I

105TH CONGRESS
1ST SESSION

H. R. 2750

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 1997

Mr. BARCIA (for himself and Mr. DOOLEY of California) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Superfund Cleanup Acceleration and Liability Equity Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

SEC. 3. REFERENCES.

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

TITLE I—REMEDY SELECTION

SEC. 101. REMEDY SELECTION.

(a) REMEDY SELECTION.—Section 121(b) (42 U.S.C. 9621) is amended to read as follows:

''(b) REMEDY SELECTION.—

''(1) HEALTH AND ENVIRONMENTAL STANDARDS.—

''(A) IN GENERAL.—Final remedies selected under this Act shall protect human health and the environment.

''(B) EXPOSURE INFORMATION.—Exposure assessments shall be consistent with the current and reasonably anticipated uses of land, water,

and other resources as identified under paragraph (2). The President shall consider and use, in selecting final remedies under this Act, information made available to the President on actual exposure to hazardous substances or pollutants or contaminants, along with other relevant information.

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

''(2) ANTICIPATED USE OF LAND, WATER, AND OTHER RESOURCES.—

''(A) IN GENERAL.—For purposes of selecting the method or methods of remediation appropriate for a given facility, the President

shall identify the current and reasonably anticipated uses of land, water, and other resources at and around the facility and the timing of such uses.

''(B) LAND USE.—Except as provided in subparagraph (C), in identifying such reasonably anticipated uses, the President shall consider relevant factors, which generally shall include the following:

''(i) Any recommendation of the Community Assistance Group. With respect to a Federal facility scheduled for closure or realignment, the President shall consider any joint consensus recommendation of the Community Assistance Group and a redevelopment authority which has been established for such facility.

''(ii) Views of the affected community not reflected in clause (i).

''(iii) The current uses of the facility and surrounding properties, recent development patterns in the area where the facility is located, and population projections for that area.

''(iv) Federal or State land use designations, including Federal facilities and national parks, State ground water or surface water recharge areas established under a State's comprehensive protection plan for ground water or surface water, and recreational areas.

''(v) The current land use zoning and future land use plans of the local government with land use regulatory authority.

''(vi) Current plans for the facility by the property owner or owners.

''(vii) The availability of alternative sources of drinking water.

''(viii) Current or anticipated plans for livestock watering or irrigation.

''(ix) Current and anticipated plans of local water suppliers.

''(x) The potential for beneficial use.

''(xi) The proximity of the contamination to residences, sensitive populations or ecosystems, natural resources, or areas of unique historic or cultural significance.

''(xii) Navigational and transportation uses that may be affected by the facility.

"(xiii) Reasonably anticipated ecological services provided by the resource.

"(xiv) Tribal land use designations for a facility in Indian country (as defined in 18 U.S.C. 1151).

"(xv) Any additional factors the Administrator considers appropriate.

Land use assumptions restricting future use can be used in evaluating remedial alternatives only to the extent that institutional controls meeting the criteria of subsection (i) and section 104 have been or will be adopted in the final remedy.

"(C) GROUNDWATER USE.—In identifying current and reasonably anticipated future ground water uses for purposes of this section, the President shall defer to State determinations regarding such uses where the State has made such a determination on a facility-specific basis.

"(D) LIMITATION.—Notwithstanding subparagraph (C), in no case shall the current or reasonably anticipated future use of ground water be identified as drinking water for ground water—

''(i) containing more than 10,000 milligrams per liter total dissolved solids,

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

''(iii) if the potential source of drinking water is physically incapable of yielding a quantity of 150 gallons per day of water to a well or spring without adverse environmental consequences.

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

''(3) SITE-SPECIFIC RISK ASSESSMENT.—The President shall use site-specific risk assessment that meets the requirements of the principles set forth in section 127(a) to—

''(A) determine the nature and extent of risk to human health and the environment;

''(B) assist in establishing remedial objectives for the facility respecting releases or threatened releases, and in identifying geographic areas or exposure pathways of concern; and

''(C) evaluate alternative remedial actions for the facility to determine their risk reduction benefits and assist in selecting the remedial action for the facility that meets the criteria of paragraph (1).

''(4) APPROPRIATE REMEDIAL ACTION.—

''(A) REMEDY EVALUATION.—The President shall identify and select an appropriate remedy that protects human health and the environment pursuant to section 121(a) by balancing the following factors:

''(i) The effectiveness of the remedy, including its implementability.

''(ii) The long-term reliability of the remedy, that is, its capability to achieve long-term protection of human health and the environment, including consideration of the preference for treatment of hot spots.

''(iii) Any short-term risk posed by the implementation of the remedy to the

affected community, to those engaged in the cleanup effort, and to the environment.

''(iv) The acceptability of the remedy to the affected community.

''(v) The reasonableness of the cost of the remedy.

''(B) MONITORING OR OVERSIGHT.—Where the President selects a final remedy under this Act that relies on stabilization, containment, or other engineering controls to limit exposure, institutional controls, or other measures, the President shall include enforceable requirements for the regular monitoring or oversight of the effectiveness and protectiveness of the remedy.

''(C) HOT SPOTS.—(i) In conducting the evaluation under subparagraph (A), the President shall prefer a remedy which includes treatment of hot spots.

''(ii) For purposes of this section, the term 'hot spot' means a discrete area within a facility that contains hazardous substances, pollutants or contaminants that, because of the interaction of high toxicity, likelihood of mobility, and uncertainty regarding the reliability of containment, present a substantial risk to human

health or the environment should exposure occur. The President shall develop guidelines for the identification of hot spots. Such guidelines shall recommend appropriate field investigations that will not require extraordinarily complex or costly measures. The guidelines will state that the more concentrated and toxic the area, the less likely the exposure scenarios reasonably considered in determining whether some form of treatment should be preferred. Treatment alternatives pursuant to this section shall be selected on a site-specific basis and are not controlled by section 3004 of the Solid Waste Disposal Act.

''(iii) In determining an appropriate remedy for hot spots, the President shall consider the factors under subparagraph (A).

''(iv) Notwithstanding the preference for treatment of a hot spot, the President may select a final containment remedy for hot spots at landfills and mining sites or similar facilities under the following circumstances:

''(I) The hot spot is small relative to the overall volume of waste or contamination being addressed, the hot spot is not

readily identifiable and accessible, and without the presence of the hot spot containment would have been selected as the appropriate remedy under subparagraph (A) for the larger body of waste or area of contamination in which the hot spot is located.

''(II) The volume and areal extent of the hot spot is extraordinary compared to other facilities, and it is highly unlikely due to the size and other characteristics of the hot spot that any treatment technology will be developed that could be implemented at reasonable cost.

Where final containment for a hot spot is selected, the President shall publish an explanation of the basis for that decision.''.

(b) OTHER STANDARDS.—Section 121(d) (42 U.S.C. 9621(d)) is amended—

(1) by striking so much of subsection (d) as precedes paragraph (3) and inserting the following:

''(d) OTHER STANDARDS.—(1) Except as provided in paragraph (2), for any facility to which they apply, the standards set forth in this section shall govern the level or standard of control for remedies, remedy selection, and

on-site management of hazardous substances in lieu of any other Federal, State, or local standards where such action is selected and carried out in compliance with this section.

''(2)(A) Point source discharges or emissions of hazardous substances into the waters of the United States or the ambient air that result from the conduct of the remedy shall comply with State and Federal standards respecting such discharges or emissions.

''(B)(i) Remedial actions selected under this section or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release which assures protection of human health and the environment.

''(ii) With respect to any hazardous substance, pollutant, or contaminant that will remain onsite, if—

''(I) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, or the Solid Waste Disposal Act; or

''(II) any promulgated standard, requirement, criteria, or limitation under a State environmental

or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized, or delegated by the Administrator under a statute cited in subclause (I), and that has been identified to the President by the State in a timely manner,

is legally applicable to the conduct or operation of the remedial action or to the hazardous substance or pollutant or contaminant concerned, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable standard, requirement, criteria, or limitation.

''(C) GROUNDWATER REMEDIES.—(i) Response actions shall return usable ground waters to beneficial use wherever practicable, within a timeframe that is reasonable given the particular circumstances of the site.

''(ii) In selecting remedies for ground water, the President shall also follow these additional overall objectives for site response actions:

''(I) Prevent exposure to contaminated ground water above acceptable risk levels.

''(II) Prevent or minimize further migration of the contaminant plume.

''(III) As needed, prevent or minimize further migration of contaminants from source materials to ground water.

''(iii) If the current or reasonably anticipated use (as determined under subsection (b)(2)) of ground water is drinking water, final remedies selected under this Act shall require a level or standard of control which meets maximum contaminant levels established under the Safe Drinking Water Act at reasonable points of compliance, as appropriate, considering the nature and timing of such use of the ground water.

''(D) ALTERNATE CONCENTRATION LIMITS.—For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

''(i) there are known and projected points of entry of such groundwater into surface water;

''(ii) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

''(iii) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water;

then the assumed point of human exposure may be at such known and projected points of entry.

''(E) Compliance with promulgated State standards for protection under subparagraph (B) shall not be required unless such laws and standards are—

''(i) of general applicability,

''(ii) consistently applied, and

''(iii) identified to the President in a timely fashion.

''(F) LIMITS ON LAND DISPOSAL PROHIBITIONS.—(i) Except as provided in clause (ii), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of haz-

ardous substances, pollutants, or contaminants shall not apply.

''(ii) Any State standard, requirement, criteria, or limitation referred to in clause (i) shall apply where each of the following conditions is met:

''(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

''(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purposes of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

''(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.'';

(2) by striking so much of paragraph (4) as precedes subparagraph (A) and inserting the following:

''(4) WAIVER.—The President may waive any requirement of subparagraphs (A) through (C) of paragraph (2) of this subsection if the President finds that—''; and

(3) by adding at the end the following new paragraph:

''(5) TECHNICAL IMPRACTICABILITY.—For purposes of subparagraph (C) of paragraph (4) the President shall make findings of technical impracticability from an engineering perspective on the basis of projections, modeling, or other analysis on a site-specific basis (including the consideration of information presented by responsible parties at such facility) without a requirement that the remedial measure for which a finding of technical impracticability is under consideration be first constructed or installed and operated and its performance over time reviewed, unless such projection, modeling, or other analysis is insufficient or inadequate to make such a finding.''.

(c) EARLY EVALUATION AND PHASED REMEDIAL ACTION.—Section 121 (42 U.S.C. 9621) is amended by adding the following new subsections after subsection (f):

''(g) EARLY EVALUATION AND PHASED REMEDIAL ACTION.—(1) The President shall consider new procedures for conducting remedial investigations and feasibility studies 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 emphasize performance-based standards

where feasible and, where appropriate, provide means to update the most practicable methods under such performance-based approaches. 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) 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, shall be collected as part of site characterization activities prior to and during the remedial investigation.

''(h) INSTITUTIONAL CONTROLS.—

''(1) USE OF INSTITUTIONAL CONTROLS.—Whenever the President selects a final remedial action under this Act which relies on restrictions on the use of land, water, or other resources to achieve protection of human health and the environment, the President shall specify the nature of the restrictions

required to achieve such protections, including restrictions on the permissible uses of land, prohibitions on specified activities upon the property, restrictions on the drilling of drinking water wells or other use of ground water, or restrictions on the use of surface water, and may ensure that such restrictions are incorporated into a hazardous substance easement, as provided by section 104(k). In reviewing remedial action alternatives that would require the use of such restrictions and providing opportunity for public comment on those alternatives, the President shall identify the nature of any institutional controls that would be required to implement such restrictions, the likely duration of such restrictions, and the anticipated costs of acquiring any appropriate hazardous substance easements and enforcing the appropriate restrictions.

''(2) REGISTRY.—The President shall maintain a registry of restrictions on the use of land, water, or other resources through institutional controls that are included in final records of decisions as part of the basis of decision at National Priorities List facilities.

''(3) REPORT.—The President shall, in consultation with representatives of State and local gov-

ernments, study the use and effectiveness of institutional controls at National Priorities List facilities. Within 3 years after the date of enactment of this subsection, and after issuance of a draft report and opportunity for public comment, the President shall issue a final report on the use and effectiveness of institutional controls at National Priorities List facilities, together with recommendations to improve efficiency and effectiveness.''.

SEC. 102. AUTHORITIES FOR INSTITUTIONAL CONTROLS.

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

''(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

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

or use of ground water, or restricting the use of surface water.

''(2) USE OF EASEMENTS.—A hazardous substance easement and notice of a property use restriction under this subsection may be used wherever institutional controls have been selected as a component of a removal or remedial action in accordance with this Act and the National Contingency Plan. Such easements and notices shall not be used in cases in which institutional controls are not relied upon in a removal or remedial action. Whenever such controls are selected as a component of a removal or remedial action, the President shall ensure that the terms of the controls and, as appropriate, the easement are specified in all appropriate decision documents, enforcement orders, and public information regarding the site.

''(3) PERSONS SUBJECT TO EASEMENTS.—A hazardous substance easement shall be enforceable for 20 years and may be renewed for additional 20-year periods where necessary to meet the standards of this section (unless terminated and released as provided for in this section) against any owner of the affected property and all persons who subsequently acquire interest in the property or rights to

use the property, including lessees, licensees, and any other person with an interest in the property, without respect to privity or lack of privity of estate or contract, lack of benefit running to any other property, assignment of the easement to another party, or any other circumstance which might otherwise affect the enforceability of easements or similar deed restrictions under the laws of the State. The easement shall be binding upon holders of any other interests in the property regardless of whether such interests are recorded or whether they were recorded prior or subsequent to the easement, and shall remain in effect notwithstanding any foreclosure or other assertion of such interests.

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

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

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

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

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

''(5) USE RESTRICTION NOTICE.—Whenever the President acquires a hazardous substance easement or assigns a hazardous substance easement to another party, the President shall record a notice of property use restriction in the public land records for the jurisdiction in which the affected property is located. Such a notice shall specify restrictions, limitations, or controls on the use of land, water, or other natural resources provided for in the hazardous substance easement.

''(6) FILING OF NOTICE.—Wherever recording in the public land records is required under this subsection, the President shall file the notice or other instrument in the appropriate office within the State (or governmental subdivision) in which the affected property is located, as designated by State law. If the State has not by law designated one office for the recording of interests in real property or claims or rights burdening real property, the document or notice shall be filed in the office of the clerk of the United States district court for the district in which the affected property is located.

''(7) METHODS OF ACQUIRING EASEMENTS.—The President may acquire a hazardous substance easement by purchase or other agreement, by condemnation, or by any other means permitted by law. Compensation for such easement shall be at fair market value, or for other consideration as agreed to by the parties, for the interest acquired. The direct cost of such easements, ensuring adequate public notice of such easements, and otherwise tracking and maintaining the protections afforded by the easements shall be considered response costs which are recoverable under this Act.

