING AND EDUCATION OF**  
17 **WORKERS.**

18 Section 126(g) of the Superfund Amendments and  
19 Reauthorization Act of 1986 (42 U.S.C. 9660a) is amend-  
20 ed—

21 (1) by inserting “from the Fund” after  
22 “Grants” in each of paragraphs (1), (2), and (3);  
23 and

24 (2) by adding at the end the following:



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

## **TITLE IX—FUNDING**

### **Subtitle A—Expenditures From the Hazardous Substance Superfund**

#### **SEC. 901. EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND.**

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

is amended—

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

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

“(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE SUPERFUND.—

“(1) SUBSECTION (b) EXPENDITURES.—The following amounts of amounts appropriated to the Hazardous Substance Superfund after January 1,

1 1996, pursuant to section 9507(b) of the Internal  
2 Revenue Code of 1986, and of amounts credited  
3 under section 9602(b) of such Code with respect to  
4 those appropriated amounts shall be available for the  
5 purposes specified in subsection (b):

6 “(A) For fiscal year 1998, \$550,000,000.

7 “(B) For fiscal year 1999, \$550,000,000.

8 “(C) For fiscal year 2000, \$550,000,000.

9 “(D) For fiscal year 2001, \$250,000,000.

10 “(E) For fiscal year 2002, \$250,000,000.

11 “(2) SUBSECTIONS (b), (c), AND (d) EXPENDI-  
12 TURES.—Amounts appropriated to the Hazardous  
13 Substance Superfund pursuant to section 9507(b) of  
14 the Internal Revenue Code of 1986 and amounts  
15 credited under section 9602(b) of such Code with re-  
16 spect to those appropriated amounts shall be avail-  
17 able as provided in appropriations Acts and may be  
18 used for the purposes specified in subsections (b),  
19 (c), and (d) of this section, including \$650,000,000  
20 for each of fiscal years 1998 and 1999 for costs de-  
21 scribed in subsection (c) with respect to completion  
22 of construction by September 30, 2000, of an addi-  
23 tional 250 sites on the National Priorities List.

24 “(b) PAYMENTS RELATED TO CERTAIN REDUC-  
25 TIONS, LIMITATIONS, AND EXEMPTIONS.—

1           “(1) MIXED FUNDING.—The President may use  
2           amounts in the Fund made available by subsection  
3           (a)(1), and appropriated under subsection (a)(2), for  
4           mixed funding under section 122(b)(1) (including  
5           mixed funding under section 311(c) of the  
6           Superfund Acceleration, Fairness, and Efficiency  
7           Act).

8           “(2) LIMITATIONS.—Amounts made available  
9           by subsection (a)(1), and appropriated under sub-  
10          section (a)(2), for the purposes of this subsection  
11          shall not exceed the following:

12                 “(A) For fiscal year 1998, \$550,000,000.

13                 “(B) For fiscal year 1999, \$550,000,000.

14                 “(C) For fiscal year 2000, \$550,000,000.

15                 “(D) For fiscal year 2001, \$250,000,000.

16                 “(E) For fiscal year 2002, \$250,000,000.

17          Of amounts made available by subsection (a)(1) for  
18          each of fiscal years 1998, 1999, and 2000, the ag-  
19          gregate expenditures from the Fund for mixed fund-  
20          ing under section 311(c)(1) of the Superfund Accel-  
21          eration, Fairness, and Efficiency Act may not exceed  
22          \$275,000,000. No funds made available for mixed  
23          funding under paragraph (1) may be used for pay-  
24          ment of, or reimbursement for, any portion of attor-

1        neys' fees that do not constitute necessary costs of  
2        response consistent with section 107(a)(2)(B).

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

8                “(1) GOVERNMENT RESPONSE COSTS.—Pay-  
9        ment of governmental response costs incurred pursu-  
10       ant to section 104, including costs incurred pursuant  
11       to the Intervention on the High Seas Act.

12               “(2) PRIVATE RESPONSE COST CLAIMS.—Pay-  
13       ment of any claim for necessary response costs in-  
14       curred by any other person as a result of carrying  
15       out the national contingency plan established under  
16       section 105, if such costs are approved under such  
17       plan, are reasonable in amount based on open and  
18       free competition or fair market value for similar  
19       available goods and services, and are certified by the  
20       responsible Federal official.

21               “(3) ACQUISITION COSTS UNDER SECTION  
22       104(j).—The costs incurred by the President in ac-  
23       quiring real estate or interests in real estate under  
24       section 104(j) (relating to acquisition of property).

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

7           “(5) FUNDS FOR STATES WITH DELEGATED OR  
8           AUTHORIZED AUTHORITY.—Payment of any funds to  
9           a State pursuant to section 153.

10          “(6) CONTRACTS AND COOPERATIVE AGREE-  
11          MENTS.—Payment for the implementation of any  
12          contract or cooperative agreement under section  
13          104(d).