''(8) ASSIGNMENT OF EASEMENTS TO PARTIES OTHER THAN THE PRESIDENT.—

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

interest in real property to a State under subsection (j).

''(B) EFFECT OF ASSIGNMENT.—Any interest in property granted to a State or other governmental entity which restricts, limits, or controls the use of land, water, or other natural resources in order to prevent exposure to, reduce the likelihood of, or otherwise respond to, a release or threatened release of a hazardous substance, and which is expressly designated in writing as a hazardous substance easement within the meaning of this paragraph, shall create the same rights, have the same legal effect, and be enforceable in the same manner as a hazardous substance easement held by the President regardless of whether the interest in property is otherwise denominated as an easement, covenant, or any other form of property right.

''(9) PUBLIC NOTICE.—Not later than 180 days after the date of the enactment of this subsection, the President shall issue regulations regarding the procedures to be used for public notice of proposed property use restrictions. Such regulations shall ensure that before acquiring a hazardous substance

easement, and before recording any notice of such easement, the President will give notice and an opportunity to comment to the owner of the affected property, all other persons with recorded interests in the property, any lessees or other authorized occupants of the property known to the President, the State and any municipalities in which the property is located, any relevant community assistance group established under section 117, the affected community, and the general public.

''(10) TERMINATION OF EASEMENTS.—An easement acquired under this subsection shall remain in force until it expires by its terms or until the holder of the easement executes and records a termination and release in accordance with the terms of the easement and approved by the Administrator of the Environmental Protection Agency or the relevant assignee. Such termination shall be recorded in the same manner as the easement.

''(11) ENFORCEMENT.—

''(A) EFFECT OF VIOLATIONS.—Violation of any restriction, limitation, or control imposed under a hazardous substance easement shall have the same effect as failure to comply with an order issued under section 106 and relief

may be sought either in enforcement actions under section 106(b)(1), section 120(g), or section 127(e) or in citizens suits under section 310. No citizens suit under section 310 to enforce such a notice may be commenced if the holder of the easement has commenced and is diligently prosecuting an action in court to enforce the easement.

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

''(12) APPLICABILITY OF OTHER PROVISIONS.—Holding a hazardous substance easement shall not

subject either the holder thereof or the owner of the affected property to liability under section 107. Any such easement acquired by the President shall not be subject to the requirements of subsection (j) or section 120(h).''.

SEC. 103. OBJECTIVE RISK ASSESSMENT STANDARDS.

Title I (42 U.S.C. 9621 et seq.) is amended by adding the following new section at the end thereof:

''SEC. 127. OBJECTIVE RISK ASSESSMENT PRINCIPLES, GUIDELINES, AND REVIEWS.

''Risk assessments and characterizations conducted under this Act shall—

''(1) provide scientifically objective, informative, and understandable assessments, estimates, and characterizations which neither minimize nor exaggerate the nature and magnitude of current or potential future risks to human health and the environment;

''(2) distinguish scientific findings from other considerations; and

''(3) be based on the best, relevant, and current scientific and technical information, including available or reasonably obtainable site-specific and all other relevant information made available to the President.''.

SEC. 104. HAZARD RANKING SYSTEM.

Section 105(c) (42 U.S.C. 9605(c)) is amended by inserting after paragraph (4) the following new paragraphs:

''(5) RISK PRIORITIZATION.—In setting priorities under subsection (a)(8), the President shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or demonstrated adverse health effects as identified in a health assessment conducted by the Agency for Toxic Substances and Disease Registry or are reasonably anticipated based on currently known facts.

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

SEC. 105. REMOVAL ACTIONS.

Section 104(c)(1) (42 U.S.C. 9604(c)(1)) is amended—

(1) by striking ''consistent with the remedial action to be taken'' and inserting ''not inconsistent with any remedial action that has been selected or is anticipated at the time of the removal action,'';

(2) by striking ''$2,000,000'' and inserting ''$3,000,000''; and

(3) by striking ''12 months'' and inserting ''two years''.

SEC. 106. CONSISTENT APPLICATION AMONG REGIONAL OFFICES.

Section 115 (42 U.S.C. 9615) is amended—

(1) by striking ''The President'' and inserting ''(a) PRESIDENTIAL RULEMAKING AND DELEGATION AUTHORITY.—The President''; and

(2) by inserting at the end thereof the following new subsection:

''(b) CONSISTENT APPLICATION AMONG REGIONAL OFFICES.—Each Regional Administrator should implement, execute, and enforce this Act and regulations, guidance, and policies established in accordance with this Act by (1) the President (or by the Administrator pursuant to a delegation from the President), or (2) the Administrator (or by the Deputy Administrator or an Assistant Administrator pursuant to a delegation from the Administrator).''.

SEC. 107. EFFECTIVE DATE AND TRANSITION RULES.

(a) EFFECTIVE DATE.—The amendments made by this title shall apply to any final remedial action selected under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 for which the Record of Decision (hereinafter in this section referred to as the

''ROD'') was signed, or the consent decree was lodged, after October 28, 1997.

(b) REMEDY UPDATES.—The Environmental Protection Agency shall maintain a process to update remedies for which design, construction, or operation and maintenance activities are ongoing as of the date of the enactment of this Act in order to bring past decisions into line with the current state of knowledge with respect to remediation science, technology and engineering, best available facility data, and most recent Environmental Protection Agency policy and guidance. In doing so, the Environmental Protection Agency shall improve the cost-effectiveness of site remediation while ensuring reliable short- and long-term protection of human health and the environment.

TITLE II—LIABILITY AND ALLOCATION

SEC. 201. LIMITATIONS TO LIABILITY FOR RESPONSE COSTS.

(a) LIMITATIONS ON LIABILITY.—Section 107(a) (42 U.S.C. 9607(a)) is amended as follows:

(1) In paragraph (1), by striking ''and'' and inserting ''or''.

(2) In paragraph (3), by striking ''person,'' and inserting ''person or''.

(3) In paragraph (4)(B)—

(A) by striking ''other'' both places it appears; and

(B) by inserting '', other than the United States, a State, or an Indian tribe,'' before the phrase ''consistent with the national contingency plan''.

(4) In paragraph (4), by striking ''by such person,'' and all that follows through ''shall be liable for—'' and inserting in lieu thereof the following: ''by such person—

from which there is a release, or a threatened release, that causes the incurrence of response costs, of a hazardous substance, shall be liable for—''.

(5) By designating the text beginning with ''The amounts recoverable'' and ending with ''this subsection commences.'' as paragraph (5) and aligning the margin of such text with paragraph (4).

(6) By adding the following new paragraphs after paragraph (5):

''(6) LIABILITY EXEMPTIONS.—Notwithstanding paragraphs (1) through (4) of this subsection, a person who does not impede the performance of a response action or natural resource restoration at a

facility listed on the National Priorities List shall not be liable:

"(A) SMALL BUSINESS EXEMPTIONS.—

"(i) IN GENERAL.—With respect to response costs incurred after October 28, 1997, for activity prior to such date, to the extent liability at such facility is based solely on paragraph (3) or (4) of this subsection and the person is a business that, during the taxable year preceding the date of transmittal of notification that the business is a potentially responsible party, had—

"(I) full- and part-time employees whose combined time was equivalent to 30 or fewer full-time employees or for that taxable year reported $3,000,000 or less in annual gross revenues; or

"(II) full- and part-time employees whose combined time was equivalent to 60 or fewer full-time employees or for that taxable year reported $5,000,000 or less in annual gross revenues, if the Administrator decides

in the Administrator's discretion to raise the threshold under subclause (I) on a site-specific and party-specific basis.

"(ii) EXEMPTION FOR MUNICIPAL SOLID WASTE.—With respect to costs and activity described in clause (i), to the extent liability at such facility is based solely on paragraph (3) or (4) of this subsection and the person arranged for disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment of only municipal solid waste or sewage sludge owned or possessed by such person and the person is a business that, during the taxable year preceding the date of transmittal of notification that the business is a potentially responsible party, had full- and part-time employees whose combined time was equivalent to 100 or fewer full-time employees.

"(iii) LIMITATION.—This subparagraph shall not apply to a person otherwise covered if the Administrator has determined that—

"(I) the hazardous substances generated or transported by the small business contributed or could contribute significantly to the response costs at the facility; or

"(II) the small business has failed to substantially comply with information requests or administrative subpoenas issued by the United States.

"(iv) EFFECT ON LIABILITY.—This subparagraph shall have no effect on the liability of any other person.

"(B) DE MICROMIS EXEMPTION.—With respect to response costs incurred after October 28, 1997, for activity prior to such date, to the extent liability at such facility is based solely on paragraph (3) or (4) of this subsection, and the person can demonstrate that it arranged for disposal or treatment, or transport for disposal or treatment or accepted for transport for disposal or treatment, 110 gallons or less of liquid materials containing hazardous substances or pollutants or contaminants or less, 200 pounds or less of solid materials containing hazardous

substances or pollutants or contaminants, or such greater or lesser amount as the Administrator may determine by regulation, except where—

"(i) the Administrator has determined that such material contributed or could contribute significantly to the costs of response at the facility, or

"(ii) the person has failed to substantially comply with information requests or administrative subpoenas by the United States.

"(C) BONA FIDE PROSPECTIVE PURCHASER EXEMPTION.—To the extent liability at such facility is based solely on paragraph (1) of this subsection for a release or threat of release from the facility, and the person is a bona fide prospective purchaser of the facility. Not later than 18 months after the date of the enactment of the Superfund Cleanup Acceleration and Liability Equity Act, the Administrator shall issue guidelines explaining criteria by which a person may qualify as a bona fide prospective purchaser. Such guidelines shall be made readily available to the public.

''(D) INHERITANCE OR BEQUEST EXEMPTION.—To the extent liability at such facility is based solely on the person's status as owner under paragraph (1) for a release or threat of release from the facility, and the person acquired the facility by inheritance or bequest if the person—

''(i) acquired the real property on which the facility concerned is located after disposal or placement of the hazardous substance took place;

''(ii) did not cause or contribute to the release or threat of release; and

''(iii) exercised due care with respect to the hazardous substance concerned, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances.

''(E) EXEMPTION FOR OWNERSHIP OF RIGHTS-OF-WAY OR GRANTING OF BUSINESS LICENSES.—To the extent the liability of a Federal or State governmental entity or municipality at such facility is based solely on its—

"(i) ownership of a road, street, or other right of way or public transportation route (other than railroad rights of way and railroad property) over which hazardous substances are transported; or

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

"(F) EXEMPTION FOR RESPONSES TO NATURAL DISASTERS.—To the extent the liability of a department, agency, or instrumentality of the United States at such facility is based on actions of such department, agency, or instrumentality taken in response to a natural disaster pursuant to the Act of August 18, 1941 (33 U.S.C. 701n) or The Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 and following).

"(7) LIMITATION RELATING TO MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—

"(1) IN GENERAL.—Notwithstanding paragraphs (1) through (4), with respect to response costs incurred after October 28, 1997, for activity prior to such date, a person shall not be liable for more than 10 percent of total response costs at a facility listed on the Na-

tional Priorities List, in aggregate, to the extent the person is liable solely under paragraph (3) or (4) of this subsection, and the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge. In any case in which more than one person at a facility comes within the coverage of this paragraph, the 10 percent limitation on liability shall apply to the aggregate liability of all such persons. Such limitation on liability shall apply only if either the acts or omissions giving rise to liability occurred before October 28, 1997.

''(2) LIMITATIONS.—

''(A) DEFINITIONS.—In this paragraph:

''(i) LARGE MUNICIPALITY.—The term 'large municipality' means a municipality with a population of 100,000 or more according to the 1990 census.

''(ii) SMALL MUNICIPALITY.—The term 'small municipality' means a municipality with a population of less than 100,000 according to the 1990 census.

"(B) AGGREGATE LIABILITY OF SMALL MUNICIPALITIES.—With respect to a facility that received municipal solid waste (in this paragraph referred to as a codisposal landfill), that was proposed for listing on the National Priorities List before October 28, 1997, that is owned or operated only by small municipalities, and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of all small municipalities for response costs incurred on or after October 28, 1997, shall be the lesser of—

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

"(ii) the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997);.

"(C) AGGREGATE LIABILITY OF LARGE MUNICIPALITIES.—With respect to a codisposal

landfill that was proposed for listing on the National Priorities List before October 28, 1997, that is owned or operated only by large municipalities, and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of all large municipalities for response costs incurred on or after October 28, 1997, shall be the lesser of—

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

"(ii) the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility (as if the facility had continued to accept municipal solid waste through January 1, 1997).

"(8) LIMITATION RELATING TO CERTAIN TAX-EXEMPT ORGANIZATIONS.—(A) Notwithstanding paragraphs (1) through (4) of this subsection, with respect to response costs incurred after October 28, 1997, the liability of a person who does not impede

the performance of response actions or natural resource restoration with respect to a release or threatened release from a vessel or facility listed on the National Priorities List shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the person, to the extent such liability is based solely on the person's status under paragraph (1) as owner of the vessel or facility if the person—

''(i) holding title, either outright or in trust, to the vessel or facility is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and holds such title as a result of a charitable donation that qualifies under sections 170, 2055, or 2522 of such Code;

''(ii) exercised due care with respect to the hazardous substance concerned, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances;

"(iii) did not cause or contribute to the release or threat of release; and

"(iv) acquired the real property on which the facility concerned is located, or acquired the vessel, after disposal or placement of the hazardous substance took place.

"(B) At any facility to which the provisions of this paragraph apply, the owner or operator of the vessel or facility within the meaning of paragraph (1) shall include any person who owned or operated the facility immediately prior to the person described in subparagraph (A).

"(9) CONTIGUOUS PROPERTY.—A person who owns or operates real property that is contiguous to or otherwise situated with respect to real property on which there has been a release of a hazardous substance and that is or may be contaminated by the release shall not be considered an owner or operator of a facility under paragraph (1)(A) solely by reason of such contamination if such person establishes by a preponderance of the evidence that—

"(A) such person exercised due care with respect to the hazardous substance, taking into consideration the characteristics of such haz-

ardous substance, in light of all relevant facts and circumstances;

"(B) such person took precautions against foreseeable acts or omissions that resulted in the release and the consequences that could foreseeably result from such acts or omissions;

"(C) such person did not cause or contribute to the release; and

"(D) such person provides full cooperation, assistance, and facility access to persons authorized to conduct response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

The President may issue assurances of no enforcement action under this Act to such person and may grant such person protection against cost recovery and contribution actions pursuant to section 113(f).".

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

(1) IN GENERAL.—Section 107 is amended by inserting after subsection (m) the following new subsection:

''(n) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—(1) In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (a)(6)(C), and the conditions described in paragraph (2) are met, the United States shall have a lien upon such facility for such unrecovered costs. Such lien—

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

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

''(C) shall be subject to the requirements for notice and validity established in paragraph (3) of subsection (l); and

''(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.