14          “(7) NATURAL RESOURCE DAMAGE ASSESS-  
15          MENTS.—The costs of assessing both short-term and  
16          long-term injury to, destruction of, or loss of any  
17          natural resources resulting from a release of a haz-  
18          ardous substance.

19          “(8) NATURAL RESOURCE DAMAGES.—The  
20          costs of Federal or State or Indian tribe efforts in  
21          the restoration, rehabilitation, or replacement or ac-  
22          quiring the equivalent of any natural resources in-  
23          jured, destroyed, or lost as a result of a release of  
24          a hazardous substance.

1       “(d) ADMINISTRATION, OVERSIGHT, RESEARCH, AND  
2 OTHER COSTS.—The President may use amounts in the  
3 Fund appropriated under subsection (a)(2) for the follow-  
4 ing costs (and administrative costs directly related to such  
5 costs):

6               “(1) INVESTIGATION AND ENFORCEMENT.—The  
7 costs of identifying, investigating, and taking en-  
8 forcement action against releases of hazardous sub-  
9 stances.

10              “(2) OVERHEAD.—

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

18                   “(B) DAMAGE ASSESSMENT CAPABILITY.—  
19 The costs of establishing and maintaining dam-  
20 age assessment capability for any Federal agen-  
21 cy involved in strike forces, emergency task  
22 forces, or other response teams under the Na-  
23 tional Contingency Plan.

24               “(3) EMPLOYEE SAFETY PROGRAMS.—The cost  
25 of maintaining programs otherwise authorized by

1       this Act to protect the health and safety of employ-  
2       ees involved in response to hazardous substance re-  
3       leases.

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

7               “(5) WORKER TRAINING AND EDUCATION  
8       GRANTS.—The cost of grants under section 126(g)  
9       of the Superfund Amendments and Reauthorization  
10      Act of 1986 for training and education of workers  
11      to the extent that such costs do not exceed  
12      \$40,000,000 for each of fiscal years 1999, 2000,  
13      2001, 2002, and 2003.

14              “(6) ATSDR ACTIVITIES.—Any costs incurred  
15      in accordance with subsection (m) of this section (re-  
16      lating to ATSDR) and section 104(i), including the  
17      costs of epidemiologic and laboratory studies, health  
18      assessments, and other activities authorized by sec-  
19      tion 104(i).

20              “(7) EVALUATION COSTS UNDER PETITION  
21      PROVISIONS OF SECTION 105(d).—Costs incurred by  
22      the President in evaluation facilities pursuant to pe-  
23      titions under section 105(d) (relating to petitions for  
24      assessment of release).

1           “(8) CONTRACT COSTS UNDER SECTION  
2       104(a)(1).—The costs of contracts or arrangements  
3       entered into under section 104(a)(1) to oversee and  
4       review the conduct of remedial investigations and  
5       feasibility studies undertaken by persons other than  
6       the President and the costs of appropriate Federal  
7       and State oversight of remedial activities at National  
8       Priorities List sites resulting from consent orders or  
9       settlement agreements.

10           “(9) RESEARCH, DEVELOPMENT, AND DEM-  
11       ONSTRATION COSTS UNDER SECTION 311.—The cost  
12       of carrying out section 311 (relating to research, de-  
13       velopment, and demonstration).

14           “(10) AWARDS UNDER SECTION 109.—The costs  
15       of any awards granted under section 109(d) (relat-  
16       ing to providing information concerning violations).

17       “(e) LIMITATIONS ON NATURAL RESOURCES  
18       CLAIMS.—No money in the Fund may be used for the pay-  
19       ment of any claim under subsection (c)(7) or (c)(8) of this  
20       section where such expenses are associated with injury or  
21       loss resulting from long-term exposure to ambient con-  
22       centrations of air pollutants from multiple or diffuse  
23       sources.

24       “(f) OTHER LIMITATIONS.—



1           “(1) LIMITATIONS ON PAYMENTS OF CLAIMS.—  
2       Claims against or presented to the Fund shall not  
3       be valid or paid in excess of the total unobligated  
4       balance in the Fund at any one time. Such claims  
5       become valid and are payable only when additional  
6       money is collected, appropriated, or otherwise added  
7       to the Fund. Should the total claims outstanding at  
8       any time exceed the current balance of the Fund,  
9       the President shall pay such claims, to the extent  
10      authorized under this section, in full in the order in  
11      which they were finally determined.

12           “(2) REMEDIAL ACTIONS AT FEDERALLY  
13      OWNED FACILITIES.—No money in the Fund shall  
14      be available for costs of remedial action, other than  
15      costs specified in subsection (d), with respect to fed-  
16      erally owned facilities; except that money in the  
17      Fund shall be available for the provision of alter-  
18      native water supplies (including the reimbursement  
19      of costs incurred by a municipality) in any case in-  
20      volving groundwater contamination outside the  
21      boundaries of a federally owned facility in which the  
22      federally owned facility is not the only potentially re-  
23      sponsible party.