''(2) The conditions referred to in paragraph (1) are the following:

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

''(B) Such response action increases the fair market value of the facility above the fair market value of the facility that existed within six months before the response action was taken.''.

''(3) No lien under this section shall arise (A) with respect to property for which the property owner preceding the first bona fide prospective purchaser is not a liable party or has resolved its liability under this Act, or (B) where an audit or inquiry gives the bona fide prospective purchaser no knowledge or reason to know of the release of hazardous substances.''.

(2) EFFECTIVE DATE AND TRANSITION RULES.—The amendments made by this subsection—

(A) shall take effect with respect to an action under section 106, 107, or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606, 9607, and 9613) that becomes final on or after October 28, 1997; and

(B) shall not apply to an action brought by any person under section 107 or 113 of that Act for costs incurred by the person before October 28, 1997.

(3) ILLEGAL ACTIVITIES.—Paragraphs (6), (7), (8), and (9) of section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as added by this section, shall not apply to any person whose liability for response costs is based on any act, omission, or status that is determined by a court or administrative body of competent jurisdiction, within the applicable statute of limitations, to have been in violation of any Federal or State law pertaining to the treatment, storage, disposal, or handling of hazardous substances if the violation pertains to a hazardous substance, the release or threat of release of which caused the incurrence of response costs at the vessel or facility concerned.

SEC. 202. EXPEDITED FINAL SETTLEMENTS.

Section 122 is amended as follows:

(1) Subsection (g) is amended by striking ''(g)'' and all that follows through the end of subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

''(g) EXPEDITED FINAL SETTLEMENT.—

''(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—(A) The President shall, as promptly as possible, offer to reach a final administrative or judi-

cial settlement with a potentially responsible party who meets one or more of the following conditions for eligibility for an expedited settlement:

''(i) The potentially responsible party's individual contribution of hazardous substances at the facility is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if both of the following conditions are met:

''(I) The potentially responsible party's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the facility; such individual contribution is presumed to be minimal if it is 1 percent or less of the total volumetric contribution at the facility.

''(II) The potentially responsible party's hazardous substances do not present toxic or other hazardous effects that would result in an allocable share of greater than 1 percent.''.

(2) Subsection (g) is further amended—

(A) by redesignating clauses (i), (ii), and (iii) of subparagraph (B) of paragraph (1) as subclauses (I), (II), and (III), respectively;

(B) by redesignating subparagraph (B) of paragraph (1) as clause (ii);

(C) in the text of clause (ii) (as so redesignated), by striking ''subparagraph (B)'' and inserting ''clause (ii)''; and

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

''(iii) The potentially responsible party is a business that, during the taxable year preceding the date of transmittal of notification that the business is a potentially responsible party, had full- and part-time employees whose combined time was equivalent to 30 or fewer full-time employees or for that taxable year reported $3,000,000 or less in annual gross revenues.

''(B) The President may offer to reach a final administrative or judicial settlement with a potentially responsible party whose individual contribution of hazardous substances at the facility is small. The contribution of hazardous substance to a facility by a potentially responsible party is small if both of the following conditions are met:

''(i) The potentially responsible party's volumetric contribution of materials containing hazardous substances is small in comparison to the total volumetric contributions of materials containing hazardous substances at the facility; such individual contribution is presumed to be small if it is more than 1 percent but less than 5 percent of the total volumetric contribution at the facility, unless the Administrator identifies a different threshold based on site-specific factors.

''(ii) The potentially responsible party's hazardous substances do not present toxic or other hazardous effects that would result in an allocable share of more than 1 percent and less than 5 percent.''.

(3) Paragraph (2) of subsection (g) is amended to read as follows:

''(2) BASIS OF DETERMINATION.—Any person who enters into a settlement pursuant to this subsection shall provide any information requested by the President or by an allocator in accordance with section 128(i)(1) or section 104(e) of this Act. The determination of whether a person is eligible for an expedited settlement shall be made on the basis of

all information available to the President at the time the determination is made. Neither the President's determination as to the eligibility of a party that is not a department, agency, or instrumentality of the United States for settlement pursuant to this section, nor the terms of the final settlement with such a party, shall be subject to judicial review. If the President determines that a party is not eligible for a settlement pursuant to this section, the President shall explain the basis for that determination in writing to any person who requests such a settlement.''.

SEC. 203. ALLOCATION PROCEDURES.

Title I (42 U.S.C. 9621 et seq.) is further amended by adding at the end the following new section:

''SEC. 128. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

''(a) ALLOCATIONS OF LIABILITY.—

''(1) DEFINITIONS.—In this section:

''(A) ALLOCATED SHARE.—The term 'allocated share' means the percentage of liability assigned to a potentially responsible party by the allocator in an allocation report.

''(B) ALLOCATION PARTY.—(i) The term 'allocation party' means a party, named on a

list of parties issued by an allocator, that will be subject to the allocation process under this section.

"(ii) Any settling party (including a party eligible for an expedited settlement pursuant to section 122(g)) or any party eligible for an exemption or limitation pursuant to section 107(a)(6) shall be considered an allocation party only for purposes of responding to requests for information from the allocator and receiving an allocated share in order to determine the appropriate orphan share pursuant to subsection (h)(4).

"(C) ALLOCATOR.—The term 'allocator' means an allocator retained to conduct an allocation for a facility under this section.

"(D) MANDATORY ALLOCATION FACILITY.—The term 'mandatory allocation facility' means—

"(i) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after October 28, 1997, and at which there are 2 or more potentially responsible persons (including 1 or more

persons that are qualified for an exemption under this Act, if at least 1 potentially responsible person is viable and not entitled to such an exemption; and

''(ii) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after October 28, 1997, and with respect to which 1 or more potentially responsible parties (other that a department, agency, or instrumentality of the United States) are liable or potentially liable if at least 1 potentially liable party is viable and not entitled to an exemption under this Act.

''(E) ORPHAN SHARE.—The term 'orphan share' means the total of the allocated shares determined by the allocator under subsection (h)(4).

''(2) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties (including 1 or more potentially responsible parties that are qualified for an exemption under this Act), the Administrator shall conduct the allocation process under this section.

''(3) REQUESTED ALLOCATIONS.—For a facility (other than a mandatory allocation facility) involving 2 or more potentially responsible parties, the Administrator may conduct the allocation process under this section if the allocation is requested in writing by a potentially responsible party that has—

''(A) incurred response costs with respect to a response action; or

''(B) resolved any liability to the United States with respect to a response action in order to assist in allocating shares among potentially responsible parties.

''(4) ORPHAN SHARE.—An allocation performed at a vessel or facility identified under paragraph (3) shall not require payment of an orphan share under subsection (h).

''(5) LIMITATION OF CERTAIN FACILITIES.—For any response costs within the scope of allocation as defined in paragraph (6) which are subject to a judicial or administrative consent decree or unilateral administrative order under section 106 which has been issued, signed, lodged, or entered as of October 28, 1997, the following procedures shall apply:

''(A) Any person or group of persons subject to the consent decree or unilateral adminis-

trative order shall select, with the approval of the Administrator, a neutral third party, who shall make the determination in subparagraph (B).

''(B) Within 14 days after the selection of the neutral third party, the person or group of persons shall submit a written presentation which shows that there is at least a $1,000,000 orphan share of the costs yet to be incurred with regard to the response action which is subject to the consent decree or unilateral administrative order.

''(C) Within 21 days after the receipt of the written submission, the neutral third party shall make a determination as to whether there is a reasonable belief, based on the information submitted, that the requirement of subparagraph (B) has been met.

''(D) If the requirement of subparagraph (B) is met, an allocation shall be performed for the sole purpose of determining the appropriate orphan share under subsection (h)(4).

''(E) The determination by the neutral third party is not reviewable and the cost of

this process shall be paid by the person or group of persons seeking the allocation.

''(F) Nothing in this paragraph shall effect or limit the obligations of any persons to implement any response action as required by the consent decree or unilateral administrative order.

''(6) SCOPE OF ALLOCATIONS.—An allocation under this section shall apply to—

''(A) response costs incurred after October 28, 1997, with respect to a mandatory allocation facility; and

''(B) response costs incurred at a facility that is the subject of a requested allocation under paragraph (3).

''(b) MORATORIUM ON COMMENCEMENT OR CONTINUATION OF SUITS.—

''(1) MORATORIUM.—No person may assert any claim for response costs pursuant to section 107 or 113 of this Act or commence any civil action seeking recovery of any response costs in connection with a response action for which an allocation is required under subsection (a)(1) or (2), or for which the Administrator has initiated an allocation under subsection (a)(3), until 90 days after issuance of the

allocator's report under subsection (h) or (m), whichever is later.

"(2) STAY OF EXISTING ACTIONS.—If a claim for response costs pursuant to section 107 or 113 of this Act or an action seeking recovery of response costs in connection with a response action for which an allocation is required under subsection (a)(1) or (a)(2), or for which the Administrator has initiated an allocation under subsection (a)(3), is pending—

"(A) upon the date of enactment of the Superfund Cleanup Acceleration and Liability Equity Act, or

"(B) upon initiation of an allocation,

the action or claim shall be stayed until 90 days after the issuance of the allocator's report under subsection (h) or (m), unless the court determines that a stay will result in manifest injustice.

"(3) STATUTE OF LIMITATIONS.—Any applicable limitations period with respect to a cause of action subject to paragraph (1) shall be tolled from the earlier of the following until 180 days after the issuance of the allocator's report under subsection (h) or (m):

"(A) The date of listing of the facility on the National Priorities List.

''(B) The commencement of the allocation process pursuant to this section.

''(c) COMMENCEMENT OF ALLOCATION.—

''(1) RESPONSIBLE PARTY SEARCH.—At all facilities subject to this section, the Administrator shall, as soon as practicable, but not later than 60 days after the commencement of the remedial investigation, initiate a thorough investigation and search for all potentially responsible parties, using the authorities under section 104. Any person may submit information to the Administrator concerning any potentially responsible party at the facility, and the Administrator shall consider such information in carrying out the responsible party search.

''(2) NOTIFICATION OF DE MINIMIS PARTIES.—As soon as practicable after receipt of sufficient information, but not more than 12 months after the commencement of the remedial investigation, the Administrator shall take each of the following actions:

''(A) The Administrator shall notify any potentially responsible party who the Administrator determines is eligible for an expedited final settlement in accordance with section 122(g)(1)(A) of its eligibility, based on informa-

tion available to the Administrator at the time the determination is made. Any such information that is not confidential shall, to the extent practicable, be made available by the Administrator to the party at the time of the settlement offer.

''(B) The Administrator shall submit a written settlement offer to each party notified under subparagraph (A) no later than 60 days after such notification. The Administrator shall, at the same time, make available to such party upon request any nonconfidential information related to the party's settlement upon which the Administrator based the settlement offer. If the settlement offer is based in whole or in part on confidential information, the Administrator shall so advise such party.

''(3) PRELIMINARY NOTICE TO OTHER PARTIES.—As soon as practicable after receipt of sufficient information, but not later than 18 months after commencement of the remedial investigation, the Administrator shall—

''(A) notify any party not previously notified under paragraph (2) who the Administrator determines is eligible for an expedited

final settlement in accordance with section 122(g)(1)(A) of its eligibility, based on information available to the Administrator at the time the determination is made;

"(B) issue a list of all potentially responsible parties preliminarily identified by the Administrator to all such parties;

"(C) notify the public, in accordance with section 117(d), of the list of potentially responsible parties identified pursuant to subparagraphs (A) and (B) by the Administrator; and

"(D) make available all responses to the Administrator's information requests, as well as other relevant information concerning the facility and potentially responsible parties, to the notified parties, to the extent it is available to the Administrator.

The Administrator shall not make available any privileged or confidential information, except as otherwise authorized by law. The Administrator shall take the actions specified in this paragraph within 9 months after the date of enactment of this section for all facilities eligible for allocation under subsection (a)(1) or (a)(2) for which the responsible party search required by a paragraph (1) was sub-

stantially complete prior to the date of the enactment of this section.

''(4) STATUS OF PARTIES.—At the time of proposing the list of potentially responsible parties under paragraph (3), the Administrator shall—

''(A) identify parties that are eligible for expedited settlement pursuant to section 122(g);

''(B) identify parties who are not eligible for such expedited settlement; or

''(C) determine that there is insufficient information to ascertain whether or not the party is eligible for such expedited settlement.

''(5) NOMINATION OF PARTIES.—(A) For 60 days after information has been made available pursuant to paragraph (3), the parties identified by the Administrator and members of the affected community shall have the opportunity to identify and nominate additional potentially responsible parties or otherwise provide information relevant to the facility or such potentially responsible parties. This period may be extended by the Administrator for an additional 30 days upon request of any person.

''(B) Any proposal for the addition of any potentially responsible party with respect to a facility

shall be supported by a statement setting forth the basis in law and fact for the nominating party's belief that the additional nominated party is potentially liable under this Act and by full disclosure to the Administrator and to the nominated party at the same time of all available information concerning that party's liability under this Act and that party's contribution of hazardous substances to the facility. The nominated party may submit to the Administrator information relating to its inclusion as an additional potentially responsible party within 45 days of the receipt of such information.

''(6) LIST OF ALLOCATION PARTIES.—(A) Within 60 days after the end of the period specified in paragraph (5)(A) for the proposal of additional parties, the Administrator shall—

''(i) issue a list of parties subject to the allocation process (hereinafter referred to in this section as the 'allocation parties');

''(ii) identify in writing, as to each of the proposed additional parties, which parties the Administrator has determined, in the Administrator's sole discretion—

''(I) to be eligible for expedited settlement pursuant to section 122(g),

"(II) not to be eligible for such expedited settlement, and

"(III) for whom insufficient information exists to determine whether or not the party is eligible for such expedited settlement; and

"(iii) identify (in writing supported by brief explanation) those parties as to which the Administrator has determined, in the Administrator's sole discretion, that there is an inadequate basis in law or fact to determine that the party is liable under this Act.

The Administrator shall consider, when making determinations under this subparagraph, all available information provided pursuant to paragraph (5)(B). For each party identified under clause (iii), the Administrator shall further identify whether that party, if liable, would be eligible for an expedited settlement.

"(B) At the time of issuance of the list of parties provided for in subparagraph (A), the Administrator shall provide the potentially responsible parties who received notice under this paragraph with a list of neutral parties who are not employees of the United States and who the Administrator deter-

mines, in the Administrator's sole discretion, are qualified to perform an allocation at the facility.

''(C) Any party the Administrator identifies as potentially liable and eligible for expedited settlement pursuant to this section, shall only be required to respond to information requests from the allocator and shall only be assigned a share in the allocation to the extent required to determine the orphan share pursuant to subsection (h), unless that party fails to reach an agreement on settlement terms with the President within 30 days after the offer.

''(D) The Administrator's determinations for purposes of this subsection shall not be subject to judicial review, nor shall any determination or explanation provided for purposes of the allocation be admissible for any purpose in an action commenced by the United States against the party that is the subject of the determination or any other party.

''(E) The allocator may assign a zero share to any party the allocator determines should receive such a share in consideration of the allocation factors including the Administrator's determinations under subparagraph (C).

''(F) If a party is included in the allocation pursuant to the nomination of a potentially responsible party pursuant to subsection (c)(5), but assigned a zero share by the allocator, that party's costs of participating in the allocation (including reasonable attorneys' fees) shall be borne by the party who proposed the addition of the party to the allocation.

''(d) DE MINIMIS SETTLEMENT OFFER.—(1) Within 30 days after the final list of parties is issued pursuant to paragraph (6) of subsection (c), the Administrator shall submit a written settlement offer to any party identified as a potentially responsible party pursuant to this section who the Administrator has determined to be eligible for an expedited final settlement in accordance with section 122(g)(1)(A), and who has not entered into a settlement with the United States regarding the matters being addressed by the allocation. The Administrator shall, at the same time, make available to such party upon request any nonconfidential information related to the party's settlement.

''(2) The President shall not include any premia pursuant to section 122(g) in a settlement offer made pursuant to paragraph (1) more than 60 days after the date the offer is required to be made pursuant to paragraph

(1) to a party that is a business which had full- and part-time employees whose combined time was equivalent to 100 or fewer employees during the taxable year preceding the date that the party received notification that the party was eligible for an expedited settlement.

''(e) SELECTION OF ALLOCATOR.—

''(1) PROPOSAL OF ADDITIONAL CANDIDATES.—Any party identified by the Administrator under subsection (c) may propose any person whom such party deems qualified for selection as an allocator in addition to those proposed from the list provided under subsection (c)(6)(B).

''(2) SELECTION OF ALLOCATOR BY ALLOCATION PARTIES.—The allocation parties shall select an allocator from the list of allocators proposed by the Administrator or under paragraph (1) by the following voting method with each allocation party having a single vote:

''(A) Each allocation party, with the Administrator voting for the identified but insolvent or defunct parties, shall numerically rank the individuals on the final list of proposed allocators, with a ranking of 1 indicating first preference, and forward its vote to the Administrator within 30 days of the issuance of the

final list of allocators pursuant to subsection (c)(6)(B).

''(B) The proposed allocator who receives the lowest combined numerical score, taking into account all votes submitted to the Administrator pursuant to clause (i), and who agrees to serve as allocator, shall be the allocator.

''(3) SELECTION OF ALLOCATOR BY EPA.—If the allocation parties do not select an allocator pursuant to this subsection within 30 days after receipt of the list provided under paragraph (2), the Administrator shall select the allocator, except that if the Administrator rejects 4 or more allocators selected by the allocation parties, the Administrator shall initiate a new allocator selection process under this section.

''(f) CONTRACT.—Following selection of the allocator, the Administrator shall enter into a contract with the selected allocator for the provision of allocation services for the facility concerned, and immediately make available all responses to information requests, as well as other relevant information concerning the facility and potentially responsible parties, to the allocator. The Administrator has the authority to use the procedures set forth in section 109(e) to obtain the services of a neutral professional for

use in conducting allocation procedures under this section, whether or not the neutral professional actually conducts such allocation procedures.

''(g) POTENTIALLY RESPONSIBLE PARTY SETTLEMENT.—At any time prior to the issuance of an allocation report as described in subsection (h), any group of potentially responsible parties may submit to the allocator a private allocation. If such private allocation meets all of the following criteria, the allocator shall promptly adopt it as the allocation report:

''(1) The private allocation is a binding allocation of 95 percent of the future recoverable response costs at issue under subsection (a).

''(2) The private allocation does not allocate any share of response costs to any person who is not a signatory to the proposed private allocation or, in the case of any orphan share, unless the United States (and, where applicable, the State) is a signatory to the proposed private allocation.

''(3) The signatories to the proposed private allocation waive their contribution rights with respect to the response costs subject to the allocation against all other potentially responsible parties at the facility.

''(h) ALLOCATION DETERMINATION.—

''(1) SETTLEMENT AND ALLOCATION REPORT.—Following issuance of the list of allocation parties pursuant to subsection (c)(6)(A)(i), the allocator shall initiate and conduct an allocation process that shall culminate in the issuance of a written report, with a nonbinding, equitable allocation of the percentage shares of responsibility of all allocation parties, including the orphan share, for response costs at the facility within the scope of the allocation, and provide such report to the allocation parties and the Administrator. The allocator shall provide the report to the allocation parties and the Administrator within 180 days of the issuance of the list of allocation parties pursuant to subsection (c)(6) or the date of the contract for allocation service pursuant to subsection (f), whichever is later. Upon request, for good cause shown, the Administrator may grant the allocator additional time to complete the allocation, not to exceed 90 days.

''(2) FACTORS IN THE ALLOCATION.—The allocator shall prepare a nonbinding, equitable allocation of percentage shares for the facility based on the following factors:

''(A) The amount of hazardous substances contributed by each allocation party.

"(B) The degree of toxicity of hazardous substances contributed by each allocation party.

"(C) The mobility of hazardous substances contributed by each allocation party.

"(D) The degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of the hazardous substance.

"(E) The degree of care exercised by each allocation party with respect to the hazardous substance, taking into account the characteristics of the hazardous substance.

"(F) The cooperation of each allocation party in contributing to the response action and in providing complete and timely information during the allocation process.

"(G) Such other factors that the Administrator determines are appropriate by published guidance. Any such guidance shall be consistent with this Act and shall be published only after notice and opportunity for public comment. An alleged failure of the allocator to consider 1 or more additional factors set forth in such guidance shall not be deemed unlawful conduct or

procedural error for purposes of subsection (l)(1)(B).

''(3) CONDUCT OF ALLOCATION PROCESS.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors specified in paragraph (2). Each party to the allocation shall be afforded an opportunity to be heard (either orally or in writing, at the allocator's discretion), and an opportunity to comment on a draft allocation report. The allocator shall not be required to respond to comments.

''(4) IDENTIFICATION OF ORPHAN SHARES.—

''(A) COMPONENTS OF ORPHAN SHARE.—The allocator may determine that a percentage share for the facility is specifically attributable to an orphan share. The orphan share shall consist only of the following:

''(i) Shares attributable to hazardous substances that the allocator determines, on the basis of information presented, to be specifically attributable to identified but insolvent or defunct allocation parties who are not affiliated with any viable allocation party.

''(ii) The difference between the aggregate shares that the allocator determines are attributable to an allocation party and the aggregate share actually paid by that party (other than a party entitled to the exemption in section 107(a)(6)(B)) if the liability of the party is eliminated or limited by any provision of this Act.

''(iii) The difference between the aggregate share that the allocator determines, on the basis of information presented, to be specifically attributable to allocation parties who settled with the United States before completion of the allocation and the share actually assumed by those parties in any settlements with the United States.

''(B) UNATTRIBUTABLE SHARES.—Shares attributable to hazardous substances that the allocator cannot attribute to any identified party shall be distributed among the allocation parties, including the orphan share, in accordance with the allocated share assigned to each.

''(5) COSTS INCURRED BEFORE OCTOBER 28, 1997.—An allocated share received by a person shall, at the person's discretion, be binding on any action or claim for response costs incurred before October 28, 1997, under section 113 if such action or claim has not become final as of October 28, 1997.

''(i) ANSWERS AND CERTIFICATIONS TO ALLOCATOR'S INFORMATION REQUESTS.—

''(1) SUBPOENAS AND INFORMATION REQUESTS.—Where necessary to assist in determining the allocation of shares, the allocator may request information or documents from any allocation party in accordance with paragraphs (2) or (5) of section 104(e), and require by subpoena the attendance of persons or the production of documents, or other information in accordance with section 104(e)(7). Any allocation party to whom a request is directed shall include in the response a certification by a responsible representative or authorized representative that satisfies the requirement of section 104(e)(3). The allocator may also request the Administrator to utilize the authorities of paragraph (2) and to exercise any information-gathering authority of the Administrator under this Act.

''(2) POWERS OF THE ALLOCATOR.—In addition to the information-gathering authority set forth in paragraph (1), the allocator shall have the authority to schedule meetings and require the attendance of allocation parties at such meetings; to require that allocation parties wishing to present similar legal or factual positions consolidate their presentations; to obtain or employ support services, including secretarial and clerical services, computer support services, and legal and investigative services; and to take any other actions necessary to conduct a fair, efficient, and impartial allocation process.

''(j) CIVIL AND CRIMINAL PENALTIES.—

''(1) CIVIL PENALTIES.—Where the allocator issues an administrative subpoena or information request pursuant to subsection (i), a party who unreasonably fails to comply with the subpoena or request shall be subject to a civil penalty not to exceed $25,000 for each day of noncompliance.

''(2) ENFORCEMENT.—The allocator may seek enforcement of an administrative subpoena or information request pursuant to subsection (i)(1), and shall seek such enforcement by requesting that the Attorney General commence an action to enforce the subpoena or request. The Attorney General, within

30 days after receiving such request from the allocator, shall—

"(A) notify the allocator that the Attorney General will commence an action to enforce the subpoena or information request;

"(B) notify the allocator that the Attorney General will not seek enforcement of the subpoena or request because the subpoena or request is barred by law or would result in annoyance, embarrassment, oppression, or undue burden or expense to the party to whom it was issued; or

"(C) notify the allocator that the Attorney General has insufficient information on which to determine whether an enforcement action is appropriate.

"(3) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days of a request for enforcement of a subpoena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.

"(4) PENALTY.—If the Attorney General or allocator prevails in an action to enforce an allocator's

subpoena or information request, the party who failed to comply shall be subject to a sanction that may include civil penalties as provided in paragraph (1). The court shall require such party to pay the reasonable expenses, including attorney's fees, caused by the failure to comply, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

''(5) CRIMINAL.—Any person who knowingly and willfully makes any false material statement or representation in the response to an allocator's information request or subpoena issued pursuant to subsection (i) shall be deemed to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

''(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

''(1) DOCUMENT REPOSITORY.—The allocator shall establish and maintain a document repository containing copies of all documents and information—

''(A) provided by the Administrator pursuant to this section,

''(B) provided or generated by the allocation parties, or

''(C) generated by the allocator during the allocation.

The documents and information in the document repository shall be available only to the parties to the allocation process for review and copying at their own expense, subject to the confidentiality provisions of paragraph (2). The Administrator shall provide to the allocator all information obtained under section 104(e), including information entitled to protection under section 1905 of title 18, United States Code, or exempt from disclosure pursuant to section 552(a) of title 5, United States Code. An allocation party shall not assert any privilege as a basis for withholding any information from the allocator.

''(2) CONFIDENTIALITY.—All documents and materials submitted to the allocator or placed in the document repository, together with the record of any information generated or obtained during the allocation process, shall be confidential. The allocator, each allocation party, the Administrator, and the Attorney General shall maintain such documents and materials, together with the record of any information generated or obtained during the allocation, as

confidential and are prohibited from using any such material in any other matter or proceeding, and shall not be subject to disclosure under section 552 of title 5, United States Code. Such material shall not be discoverable or admissible in any other Federal, State, or local judicial or administrative proceedings, except—

"(A) a new allocation pursuant to subsection (m) or (n) for the same remedial action, or

"(B) an initial allocation for a different remedial action at the same facility.

Nothing in this section shall be construed to authorize any person, including the allocator, to withhold any documents or information from Congress, or any duly authorized Committee thereof, or limit in any manner the right of Congress, or any duly authorized Committee thereof, to obtain such documents or information. Any person disclosing such documents or information to Congress shall notify the person who produced such documents or information of the fact of such disclosure pursuant to paragraph (5).

"(3) DISCOVERABILITY AND ADMISSIBILITY.—Notwithstanding the foregoing, if the original of any document or material submitted to the allocator or

placed in the document repository was, in the hands of the party which provided it, otherwise discoverable or admissible, then such original document, if subsequently sought from such party, shall remain so. If a fact generated or obtained during the allocation was, in the hands of a witness, otherwise discoverable or admissible, then such fact, if subsequently sought from such other party, shall remain so.

''(4) NO WAIVER OF PRIVILEGE.—The submission of, documents, or information pursuant to the allocation process shall not be deemed to be a waiver of any privilege, applicable to such documents or information under any Federal or State law or rule of discovery or evidence.

''(5) PROCEDURE WHEN DISCOVERY IS SOUGHT.—Any person, including the United States and any Federal, State, or local agency, department or instrumentality, receiving any request for a statement, document, or material submitted, or for the record of any allocation proceeding, shall promptly notify the person who originally submitted such item and, except in the case of a request from the Congress or a duly authorized committee thereof, shall provide such submitting person the opportunity to assert and defend the confidentiality of such item.

No person shall release or provide a copy of the item to any person not a party to such allocation, other than the Congress or a duly authorized committee thereof, except as may be required by court order.

''(6) CIVIL PENALTY FOR VIOLATION OF CONFIDENTIALITY.—Any person who fails to maintain the confidentiality of any statements, documents or information generated or obtained during an allocation proceeding, or who releases any such information in violation of this section shall be subject to civil penalties of up to $25,000 per violation. Such penalties may be sought in a civil action initiated by the Attorney General on behalf of the United States, or any allocation party adversely affected by the failure to maintain confidentiality.

''(l) REJECTION OF ALLOCATION REPORT.—

''(1) REJECTION.—The Administrator and the Attorney General may jointly reject a report issued by an allocator only if the Administrator and the Attorney General jointly publish, not later than 180 days after the Administrator receives the report, a written determination that—

''(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reason-

able basis for the shares assigned to the parties; or

''(B) the allocation process was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

''(2) FINALITY.—A report issued by an allocator may not be rejected after the date that is 180 days after the date on which the United States accepts a settlement offer (excluding an expedited settlement under section 122) based on the allocation.

''(3) JUDICIAL REVIEW.—Any determination by the Administrator or the Attorney General under this subsection shall not be subject to judicial review unless 2 successive allocation reports relating to the same response action are rejected, in which case any allocation party may obtain judicial review of the second rejection in a United States district court under subchapter II of chapter 5 of part I of title 5, United States Code.

''(4) DELEGATION.—The authority to make a determination under this subsection may not be delegated to any officer or employee below the level of an Assistant Administrator or Acting Assistant Administrator or an Assistant Attorney General or Act-

ing Assistant Attorney General with authority for implementing this Act.

''(m) SECOND AND SUBSEQUENT ALLOCATIONS.—

''(1) IN GENERAL.—If a report is rejected under subsection (l), the allocation parties shall select an allocator to perform, on an expedited basis, a new allocation based on the same record available to the previous allocator.