24           “(3) REMEDIAL ACTIONS AT FACILITIES NOT  
25      LISTED ON NPL.—No money in the Fund shall be

1 available for response actions that are not removal  
 2 actions under section 101(23) with respect to any  
 3 facility that is not listed on the National Priorities  
 4 List.”.

5 (b) ADDITIONAL AMENDMENTS.—

6 (1) SECTION 111.—Section 111 (42 U.S.C.  
 7 9611) is further amended by striking subsections (j)  
 8 and (n).

9 (2) SECTION 107.—Section 107 (42 U.S.C.  
 10 9607) is amended by striking subsection (k).

11 **SEC. 902. AUTHORIZATION OF APPROPRIATIONS FROM**  
 12 **GENERAL REVENUES.**

13 (a) AUTHORIZATION.—Section 111(p)(1) is amended  
 14 to read as follows:

15 “(1) IN GENERAL.—The following sums are au-  
 16 thorized to be appropriated, out of any money in the  
 17 Treasury not otherwise appropriated, to the Hazard-  
 18 ous Substance Superfund:

19 “(A) For fiscal year 1998, \$250,000,000.

20 “(B) For fiscal year 1999, \$250,000,000.

21 “(C) For fiscal year 2000, \$250,000,000.

22 “(D) For fiscal year 2001, \$250,000,000.

23 “(E) For fiscal year 2002, \$250,000,000.

24 In addition, there is authorized to be appropriated to  
 25 the Hazardous Substance Superfund for each fiscal

1 year an amount equal to so much of the aggregate  
 2 amount authorized to be appropriated under this  
 3 subsection (and section 131(b)(2)) as has not been  
 4 appropriated before the beginning of the fiscal year  
 5 involved.”.

6 (b) REPEAL OF DUPLICATIVE AUTHORIZATION.—  
 7 Subsection (b) of section 517 of the Superfund Amend-  
 8 ments and Reauthorization Act of 1986 (26 U.S.C. 9507  
 9 note) is hereby repealed.

10 (c) CONFORMING AMENDMENT.—Section 9507(a)(2)  
 11 of the Internal Revenue Code of 1986 is amended by strik-  
 12 ing “section 517(b) of the Superfund Revenue Act of  
 13 1986” and inserting “section 111(p) of the Comprehensive  
 14 Environmental Response, Compensation, and Liability Act  
 15 of 1980 (42 U.S.C. 9611(p))”.

## 16 **Subtitle B—5-Year Extension of** 17 **Hazardous Substance Superfund**

### 18 **SEC. 911. 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE** 19 **SUPERFUND.**

20 (a) EXTENSION OF TAXES.—

21 (1) Paragraph (1) of section 59A(e) of the In-  
 22 ternal Revenue Code of 1986 is amended to read as  
 23 follows:

1           “(1) IN GENERAL.—The tax imposed by this  
2           section shall apply to taxable years beginning after  
3           December 31, 1997, and before January 1, 2003.”

4           (2) Paragraph (1) of section 4611(e) of such  
5           Code is amended to read as follows:

6           “(1) IN GENERAL.—Except as provided in para-  
7           graphs (2) and (3), the Hazardous Substance  
8           Superfund financing rate under this section shall  
9           apply after December 31, 1997, and before January  
10          1, 2003.”

11          (3) Paragraph (2) of section 4611(e) of such  
12          Code is amended—

13                 (A) by striking “1993” and inserting  
14                 “2000”,

15                 (B) by striking “1994” each place it ap-  
16                 pears and inserting “2001”, and

17                 (C) by striking “1995” each place it ap-  
18                 pears and inserting “2002”.

19          (b) EXTENSION OF REPAYMENT DEADLINE FOR  
20          SUPERFUND BORROWING.—Subparagraph (B) of section  
21          9507(d)(3) of such Code is amended by striking “Decem-  
22          ber 31, 1995” and inserting “December 31, 2002”.

23          (c) TRUST FUND PURPOSES.—Paragraph (1) of sec-  
24          tion 9507(c) of such Code is amended by striking subpara-

1 graphs (A) and (B) and inserting the following new sub-  
2 paragraphs:

3                   “(A) to carry out the purposes specified in  
4                   subsections (b), (c), and (d) of section 111  
5                   CERCLA, or

6                   “(B) hereafter authorized by a law which  
7                   does not authorize the expenditure out of the  
8                   Superfund for a general purpose not covered by  
9                   subparagraph (A).”

10       (d) COORDINATION WITH OTHER PROVISIONS.—  
11 Paragraph (2) of section 9507(e) of such Code is amended  
12 by striking “CERCLA” and all that follows through  
13 “Acts)” and inserting “CERCLA, the Superfund Amend-  
14 ments and Reauthorization Act of 1986, and Superfund  
15 Acceleration, Fairness, and Efficiency Act (or in any  
16 amendment made by any of such Acts)”.

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