''(2) MORATORIUM AND TOLLING.—The moratorium and tolling provisions of subsection (c) shall be extended until the date that is 180 days after the date of the issuance of any second or subsequent allocation report under paragraph (1).

''(3) SAME ALLOCATOR.—The allocation parties may select the same allocator who performed 1 or more previous allocations at the facility, except that the Administrator may determine that an allocator whose previous report at the same facility has been rejected under subsection (l) is unqualified to serve.

''(n) SETTLEMENTS BASED ON ALLOCATIONS.—

''(1) DEFINITION.—In this subsection, the term 'all settlements' includes any orphan share allocated under subsection (h).

''(2) IN GENERAL.—Unless an allocation report is rejected under subsection (l), any allocation party

at a mandatory allocation facility (including an allocation party whose allocated share is funded partially or fully by orphan share funding under subsection (h)) shall be entitled to resolve the liability of the party to the United States for response actions subject to allocation if, not later than 90 days after the date of issuance of a report by the allocator, the party—

''(A) offers to settle with the United States based on the allocated share specified by the allocator; and

''(B) agrees to the other terms and conditions stated in this subsection.

''(3) SETTLEMENT PROVISIONS.—Settlements based on allocated shares shall include each of the following:

''(A) A waiver of contribution rights against all parties who are potentially responsible parties for the response costs which are subject to the allocation, as well as a waiver of any rights to challenge any settlement the President enters into with any other potentially responsible party.

''(B) Covenants not to sue, consistent with section 122(f), and provisions regarding per-

formance or adequate assurance of performance of response actions addressed in the settlement.

''(C) A premium determined on a site specific basis and subject to the limitations set forth in paragraph (4)(A), that compensates for the United States litigation risk with respect to potentially responsible parties who have not resolved their liability to the United States, except that—

''(i) no such premium shall apply if all parties settle or the settlement covers 100 percent of response costs; and

''(ii) part of the premium amount shall be reimbursed in accordance with paragraph (4)(B) if the United States recovers costs as described in that paragraph.

''(D) Contribution protection, consistent with section 113(f), regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

''(E) Provisions through which the settling parties shall receive reimbursement from the Fund for any response costs which are subject to the allocation incurred by such parties in excess of the aggregate of their allocated share and any premia required by the settlement. Such right to reimbursement shall not be contingent on the United States recovery of response costs from any responsible person not a party to any settlement with the United States.

''(4) PREMIUM PROVISIONS.—

''(A) PREMIUM LIMITATIONS.—(i) The premium authorized by paragraph (3)(C) for litigation risk shall not exceed the following:

''(I) Five percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for 80 percent or more of responsibility at the facility.

''(II) Ten percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 60 percent and less than 80 percent of responsibility at the facility.

"(III) Fifteen percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for more than 40 percent and less than 60 percent of responsibility at the facility.

"(IV) Twenty percent of the total costs assumed by a settling party, where settlements (and any orphan share identified by the allocator) account for 40 percent or less of responsibility at the facility.

"(ii) The Administrator shall have authority to promulgate regulations to modify the premia percentages established in this subparagraph. The Administrator may not propose a rule before the date 36 months after the enactment of this section, and no such rule may take effect before the date 48 months after the enactment of this section. Such rule must be based upon an administrative record establishing that such modification is necessary to reflect actual experience regarding the litigation risk faced by the United States in proceeding against nonsettling parties under this section.

"(B) PREMIUM REIMBURSEMENT.—(i) In a case in which an allocation party has entered into a settlement under this subsection and has paid a premium in accordance with the limitations in subparagraph (A), if the total amount of response costs recovered by the United States after the date of the settlement exceeds the total amount that settlements (and any orphan share identified by the allocator) accounted for in applying the limitations in subparagraph (A), then the United States shall reimburse part of the premium paid by the allocation party in accordance with clause (ii).

"(ii) The United States shall reimburse an allocation party subject to clause (i) an amount equal to one-half of the difference between—

"(I) the premium actually paid by the allocation party; and

"(II) the premium that would have been paid by the allocation party had the total amount of response costs recovered by the United States after the date of the settlement been used in applying the limitations in subparagraph (A).

''(5) AUTHORIZATION OF REIMBURSEMENT.—In any settlement in which a party agrees to perform response work in excess of its share, the Administrator shall have authority to carry out the Administrator's duty to reimburse settling parties under this section pursuant to such reasonable procedures as the Administrator may prescribe.

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

''(A) documentation of actual costs incurred; and

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

''(7) SITE-SPECIFIC ACCOUNTS.—If, as part of any settlement agreement under this subsection, a potentially responsible party will be paying amounts to the President for carrying out any response action at a particular vessel or facility, the President shall retain such amounts in specific interest-bearing accounts, and use such amounts, together with accrued interest, to conduct or enable other persons to conduct the response action at the vessel or facility.

''(o) POST-ALLOCATION LITIGATION.—

''(1) IN GENERAL.—The United States may commence an action under section 107 against any person liable under that section who has not resolved its liability to the United States following allocation, on or after 90 days following issuance of the allocator's report. In any such action, such person shall be liable in accordance with section 107 for all response costs not recovered through settlements with other persons. Such recoverable costs shall include any federally funded orphan share identified in accordance with subsection (h), but shall not include any shares allocated to Federal, State, or local governmental agencies, departments, or instrumentalities. Defendants in any such action may implead only allocation parties who did not resolve their liability to the United States. The Administrator and the Attorney General shall issue guidelines to ensure that the relief sought against de minimis parties under principles of joint and several liability will not be grossly disproportionate to their contribution to the facility. The application of such guidelines is committed to the discretion of the Administrator and the Attorney General.

''(2) CERTIFICATION.—In commencing any action under section 107 following allocation, the At-

torney General must certify, in the complaint, that the United States has been unable to reach a settlement that would be in the best interests of the United States. This certification shall not be subject to judicial review.

''(3) DEFENDANTS.—No person may commence an action under section 107 or otherwise seek contribution for response costs which are subject to the allocation against any person who was not identified as an allocation party pursuant to subsection (c) or subsequently identified as a potentially liable party.

''(4) ADMISSIBILITY OF ALLOCATOR'S REPORT.—The allocator's report shall not be admissible in any court for any purpose, except as set forth in this section. The allocator's report, subject to the rules and discretion of the court, may be admissible solely for the purpose of assisting the court in making an equitable allocation of response costs among the relative shares of nonsettling liable parties.

''(5) COSTS OF ALLOCATION PROCEDURE ON ORPHAN SHARE INCLUDED AS COSTS OF RESPONSE.—The costs of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator, shall be con-

sidered necessary costs of response for purposes of this Act.

''(6) REJECTION OF SHARE DETERMINATION.—In any action by the United States under this title, if the United States has rejected an offer of settlement that is consistent with subsection (n) and that was presented to the United States prior to the expiration of the moratorium period set forth in subsection (b), the offeror shall be entitled to recover from the United States the offeror's reasonable costs of defending the action after the making of the offer (including reasonable attorneys' fees) if the ultimate resolution of liability or allocation of costs with respect to the offeror (taking into account all settlements and reimbursements with respect to the facility other than those attributable to insurance or indemnification), is as, or more, favorable to the offeror than the offer based on the allocation.

''(p) UAO PERFORMANCE.—

''(1) REIMBURSEMENT.—Any allocation party who satisfactorily performs work under an administrative order issued under section 106(a) after the issuance of an allocation report shall be entitled to the reasonable and necessary costs of work in excess of their allocated share, provided that the party—

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

''(B) agrees that its reimbursement shall be reduced by an amount equal to the maximum litigation risk premium provided for in subsection (n)(4) based on the total allocated shares of the allocation parties who have not reached settlements with the United States by the end of the moratorium on commencement of actions provided in subsection (b); and

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

''(2) OFFSET.—Any and all reimbursement provided to a performing party for work in excess of its share is subject to equitable offset or reduction by the Administrator upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.

''(3) TIME OF PAYMENT.—Any and all reimbursement to a performing party for work in excess of its share shall be paid after work is completed, but no sooner than completion of the construction of the remedial action.

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

''(A) documentation of actual costs incurred; and

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

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

''(6) BAR.—An administrative order under section 106(a) shall be in lieu of any action by the United States or any other person against the allocation party for recovery of response costs in connection with the response action, or for a contribution toward the costs of the response action that is subject to the allocation process under this section.

''(q) FUNDING OF ORPHAN SHARES.—

''(1) LIMITATION ON OBLIGATIONS.—For each settlement agreement entered into pursuant to subsection (n) that includes an orphan share, and for each unilateral administrative order where the person satisfies the requirements of subsection (p), the United States shall reimburse the allocation parties, including any Federal agency, for costs incurred and equitably attributable to the orphan share. In no case shall the United States obligate for such costs and interest determined under paragraph (3) in excess of $ in any fiscal year, plus any remaining unobligated balance of funds made available under paragraph (2) from previous fiscal years. The mandate to the United States to make obligations and payments under this paragraph constitutes an entitlement to those parties eligible to receive those payments.

''(2) AUTHORIZATION.—There are authorized to be appropriated from the Fund not to exceed $ per year for fiscal year 1998 and each succeeding fiscal year for payments required by paragraph (1), to remain available until expended.

''(3) AMOUNTS OWED.—

''(A) DELAY IF FUNDS ARE UNAVAILABLE.—If funds are unavailable in any fiscal

year to reimburse all allocation parties pursuant to paragraph (1), the Administrator may delay payment until funds are available.

"(B) PRIORITY.—The priority for reimbursement shall be based on the length of time that has passed since the settlement between the United States and the allocation parties pursuant to subsection (n).

"(C) PAYMENT FROM FUNDS MADE AVAILABLE IN SUBSEQUENT FISCAL YEARS.—Any amount due and owing in excess of available appropriations in any fiscal year shall be paid from amounts made available in subsequent fiscal years, along with interest on the unpaid balances at the rate equal to that of the current average market yield on outstanding marketable obligations of the United States with a maturity of 1 year.

"(r) ROLE OF FEDERAL AGENCIES.—Federal departments, agencies, or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process provided by this section to the same extent as any other party, other than the receipt of orphan share funding under subsection (h).

''(s) REPRESENTATIVE OF THE FUND.—The Administrator and the Attorney General shall participate in the allocation proceeding as a representative of the Fund.

''(t) ANNUAL REPORT.—The President shall report annually to Congress on the administration of the allocation scheme under this section, and provide information comparing allocation results with actual settlements at multiparty facilities.

''(u) SAVINGS PROVISIONS.—(1) Nothing in this section shall in any way limit or affect the President's authority to exercise the powers conferred by section 103, 104, 105, 106, or 122 of this title, or to commence an action against a party where there is a contemporaneous filing of a judicial consent decree resolving that party's liability; or to file a proof of claim or take other action in a proceeding under title 11 of the United States Code.

''(2) The procedures established in this section shall not be construed to modify or affect in any way the principles of retroactive, strict, joint and several liability under this title.

''(3) Nothing in this section shall limit or affect—

''(A) the Administrator's obligation to perform an allocation for facilities that have been the subject of partial or expedited settlements;

''(B) the ability of a potentially responsible party at a facility to resolve its liability to the United States or other parties at any time before initiation or completion of the allocation process;

''(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree that is issued, signed, lodged, or entered with respect to liability under this Act or that authorizes modification of any such order, judgment or decree; or

''(D) the validity, enforceability, finality or merits of any preexisting contract or agreement relating to any allocation of responsibility or any sharing of response costs under this Act.

''(v) RESPONSE ACTION CONTRACTOR.—A person who is potentially liable under this Act solely as a response action contractor with respect to a facility in accordance with section 119 shall not be named as an allocation party under this section with respect to that facility.''.

SEC. 204. RECYCLING TRANSACTIONS.

(a) PURPOSES.—The purposes of this section are—

(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

(2) to level the playing field between the use of virgin materials and recycled materials; and

(3) to remove the disincentives and impediments to recycling because of potential liability.

(b) CLARIFICATION OF LIABILITY UNDER CERCLA FOR RECYCLING TRANSACTIONS.—Title I is amended by adding after section 128 the following new section:

"SEC. 129. RECYCLING TRANSACTIONS.

''(a) LIABILITY CLARIFICATION.—As provided in subsections (b), (c), (d) and (e), a person who arranged for the recycling of recyclable material shall not be liable under section 107(a)(3) or 107(a)(4).

''(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.

''(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling if the person who

arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

''(1) The recyclable material met a commercial specification grade.

''(2) A market existed for the recyclable material.

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

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

''(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compli-

ance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

''(6) For purposes of this subsection, 'reasonable care' shall be determined using criteria that include (but are not limited to) (A) the price paid in the recycling transaction; (B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material; and (C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a re-

quirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

''(d) TRANSACTIONS INVOLVING SCRAP METAL.—

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

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

''(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act subsequent to the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

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

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

"(3) For the purposes of this subsection, the term 'scrap metal' means bits and pieces of metal parts (e.g. bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g. radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation and steel shipping containers of a capacity from 30 liters to and including 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits or pieces) contained in or adhering thereto.

"(e) TRANSACTIONS INVOLVING BATTERIES.—(1) Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable ma-

terial) can demonstrate by a preponderance of the evidence that at the time of the transaction—

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

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

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

''(iii) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the stor-

age, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

''(2) For purposes of paragraph (1)(A) of this subsection, a person who, by contract, arranges or pays for processing of batteries by an unrelated third person and receives from such third person materials reclaimed from such batteries shall not thereby be deemed to recover the valuable components of such batteries, provided, however, that (A) for transactions occurring more than 90 days after the date of enactment of the Superfund Cleanup Acceleration and Liability Equity Act, such person exercised due diligence in determining that such third person was in compliance with all Federal, State, and local environmental laws and regulations applicable to the storage, transport, management, or other activities associated with the recycling of spent batteries; and (B) such person had no knowledge or reason to know of the release or threatened release.

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

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

"(i) that the recyclable material would not be recycled,

"(ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration, or

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

"(B) the person added hazardous substances to the recyclable material for purposes other than processing for recycling; or

"(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material.

"(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices, the price

paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation or other management activities associated with the recyclable material.

''(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

''(g) EFFECT ON OTHER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a).

''(h) PCBS.—An exemption under this section does not apply if the recyclable material contained polychlorinated biphenyls in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

''(i) REGULATIONS.—The Administrator has the authority, under section 115, to promulgate additional regulations concerning this section.

''(j) EFFECT ON PENDING OR CONCLUDED ACTIONS.—The exemptions provided in this section shall not affect any concluded judicial or administrative action or

any pending judicial action initiated by the United States prior to enactment of this section.

''(k) LIABILITY FOR ATTORNEY'S FEES FOR CERTAIN ACTIONS.—Any person who commences an action for contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

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

''(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act; or

''(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.''.

SEC. 205. RESPONSE ACTION CONTRACTORS INDEMNIFICATION.

(a) CLARIFICATION OF RESPONSE ACTION CONTRACTOR LIABILITY.—Section 119(a) (42 U.S.C. 9619(a)) is amended by inserting after paragraph (4) the following new paragraph:

''(5) LIABILITY.—Any liability of a person under this Act as a response action contractor arising solely from the performance by such person of a response action contract at any facility shall be determined solely in accordance with this section with respect to such facility.''.

(b) IMPLEMENTATION OF ALTERNATIVE OR INNOVATIVE TECHNOLOGIES.—Section 119(a) (42 U.S.C. 9619(a)) is further amended by adding at the end the following:

''(6) IMPLEMENTATION OF ALTERNATIVE OR INNOVATIVE TECHNOLOGIES.—No response action contractor shall be liable under this Act solely as a result of such contractor's testing or implementation of alternative or innovative treatment technologies (as defined in section 311(b)) or alternative or innovative containment technologies with respect to a response action if use of the technology in connection with the response action has been approved by the authorized Federal regulatory agency or State regulatory agency acting under a contract or cooperative agreement with the Administrator pursuant to section 127. This paragraph shall not apply in the case of negligence, gross negligence, or intentional misconduct by such contractor in implementing the ap-

proved technology, including any noncompliance with the approved process for implementing the technology.''.

(c) INDEMNIFICATION CLARIFICATION.—Section 119(c)(1) (42 U.S.C. 9619(c)(1)) is amended by inserting ''under Federal, State, or common law'' after ''any liability''.

(d) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) (42 U.S.C. 9619(c)(5)(A)) is amended by inserting ''or threatened release'' after ''release'' each place it appears.

(e) CONSIDERATIONS.—Section 119(c) (42 U.S.C. 9619(c)) is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (6), (7), (8), and (9), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) CONSIDERATIONS.—In exercising the President's discretion under this subsection whether to provide an indemnification agreement, the President should consider the adequacy of competition in response to solicitations, the availability of adequate insurance at a fair and reasonable price (including consideration of premium, policy terms, deductibles, policy coverage, limits, and renewal terms), applicable statutes of limitation that may apply to actions

against response action contractors, and any other factors the President considers relevant.''.

(f) EXTENSION.—Section 119 (42 U.S.C. 9619) is amended—

(1) in subsection (e)(2)(C) by striking ''1996'' and inserting ''2000''; and

(2) in subsection (g)(5) by striking ''1995'' and inserting ''1999''.

TITLE III—COMMUNITY PARTICIPATION AND HUMAN HEALTH

Subtitle A—Community Participation

SEC. 301. DEFINITIONS.

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

''(f) DEFINITIONS.—

''(1) COVERED FACILITY.—The term 'covered facility' means a facility—

''(A) that has been listed or proposed for listing on the National Priorities List; or

''(B) at which the Administrator is undertaking an action anticipated to exceed 1 year or the funding limit under section 104 of this Act is anticipated to be reached.

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

SEC. 302. PUBLIC PARTICIPATION.

(a) TAG GRANTS.—Section 117(e) (42 U.S.C. 9617(e)) is amended to read as follows:

''(e) GRANTS FOR TECHNICAL ASSISTANCE.—

''(1) AUTHORITY.—In accordance with the rules promulgated by the Administrator, the Administrator may make grants available to any Community Advisory Group or affected community. Such grants shall be known as Technical Assistance Grants ('TAGs').

''(2) SPECIAL RULES.—No matching contribution shall be required for a Technical Assistance Grant. The Administrator may make the lesser of $5,000 or 10 percent of the total grant amount available to the grant recipient, in advance of the expenditures to be covered by the grant.

''(3) GRANT AVAILABILITY.—The Administrator shall promptly notify residents and Indian tribes liv-

ing near a covered facility that a technical assistance grant is available under this section.

''(4) NUMBER OF TAGS PER FACILITY.—Except as provided in this paragraph, not more than one grant may be made at a time under this subsection with respect to a single covered facility, but the grant may be renewed to facilitate public participation at all stages of response action. Limits shall be established with respect to the number of years for which grants may be available based on the duration, type, and extent of response activity at a facility. The Administrator may provide more than one grant under this subsection with respect to a single covered facility, considering such factors as the area affected by the facility and the distances between affected communities.

''(5) FUNDING AMOUNT.—The initial amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. Except that, the Administrator may increase the amount of the grant if the grant recipient demonstrates that the covered facility's characteristics indicate additional funds are necessary due to the complexity of the response action, including the size and complexity of the facility, or nature or volume of site-related infor-

mation. In addition, the Administrator must find that the grant recipient's management of a previous grant award, if any, was satisfactory, and the costs incurred under the award are allowable and reasonable.

"(6) SIMPLIFICATION.—To ensure that the application process is accessible to all affected citizens, the Administrator shall review the existing guidelines and application procedures for the TAG grants and, within 180 days after the enactment of this section, revise, as appropriate, such guidelines and procedures to simplify the process of obtaining such grants.

"(7) AUTHORIZED GRANT ACTIVITIES.—

"(A) INTERPRETATION OF INFORMATION.—Grants awarded under this subsection may be used to obtain technical assistance in interpreting information and providing input with regard to (i) the nature of the hazard at a facility; (ii) sampling and monitoring plans, (iii) the remedial investigation and feasibility study; (iv) the record of decision; (v) the selection, design, and construction of the remedial action; (vi) operation and maintenance; (vii) re-

moval activities at such facility; or (viii) health assessment or related health activity.

"(B) ADDITIONAL ACTIVITIES.—Grants awarded under this section also may be used (i) to obtain technical assistance in interpreting information used to rank facilities according to the Hazard Ranking System, (ii) to hire health experts to advise affected residents on health assessment and data gathering efforts and response activities, and on the design of any health studies that a government agency performs, (iii) to hire technical experts to file comments with governmental agencies and generate other documents as necessary to ensure full participation by the grant recipient, (iv) to publish newsletters or otherwise finance the dissemination of information to other members of the community, and (v) to evaluate the reliability of long-term operation and maintenance and institutional controls. In addition, not more than 10 percent of the amount of a technical assistance grant under this section may be used for training, hiring of neutral professionals to facilitate deliberations and consensus efforts or

hiring community liaisons to potentially responsible parties and government agencies.

''(8) NON-SITE-SPECIFIC GRANTS.—In accordance with the rules promulgated by the Administrator, the Administrator may make Technical Assistance Grant funds available to Indian tribes, nonprofit organizations, and citizens groups to enhance their participation in rulemaking processes carried out in accordance with this Act. Total funding for all such grants shall not exceed $100,000.''.

(b) IMPROVING CITIZEN AND COMMUNITY PARTICIPATION.—(1) Such section 117 is amended by redesignating paragraphs (1) and (2) of subsection (a) as subparagraphs (A) and (B), by striking ''under paragraph (1)'' in such subsection (a) and inserting ''under subparagraph (A)'', by redesignating such subsection (a) as paragraph (4), by redesignating subsections (b) and (c) as paragraphs (6) and (7) of subsection (a), and by inserting the following immediately after the section heading:

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

''(1) IN GENERAL.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the President shall take the actions speci-

fied in this subsection. Public meetings required under this subsection shall be designed to obtain information from the community and disseminate information to the community concerning the President's facility activities and pending decisions.

''(2) HEALTH ASSESSMENT AND PRELIMINARY ASSESSMENT AND SITE INSPECTION.—The President shall provide the opportunity for public meetings and publish a notice of such meetings before or during performance of the health assessment or related health activity and the preliminary assessment and site inspection, as appropriate. Where the President determines a meeting is not appropriate at the preliminary assessment and site inspection stage, the President shall provide adequate public notice of that decision. To the extent practicable, before or during the health assessment or related health activity and site inspection, the President shall solicit and evaluate concerns, interests, and information from the Community Advisory Group, if any, affected Indian Tribes, the affected community, local government officials and local health officials. The evaluation shall include, as appropriate, face-to-face community surveys to identify the location of private drinking water wells, potential exposure pathways,

including historic and current or potential use of water, and other environmental resources in the community; a public meeting; written responses to significant concerns; and other appropriate participatory activities.

''(3) REMEDIAL INVESTIGATION AND FEASIBILITY STUDY.—The President shall provide the opportunity for public meetings and publish a notice of such meetings before or during the Remedial Investigation and Feasibility Study (RI/FS). During the remedial investigation and feasibility study, the President shall solicit the views and preferences of the Community Advisory Group, if any, affected Indian Tribes, the affected community, local government officials and local health officials on the remediation and disposition of hazardous substances, pollutants, or contaminants at the facility. Such views and preferences shall be described in the remedial investigation and feasibility study and considered in the screening of remedial alternatives for the facility.''.

(2) Such section 117, as amended by this subsection, is amended by adding the following new paragraph after paragraph (4) of subsection (a):

''(5) COMPLETION OF WORK PLAN.—The President shall provide the opportunity for public meetings and publish a notice of such meetings before or during the completion of the work plan for the Remedial Design and Remedial Action.''.

(3) Such section 117, as amended by this subsection, is amended by adding the following new paragraphs after paragraphs (6) and (7):

''(8) ALTERNATIVES.—Pursuant to paragraph (4), members of the Community Advisory Group, if any, affected Indian Tribes, the affected community, local government officials and local health officials may propose remedial alternatives to the President, and the President shall consider such alternatives in the same manner as the President considers alternatives proposed by other parties.

''(9) SELECTING APPROPRIATE PROCEDURES.—In determining which of the procedures set forth in paragraph (2) may be appropriate, the Administrator may consult with the Community Advisory Group, if any, affected Indian Tribe, the affected community, local government officials and local health officials.

''(10) PROVIDING INFORMATION.—The President shall provide information to the Community

Advisory Group, if any, affected Indian Tribes, the affected community, local government officials and local health officials throughout all significant phases of the response action at the facility. The President, on a regular basis, shall inform such entities of the progress and substance of technical meetings between the lead agency and potentially responsible parties regarding a covered facility. The President shall notify the Community Advisory Group, if any, affected Indian Tribes, the affected community, local government officials and local health officials concerning—

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

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

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

(4) Such section 117 is amended by striking "major" in subsection (d).

(5) Such section 117 is amended by adding the following new subsection after subsection (a), as amended by this section:

''(b) ADDITIONAL PUBLIC INVOLVEMENT REQUIREMENTS.—(1) The President shall make records relating to the facility available to the public throughout all phases of response action at the facility. Such information shall be made available to the public for inspection and copying without the need to file a formal request subject to reasonable service charges as appropriate. This paragraph shall not apply to a record that is exempt from disclosure under section 552 of title 5, United States Code, or to any record that is exchanged between parties to a dispute under this Act for the purposes of settling the dispute.

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

''(3) Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 which is expected to extend beyond 180 days, the President shall comply with the requirements of this section unless the President determines that such compliance presents an imminent and substantial endangerment to human health or the environment.

Whenever the planning period for a removal action is expected to be greater than 180 days, the Administrator shall provide the Community Advisory Group, if any, affected Indian Tribes, the affected community, local government officials and local health officials with notice of the anticipated removal action and a public comment period of no less than 30 days.''.

(6) Such section 117 is amended by adding the following new subsection after subsection (e):

''(f) UNDERSTANDABLE PRESENTATION OF MATERIALS.—The President shall ensure that information prepared 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. 303. COMMUNITY ADVISORY GROUPS.

Section 117 (42 U.S.C. 9617) is amended by adding after subsection (h) the following:

''(i) COMMUNITY ADVISORY GROUPS.—

''(1) CREATION AND RESPONSIBILITIES.—The President shall provide the opportunity for the establishment of a representative public forum, known as a Community Advisory Group (CAG), to achieve

direct, regular, and meaningful consultation with all interested parties throughout all stages of a response action whenever—

"(A) the President determines such a group will be helpful; or

"(B) 10 individuals residing in or at the area in which the facility is located, or 10 percent of the population of a locality in which the National Priorities List facility is located, whichever is less, petition for a Community Advisory Group to be established.

"(2) DUTIES.—Each Community Advisory Group shall provide information and views to the President, and, as appropriate, any or all of the following: the Agency for Toxic Substances and Disease Registry, State regulatory agencies, Federal agencies, Federal, State, and tribal natural resource trustees, and potentially responsible parties conducting response actions. The information and views reported shall include the various subjects related to facility remediation, including facility health studies, potential remedial alternatives, and selection and implementation of remedial and removal actions. The Community Advisory Group shall attempt to achieve consensus among its members before reporting posi-

tions to agencies or potentially responsible parties. In cases in which consensus cannot be reached, the Community Advisory Group shall allow the presentation of divergent views.

''(3) LAND USE RECOMMENDATIONS.—To obtain greater community input into and support for remedial decisions affecting future land use, the Administrator shall consult with the Community Advisory Group, if any, affected Indian Tribes, the affected community, local government officials and local health officials on a regular basis throughout the remedy selection process regarding the reasonably anticipated future use of land at the facility and any institutional controls required to assure that land use restrictions remain in effect. The Community Advisory Group may offer recommendations on the reasonably anticipated future use of land at the facility to the Administrator at any time prior to the selection of a remedy at the facility. The land use recommendation shall consider at a minimum, applicable comprehensive land use plans and the other factors for determining future land use set forth in section 121(b)(2)(B).

''(4) COMMUNITY ADVISORY GROUP MEMBERS.—Members shall serve on the Community Ad-

visory Group without pay. The President shall provide notice and opportunity to participate on a Community Advisory Group to the affected community, including to persons who are or historically have been disproportionately affected by facility contamination in their community. The President shall ensure that each Community Advisory Group, to the extent practicable, reflects the composition of the community near the facility and the diversity of interests. Local residents shall comprise a majority of the total membership of the CAG. At least one person in this group shall represent the Technical Assistance Grant recipient if such a grant has been awarded under subsection (e). To the extent possible, the President shall ensure that members of the following groups are represented on a CAG:

"(A) Persons residing or owning residential property near the facility or persons who may be directly affected by the releases from the facility.

"(B) Persons who, although not residing or owning property near the facility, may be potentially affected by releases from the facility.

"(C) Local medical community practicing in the community.

''(D) Members of local Indian tribes or Indian communities.

''(E) Local citizen, civic, environmental, or public interest groups with members residing in the community.

''(F) Current and former employees of the facility during facility operation.

''(G) Local business community.

''(5) FACA.—The Federal Advisory Committee Act shall not apply to a CAG established under this Act or ATSDR Community Advisory Panels.

''(6) TECHNICAL AND ADMINISTRATIVE SUPPORT FOR COMMUNITY ADVISORY GROUPS.—The President may provide administrative support for Community Advisory Groups.

''(7) ADDITIONAL PARTICIPANTS.—The Administrator of Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry and the State, representatives chosen by the governing body of local Indian tribes or Indian community local governments (which may include pertinent city or county governments, or both), and any other governmental unit which directly regulates land use in the immediate vicinity of the facility, as appropriate; and facility owners and

local representatives of the Potentially Responsible Parties (PRPs), who represent, wherever practicable, a balance of PRP interests, may participate in Community Advisory Group meetings to provide information and technical expertise, but shall not be members of the Community Advisory Group.

''(8) OTHER PUBLIC INVOLVEMENT.—The existence of a Community Advisory Group shall not diminish any other obligation of the President to consider the views of any person in selecting response actions under this Act. Nothing in this section shall affect the status of any Citizen Advisory Group formed before the enactment of this subsection. Nothing in this section shall affect the status, decisions, or future formation of any Department of Defense Restoration Advisory Board, Department of Energy Site Specific Advisory Board, and no Citizen Advisory Group must be established for a facility if any such Board has been established for the facility.

''(j) COMMUNITY STUDY.—

''(1) REPORT BY THE ADMINISTRATOR.—The Administrator shall prepare and submit to Congress a Community Study two years after the date of enactment of the Superfund Cleanup Acceleration and Liability Equity Act, shall periodically update the

study. The Administrator shall ensure that copies of such studies are made available to the public.

''(2) CONTENT OF THE REPORT.—The Administrator's report shall include an analysis of the speed of listing; the speed and nature of response action; the degree to which public views are reflected in response actions; future land use determinations and use of institutional controls; and the population, race, ethnicity, and income characteristics of each community affected by each facility listed or proposed for listing on the National Priorities List.

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

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

SEC. 304. TECHNICAL OUTREACH SERVICES FOR COMMUNITIES.

Section 311(d)(2) (42 U.S.C. 9660(d)(2)) is amended to read as follows:

''(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of a hazardous substance research center under this subsection shall include—

''(A) the conduct of research and training relating to the disposal and management of hazardous substances and publication and dissemination of the results of the research; and

''(B) the conduct of a program to provide educational and technical assistance to communities affected by contamination.''.

SEC. 305. RECRUITMENT AND TRAINING PROGRAM.

Section 117 (42 U.S.C. 9617) is amended by adding after subsection (j) the following:

''(k) RECRUITMENT AND TRAINING PROGRAM.—

''(1) IN GENERAL.—The Administrator, in consultation with the National Institute of Environmental Health Studies, shall conduct a program to assist in the recruitment and training of individuals in an affected community for employment in response activities conducted at the facility concerned.

''(2) RECRUITMENT, TRAINING, AND EMPLOYMENT.—The Administrator shall encourage a person conducting a response action under this Act to train and employ persons from the affected community in remediation skills.''.

SEC. 306. FACILITY SCORING.

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

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

SEC. 307. GRANT PROGRAM.

(a) GRANT PROGRAM.—Title III (42 U.S.C. 9651 et seq.) is amended by inserting after section 311 the following new section:

''SEC. 311A. GRANT PROGRAM.

''(a) GRANT PURPOSES.—Grants from the Fund for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this section.

''(b) ADMINISTRATION.—Grants from the Fund under this section shall be administered by the National Institute of Environmental Health Sciences.

''(c) GRANT RECIPIENTS.—Grants from the Fund shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or may be engaged in hazardous waste removal or containment or emergency response operations. Of the amount authorized in section 111, 20 percent of the funds shall be allocated to such nonprofit organizations for training of minority and other community-based workers who are or may be directly engaged in hazardous waste removal or containment or emergency response operations.''.

(b) AUTHORIZATION OF FUNDS FOR GRANTS.—Section 111(c)(12) (42 U.S.C. 9611(c)(12)) is amended by striking out ''do not exceed'' and all that follows through the end of the paragraph and inserting in lieu thereof the following: ''do not exceed $40,000,000 for each of the fiscal years 1999, 2000, 2001, 2002, and 2003.''.

Subtitle B—Human Health

SEC. 311. DISEASE REGISTRY AND HEALTH CARE PROVIDERS.

Section 104 (42 U.S.C. 9604) is amended as follows:

(1) In subsection (b), by adding the following new paragraph at the end thereof:

''(3) NOTICE TO HEALTH AUTHORITIES.—The President shall notify State and local public health authorities and Tribal health officials whenever the President has reason to believe that a release of a hazardous substance, pollutant, or contaminant has occurred, is occurring, or is about to occur or that there is a threat of such a release.''.

(2) In subparagraph (E) of paragraph (1) of subsection (i), by striking ''admission to hospitals and other facilities and services operated or provided by the Public Health Service'' and inserting ''referral to health care providers''.

(3) Paragraph (6)(A) of subsection (i) is amended to read as follows:

''(A)(i) The Administrator of ATSDR shall perform a health assessment or related health activity (including biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers) at a minimum, for each facility listed or proposed for listing on the National Priorities List established under section 105, including a facility owned or operated by a department, agency, or instrumentality of the United States. Such health assessment or related health activity shall be completed for each facility listed or proposed for listing on the National Priorities List not later than 1 year after

the date of proposal for inclusion on such list for each facility.

''(ii) The Administrator of the Environmental Protection Agency and the Administrator of ATSDR shall develop strategies, in consultation with State, Tribal, and local health officials, to obtain relevant on-site and off-site characterization data, taking into account the needs and conditions of the affected community.

''(iii) The Administrator of the Environmental Protection Agency shall, to the maximum extent practicable, provide the Administrator of ATSDR with the data and information necessary to make a public health determination in a timely manner to allow the Administrator of ATSDR to complete the assessment.

''(iv)(I) If appropriate, the Administrator of ATSDR shall provide recommendations for sampling environmental media to the Administrator of the Environmental Protection Agency as soon as practicable after discovering a release or threat of release of a hazardous substance or pollutant or contaminant at a facility.

''(II) To the maximum extent practicable, the Administrator of the Environmental Protection Agency shall incorporate the recommendations into the facility investigation activities.''.

(4) Subparagraph (F) of paragraph (6) of subsection (i) is amended to read as follows:

''(F) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health, including children and other highly susceptible populations, posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the past, present, or future existence of potential pathways of human exposure and the community's historic exposure to site-related and non-site-related sources (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure.''.

(5) In paragraph (14) of subsection (i), by striking ''distribute to the States, and upon request to medical colleges, physicians, and'' and inserting the following: ''distribute to the States, including

State health departments, Tribal health officials, and upon request to medical colleges, local health departments, medical centers, physicians, nursing institutions, nurses, and'', by inserting ''(A)'' after ''(14)'', and by adding the following at the end thereof:

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

SEC. 312. SUBSTANCE PROFILES.

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

(1) By inserting ''(A)'' after ''(3)''.

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

(3) By striking out the matter beginning with ''Any toxicological profile or revision thereof'' and all that follows through the end of such paragraph and inserting in lieu thereof the following:

''(B) Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall

be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the listing but which have been found at National Priorities List facilities and non-National Priorities List facilities and which have been determined by ATSDR to be of health concern. Profiles required under this paragraph shall be revised and republished as appropriate, based on scientific development. Such profiles shall be provided to the States, including State health departments, Tribal health officials, and local health departments, and made available to other interested parties.''.

SEC. 313. HEALTH STUDIES.

(a) HUMAN HEALTH STUDY.—Subparagraph (A) of section 104(i)(7) (42 U.S.C. 9604(i)(7)) is amended to read as follows: ''(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment or related health activity indicating a threat of exposure to a hazardous substance at levels exceeding the protective level under the hazard ranking system, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epi-

demiologic or other health studies of the entire exposed population.''.

(b) RESEARCH PROGRAM.—Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is amended as follows:

(1) By inserting after ''program of research'' the following: ''conducted directly or by such means as cooperative agreements and grants with appropriate public and nonprofit institutions. The program shall be''.

(2) In the last sentence—

(A) in clause (iii), by striking ''and'' at the end;

(B) by redesignating clause (iv) as clause (v); and

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

''(iv) laboratory and other studies that can lead to the development of innovative techniques for predicting organ-specific, tissue-specific, and system-specific acute and chronic toxicity; and''.

SEC. 314. GRANT AWARDS, CONTRACTS, AND COMMUNITY ASSISTANCE ACTIVITIES.

Section 104(i)(15) (42 U.S.C. 6904(i)(15)) is amended as follows:

(1) By inserting ''(A)'' before ''The activities''.

(2) In the first sentence, by striking ''cooperative agreements with States (or political subdivisions thereof)'' and inserting ''grants, cooperative agreements, or contracts with States (or political subdivisions thereof), Indian Tribes, other appropriate public authorities, public or private institutions, colleges, universities (including historically black colleges and universities)''.

(3) By adding at the end the following new subparagraph:

''(B) The Administrator of the Agency for Toxic Substances and Disease Registry, pursuant to the grants, cooperative agreements and contracts referred to in this paragraph, is authorized to facilitate, where appropriate, the provision of health services to communities affected by the release of hazardous substances. Such health services may include diagnostic services, testing, health data registries, and preventative public health education.''.

SEC. 315. INDIAN HEALTH PROVISIONS.

Section 104(i) (42 U.S.C. 9406(i)) is amended as follows:

(1) In paragraph (1)—

(A) by inserting ''the Indian Health Service'' after ''the Secretary of Transportation'';

(B) by inserting ''and tribal'' after ''and local'';

(C) in subparagraph (A) by inserting ''and Indian tribes'' after ''the States''; and

(D) in subparagraph (C) by inserting ''Indian tribes'' after ''States,''.

(2) In paragraph (4) by—

(A) striking ''State officials and local officials'' and inserting ''State, tribal, and local officials''; and

(B) inserting in the second sentence ''or Indian tribes'' after ''States''.

(3) In paragraph (5)(A) by inserting ''and the Indian Health Service'' after ''Public Health Service''.

(4) In paragraph (6)(C) by inserting ''where low population density is not used as an excluding risk factor'' after ''health appears highest''.

(5) In paragraph (6)(E)—

(A) by inserting ''Indian tribe'' after ''Any''; and

(B) by inserting at the end of the subparagraph the following: ''If the ATSDR or the Administrator of the Environmental Protection Agency does not act on the recommendations of

the State or Indian tribe, then the Administrators must respond in writing to the State or tribe why they have not acted on the recommendations.''.

(6) In paragraph (6)(F) by striking ''and'' after ''emissions,'' and inserting ''and any other pathways resulting from subsistence activities'' after ''contamination''.

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

(8) In paragraph (10)—

(A) by striking ''and'' at the end of subparagraph (D);

(B) by striking the period at the end of subparagraph (E) and inserting ''; and''; and

(C) by inserting after revised subparagraph (E) the following new subparagraph:

''(F) and the health impacts from pollutants, contaminants, and hazardous substances on Indian tribes from covered facilities.''.

SEC. 316. PUBLIC HEALTH RECOMMENDATIONS IN REMEDIAL ACTIONS.

Section 121(c) (42 U.S.C. 9621(c)) is amended in the first sentence 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),''.

Subtitle C—General Provisions

SEC. 321. TRANSITION.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall become effective upon the date of enactment of this Act.

(b) SPECIAL RULE.—The requirements of paragraphs (2), (3), (5), and (8) of section 117(a) and paragraph (1) of section 117(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by sections 301 and 302, shall become effective 180 days after the date of enactment of this Act.

TITLE IV—NATURAL RESOURCE DAMAGES

SEC. 401. USE OF NATURAL RESOURCE DAMAGES FUNDS.

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

(1) by striking ''(f)(1)'' and all that follows through the end of paragraph (1) and inserting the following:

"(f) USE OF NATURAL RESOURCE DAMAGES FUNDS.—

"(1) IN GENERAL.—Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only for reasonable restoration measures for such natural resources. Sums recovered by a State or Indian tribe as trustee under this subsection shall be available for use only for reasonable restoration measures for such natural resources by the State or Indian tribe."; and

(2) by indenting the left margins of paragraph (2) so as to be appropriately aligned under paragraph (1).

SEC. 402. LEAD TRUSTEE; BUNDLING OF CLAIMS; POTENTIALLY RESPONSIBLE PARTY STATUS.

Section 107(f)(2) (42 U.S.C. 9607(f)(2)) is amended by adding at the end the following new subparagraph:

"(D) LEAD TRUSTEE.—(i) In a case where more than one Federal, State, or tribal trustee has cause to conduct a natural resource damage assessment, the trustees shall designate a lead administrative trustee at the site. Such designation shall be done not later than 180 days after first notice to the responsible parties that a natural resource damage

assessment will be made. Failure by a trustee to participate in the designation of a lead trustee shall preclude the trustee from seeking costs for natural resource damages from a responsible party.

''(ii) The lead administrative trustee shall bear the responsibility of coordinating input of other trustees in assessing damages to the natural resources and developing and implementing any restoration plan.

''(iii) In the event that a natural resource damage assessment results in the filing of a claim under this subsection, such claim will represent the interests of all trustees associated with the assessment. Each trustee shall act as plaintiff for resources identified in the assessment where exclusive ownership or management of such resources can be demonstrated.

''(iv) Where a Federal, State, or tribal trustee is a liable party under this section where natural resources have been injured, destroyed, or lost, such trustee shall not be designated the lead administrative trustee under this subsection.''.

SEC. 403. USE OF MEDIATION.

Section 122(f) (42 U.S.C. 9622(f)) is amended by adding at the end the following new paragraph:

''(7) USE OF MEDIATION.—Any Federal natural resource trustee, State natural resource trustee, or Indian tribe seeking damages for injury to, destruction of, or loss of natural resources in accordance with subsections (a) and (f) of section 107 shall initiate mediation for such claim with any potentially responsible parties by means of the mediation procedure or other alternative dispute resolution method recognized by the district court in which the action is filed. Such mediation shall be initiated not later than 120 days after the filing of such action. Such 120-day period may be extended upon agreement of all parties.''.

SEC. 404. TRANSITION RULES.

The amendments made by this title shall not apply to any action to recover natural resource damages under section 107(f) that was filed in the appropriate district court before October 28, 1997.

SEC. 405. LOST-USE AND NONUSE DAMAGES AND CONTINGENT VALUATION METHODOLOGY.

Section 107(f) (42 U.S.C. 9607(f)) is amended by adding at the end the following new paragraph:

''(3) DAMAGES.—

''(A) MEASURE OF DAMAGES.—The measure of damages in any action under this sub-

section shall be limited to the reasonable costs of—

"(i) assessing such damages;

"(ii) restoring such resources; and

"(iii) the lost-use of such resources occurring after December 11, 1980.

"(B) NONUSE VALUES.—There shall be no recovery under this Act for any impairment of nonuse values as a separate compensable damage.

"(C) CONTINGENT VALUATION METHODOLOGY.—Contingent valuation methodology and other economic polling techniques shall not be used to value either lost natural resource services or any particular restoration alternative.".

SEC. 406. RESTORATION GOAL AND ALTERNATIVES.

Section 107(f) (42 U.S.C. 9607(f)) is further amended by adding at the end the following new paragraph:

"(4) RESTORATION ALTERNATIVES.—

"(A) GOAL.—An injury to, destruction of, or loss of natural resources, for the purposes of evaluating damages and identifying restoration alternatives under this subsection or section 106, shall mean a measurable adverse change in a population or community of organisms that

exceeds the natural variability of the population or community of organisms to an ecologically significant degree, as a result of a release of a hazardous substance. The goal of any restoration shall be to restore injured natural resources to their baseline condition for the reasonably anticipated use of the natural resources as measured by the consumptive and non-consumptive services provided by such resources.

''(B) RESTORATION OF SPECIAL RESOURCES.—(i) The goal of restoration of a damaged biological resource that is located within a federally designated national park, wilderness area, or marine sanctuary shall be to return populations of such resource to the baseline condition.

''(ii) If a species is listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), impacts to individual plants or animals shall be considered to be impacts to populations or communities of organisms.

''(C) SELECTION OF ALTERNATIVES.—Any Federal natural resource trustee, State natural

resource trustee, or Indian tribe selecting a restoration alternative to attain the goal of this paragraph shall select measures that—

''(i) are technically feasible;

''(ii) are cost-effective;

''(iii) are consistent with response actions; and

''(iv) are timely, to the extent consistent with clauses (i), (ii), and (iii).

''(D) NATURAL RECOVERY.—Natural recovery shall be considered as a restoration alternative on an equal basis with other measures, where natural recovery will result in the restoration of services within a time frame that is reasonable compared to the time by which more active measures would result in attainment of the restoration goal in subparagraph (A).

''(E) REPLACEMENT.—With the concurrence of the affected trustees, any restoration alternative selected in accordance with subparagraph (B) may include temporary or permanent replacement of the services, or some portion thereof, which would otherwise have been provided by the injured natural resources.''.

SEC. 407. DOUBLE RECOVERY.

Section 107(f)(4), as added by section 406, is amended by adding at the end the following new subparagraph:

''(F) DOUBLE RECOVERY.—There shall be no double recovery by a Federal, State, or tribal trustee or trustees under this Act or any other law for natural resource damages, including the costs of damage assessment or restoration, replacement or acquisition for the same injury, destruction, or loss of a natural resource.''.

SEC. 408. CAUSATION.

Section 107(f) (42 U.S.C. 9607(f)) is further amended by adding at the end the following new paragraph:

''(5) CAUSATION.—A trustee may recover natural resource damages from a defendant only if the damage assessment demonstrates that the hazardous substance release or releases for which the defendant is legally responsible were a cause of any alleged natural resource injuries that deviate from the baseline condition. For purposes of this paragraph, the term 'cause' shall be construed in accordance with the Restatement Second of Torts as in effect on the date of the enactment of this paragraph.''.

SEC. 409. DEFINITIONS.

Section 101 (42 U.S.C. 9601) is amended—

(1) in paragraph (21), by striking ''or any interstate body'' and inserting ''Indian tribe, or any interstate body, except that no Indian tribe shall be required to share payment of future operation and maintenance costs associated with a site under section 104''; and

(2) by adding at the end the following new paragraphs:

''(39) The term 'baseline' means the condition or conditions that would have existed at a natural resource had a release of hazardous substances not occurred.

''(40) The term 'consumptive services' means the use of a natural resource by the public that includes activities such as fishing and trapping in which resources are harvested.

''(41) The term 'nonconsumptive services' means the physical use of the resource by the public in a manner that does not reduce the stock of the resource. Such uses include activities related to visitation, such as hiking, wildlife viewing, and photography, as well as ecological services such as flood control and filtration.''.

TITLE V—STATE ROLE

SEC. 501. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.

Title I is amended by adding after section 129 the following new section:

"SEC. 130. CONTRACTS OR COOPERATIVE AGREEMENTS WITH STATES.

''(a) IN GENERAL.—

''(1) APPLICATION FOR AUTHORITY TO TAKE PREREMEDIAL ACTION AT NON-NPL FACILITIES.—A State may apply to the Administrator to take or require preremedial actions (including removal actions) under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the boundaries of the State that is not listed on the National Priorities List (NPL).

''(2) APPLICATION FOR AUTHORITY TO TAKE RESPONSE ACTION AT NPL FACILITIES.—A State may apply to the Administrator to take or require response actions, including selection and enforcement of remedial actions and use of allocation procedures under section 128, under a contract or cooperative agreement as provided in this section at any non-federally owned or operated facility within the

boundaries of the State that is listed on the National Priorities List (NPL) or to take or require removal actions at any facility proposed for listing on the National Priorities List.

''(3) APPROVAL OF APPLICATION.—The Administrator shall enter into a contract or cooperative agreement under this section if the Administrator determines that the State—

''(A) meets the qualification requirements set forth in the regulations promulgated pursuant to subsection (b); and

''(B) with respect to authority to select remedial actions and use allocation procedures, meets the qualification requirements set forth in subsection (c).

''(b) REGULATIONS.—The Administrator, in consultation with the States, shall promulgate regulations to implement this section. The regulations shall provide such additional qualifications for a contract or cooperative agreement under this section as the Administrator considers reasonable, including qualifications applicable to particular types of preremedial or response actions. The regulations shall include a requirement that, in order for a State to qualify for a contract or cooperative agreement with respect to a facility under this section, the State may

not be a major potentially responsible party with respect to that facility.

''(c) QUALIFICATION REQUIREMENTS WITH RESPECT TO SELECTION OF REMEDIAL ACTION AND USE OF ALLOCATION PROCEDURES.—For purposes of subsection (a)(3)(B), with respect to a contract or cooperative agreement under this section for authority to select remedial action or to use the allocation procedures under section 128, the Administrator also shall make each of the following determinations:

''(1) The State has the capability to select remedial actions or to use the allocation procedures under section 128, including adequate legal authority, financial and personnel resources, organization, and expertise.

''(2) The State meets any other qualifications set forth in the regulations promulgated under subsection (b) for selecting remedial actions or using the allocation procedures.

''(3) The State demonstrates a historical record of performing similar response actions.

''(d) REQUIREMENTS FOR SELECTION OF REMEDIAL ACTION.—In any contract or cooperative agreement that allows a State to select remedial actions, the State shall agree to select such remedial actions in accordance with

all of the procedures and requirements set forth in sections 117 and 121 of this Act, the National Contingency Plan, and any other relevant regulations and guidelines adopted by the Administrator.

''(e) STATE AUTHORITY REGARDING ENFORCEMENT OF SELECTED REMEDIAL ACTION.—(1) A State that selects a remedial action pursuant to a contract or cooperative agreement entered into under subsection (a) shall have the authority to enforce the requirements of such remedial action pursuant to section 121(f)(4).

''(2) Such State also shall have the authority to enforce compliance with any standard, regulation, condition, requirement, order, or final determination of the State with respect to the remedial action. Such State also may seek civil penalties not to exceed $25,000 per day for any violation of such standard, regulation, condition, requirement, order, or final determination. Such State may commence an action seeking such relief unless the standard, regulation, condition, requirement, order, or final determination is arbitrary, capricious, or contrary to law when reviewed upon the administrative record presented by the State.

''(3) In addition, if expressly provided in the contract or cooperative agreement, such State may waive a Federal

requirement applicable to the remedial action in accordance with section 121.

''(f) REQUIREMENTS FOR ENFORCEMENT AND ALLOCATION.—

''(1) ENFORCEMENT.—In the case of a contract or cooperative agreement providing for a State to initiate an enforcement action with respect to a facility for purposes of recovering costs or compelling performance of a remedy at the facility, the contract or cooperative agreement shall require the State to provide for expedited settlements under section 122.

''(2) USE OF ALLOCATION PROCEDURES.—(A) In the case of a contract or cooperative agreement providing for a State to initiate an enforcement action with respect to a facility subject to mandatory allocation pursuant to section 128(a)(1), the contract or cooperative agreement shall require the State to use allocation procedures with respect to the facility. The contract or cooperative agreement shall require the State to initiate the allocation process by certifying each of the following:

''(i) The State has completed a potentially responsible party search substantially consistent with subsection (c) of section 128 and will make

the results of that search available to the allocator and the parties.

''(ii) The State has notified Federal, State, and tribal natural resource trustees of the commencement of the allocation process and, pursuant to section 104(b)(2), of potential damages to natural resources.

''(iii) The facility would be subject to mandatory allocation under section 128(a)(1) if the President were conducting the response action.

''(B) After the State has made a certification under subparagraph (A), the Administrator shall initiate an allocation in accordance with the terms of section 128. The Administrator may assign to the State, by cooperative agreement or otherwise, any responsibilities to conduct the allocation, except that the Administrator and Attorney General shall retain their authority relating to orphan share funding as provided by this paragraph and in section 128, including the timing and terms of payment.

''(C) The State may accept or reject the allocation report on the same basis as provided in section 128(l). If the State does not reject the allocation, it shall use the allocator's report as the basis of State settlements. The State may recover the costs of the

allocation pursuant to State law or the provisions of this Act.

''(D) The President, through either the Administrator or the Attorney General, or both, may participate in any phase of an allocation proceeding where an orphan share is identified according to the factors set forth in section 128.

''(E) If the State accepts an allocation report as the basis for its settlements, and the allocation report identifies an orphan share subject to Federal funding, the State shall apply for such funding by certifying each of the following to the Administrator and the Attorney General:

''(i) The allocation presents a reasonable basis for resolving responsibility for the facility.

''(ii) The assignment of an orphan share shall be in accordance with section 128.

''(F) The Administrator and the Attorney General shall accept a State's request for orphan share funding supported by an allocation report and the certification described in subparagraph (E), unless the Administrator and Attorney General determine, within 120 days after the 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.

''(G) The contract or cooperative agreement shall provide the following:

''(i) The Administrator may deduct from orphan share funding the costs incurred in conducting the allocation.

''(ii) The State may use the orphan share funding only to fund response actions through settlement or to reimburse parties performing work in excess of the share assigned to them in allocation. No such reimbursement may exceed the reimbursement level available under section 128.

''(H) The State may recover funds provided through orphan share funding from nonsettling responsible parties pursuant to State law or the provisions of this Act. Seventy-five percent of such recoveries shall be returned to the Fund. The remaining 25 percent shall be used for any other response action by the recovering State.

''(3) COVENANTS.—(A) In a case in which either the President, acting under the authority of this Act, or a State, acting pursuant to a contract or cooperative agreement under this section, has respon-

sibility for selecting a response action at a facility listed or proposed for listing on the National Priorities List and enters an administrative or judicial settlement to resolve the liability of responsible parties at the facility, the President or the State may confer, in accordance with requirements relating to covenants of sections 122 and 128, a covenant that will preclude some or all administrative or judicial action by both the President and the State to recover response costs or to compel response actions at the facility with respect to matters addressed in the settlement, except that such covenants shall not be binding on the governmental entity that did not confer the covenant to the extent that—

''(i) the covenant purports to address natural resource damages; or

''(ii) the President or the State has not been provided notice of, and an opportunity to participate in, the settlement concerning the response action; or

''(iii) the President or the State objects to the settlement within 120 days of the date of signature for the record of decision or receipt of notice of the settlement, whichever is later.

''(B) The covenants described by this paragraph may be conferred by either the Administrator or the State with respect to a facility owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government). The Administrator may confer a covenant in an administrative order, consent decree, or an interagency agreement. The State may confer a covenant in an administrative order or a consent decree.

''(g) TERMS AND CONDITIONS; ENFORCEMENT.—

''(1) IN GENERAL.—A contract or cooperative agreement under this section shall be subject to such terms and conditions as the Administrator may prescribe. If a State fails to comply with a requirement of a contract or cooperative agreement, the Administrator, after 90 days notice to the affected State, may seek in the appropriate United States district court to ensure performance of the response action, or to recover any funds advanced or any costs incurred because of the breach.

''(2) SPECIFIC TERMS.—A contract or cooperative agreement under this section shall include the following requirements:

"(A) A requirement that the State shall exercise any authority conferred by this section or the contract or cooperative agreement on behalf of the State, and not on behalf of or in the name of the Administrator, the President, or the United States.

"(B) A requirement that the State have and maintain sufficient legal authority under applicable State law to enter into the contract or cooperative agreement.

"(C) A requirement that the Administrator retain authority to terminate and recoup funding, and to terminate the contract or cooperative agreement, if the State fails to perform the contract or cooperative agreement in a manner consistent with this Act. At least 90 days before terminating any contract or cooperative agreement with a State, the Administrator shall provide to the State a written explanation of the reasons for the proposed termination and afford an opportunity to the State to discuss the termination and to propose actions to correct any deficiencies.

"(D) A requirement imposing a non-discretionary duty on the Administrator to per-

form or compel expeditious performance of response actions under the contract or cooperative agreement if the State fails to comply with the terms of the contract or cooperative agreement.

''(h) SAVINGS CLAUSE.—Nothing in this section shall affect the exercise by a State of any other authorities that may be applicable to facilities in such State.''.

SEC. 502. STATE COST SHARE.

Section 104(c) is amended by adding at the end the following new paragraphs:

''(10) EXISTING CONTRACTS AND COOPERATIVE AGREEMENTS.—The requirements of paragraphs (3), (6), and (7) of this subsection shall apply only to contracts and cooperative agreements pursuant to section 104(d) entered into prior to the enactment of the Superfund Cleanup Acceleration and Liability Equity Act.

''(11) STATE COST SHARE.—After the date of enactment of the Superfund Cleanup Acceleration and Liability Equity Act, the Administrator shall not provide any funding under this subsection or section 127, or any response action pursuant to this section, except for emergency removal actions, unless the State in which the release or threatened release occurs has entered into a contract or cooperative agreement pursuant to this subsection or sec-

tion 127 that provides assurances, deemed adequate by the Administrator, that—

''(A) the State will pay or assure payment of 10 percent of the cost of such response action or funding, including 10 percent of orphan share funding and operation and maintenance costs; and

''(B) the State will assure oversight of any operation and maintenance of funded response actions.''.

TITLE VI—GENERAL PROVISIONS

SEC. 601. DEFINITIONS.

Section 101 (42 U.S.C. 9601), as amended by section 409, is further amended by adding at the end the following:

''(41) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means all waste materials generated by households, including single and multifamily residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal

solid waste collection services, and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulation issued pursuant to section 3001(d) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)). Examples of municipal solid waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.''.

SEC. 602. APPROVAL OF GOVERNOR NOT REQUIRED BEFORE LISTING OF FACILITY ON NATIONAL PRIORITIES LIST.

Section 105(a)(8)(B) (42 U.S.C. 9605(a)(8)(B)) is amended by inserting after ''consider any priorities established by the States'' the following: '', but the approval of a Governor of a State is not necessary before the Presi-

dent lists a facility in that State on the National Priorities List''.

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