

105TH CONGRESS
1ST SESSION

S. 18

To assist the States and local governments in assessing and remediating brownfield sites and encouraging environmental cleanup programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. LAUTENBERG (for himself, Mr. BAUCUS, Mr. REID, Mr. MOYNIHAN, Mr. GRAHAM, Mrs. BOXER, Mr. WYDEN, Mr. LEVIN, Mr. TORRICELLI, Mr. BREAUX, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To assist the States and local governments in assessing and remediating brownfield sites and encouraging environmental cleanup programs, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Brownfields and Environmental Cleanup Act of 1997”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL CLEANUP

Sec. 101. Definitions.

Sec. 102. Inventory and assessment grant program.

Sec. 103. Grants for revolving loan programs.

Sec. 104. Economic redevelopment grants.

Sec. 105. Reports.

Sec. 106. Limitations on use of funds.

Sec. 107. Effect on other laws.

Sec. 108. Regulations.

Sec. 109. Authorizations of appropriations.

TITLE II—PROSPECTIVE PURCHASERS

Sec. 201. Limitations on liability for response costs for prospective purchasers.

TITLE III—INNOCENT LANDOWNERS

Sec. 301. Innocent landowners.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) past uses of land in the United States for
4 industrial and commercial purposes have created
5 many sites throughout the United States that have
6 environmental contamination;

7 (2) Congress and the governments of States
8 and political subdivisions of States have enacted
9 laws to—

10 (A) prevent environmental contamination;

11 and

12 (B) carry out response actions to correct
13 past instances of environmental contamination;

14 (3) many sites are minimally contaminated, do
15 not pose serious threats to human health or the en-

1 vironment, and can be satisfactorily remediated ex-
2 peditiously with little government oversight;

3 (4) promoting the assessment, cleanup, and re-
4 development of contaminated sites could lead to sig-
5 nificant environmental and economic benefits, par-
6 ticularly in any case in which a cleanup can be com-
7 pleted quickly and during a period of time that
8 meets short-term business needs;

9 (5) the private market demand for sites af-
10 fected by environmental contamination frequently is
11 reduced, often because of uncertainties regarding li-
12 ability or potential cleanup costs of innocent land-
13 owners and prospective purchasers under Federal
14 law;

15 (6) the abandonment or underutilization of
16 brownfield sites impairs the ability of the Federal
17 Government and the governments of States and po-
18 litical subdivisions of States to provide economic op-
19 portunities for the people of the United States, par-
20 ticularly the unemployed and economically disadvan-
21 taged;

22 (7) the abandonment or underuse of brownfield
23 sites also results in the inefficient use of public fa-
24 cilities and services, as well as land and other natu-

1 ral resources, and extends conditions of blight in
2 local communities;

3 (8) cooperation among Federal agencies, de-
4 partments and agencies of States and political sub-
5 divisions of States, local community development or-
6 ganizations, and current owners and prospective
7 purchasers of brownfield sites is required to accom-
8 plish timely response actions and the redevelopment
9 or reuse of brownfield sites;

10 (9) there is a need to provide financial incen-
11 tives and assistance to inventory and assess certain
12 brownfield sites and facilitate the cleanup of the
13 sites so that the sites may be redeveloped for bene-
14 ficial uses; and

15 (10) there is a need for a program to—

16 (A) encourage cleanups of brownfield sites;
17 and

18 (B) facilitate the establishment and en-
19 hancement of programs by States and local gov-
20 ernments to foster cleanups of brownfield sites
21 through capitalization of loan programs.

22 (b) PURPOSES.—The purposes of this Act are to cre-
23 ate new business and employment opportunities through
24 the economic redevelopment of brownfield sites that gen-
25 erally do not pose a serious threat to human health or

1 the environment and to stimulate the assessment and
2 cleanup of brownfield sites by—

3 (1) encouraging States and local governments
4 to provide for the assessment and cleanup of
5 brownfield sites that may not be remediated under
6 other environmental laws (including regulations) in
7 effect on the date of enactment of this Act;

8 (2) encouraging local governments and private
9 parties, including local community development or-
10 ganizations, to participate in programs, such as
11 State cleanup programs, that facilitate expedited re-
12 sponse actions that are consistent with business
13 needs at brownfield sites;

14 (3) directing the Administrator of the Environ-
15 mental Protection Agency to establish programs that
16 provide financial assistance to—

17 (A) facilitate site assessments of certain
18 brownfield sites;

19 (B) encourage cleanup of appropriate
20 brownfield sites through capitalization of loan
21 programs; and

22 (C) encourage workforce development in
23 areas adversely affected by contaminated prop-
24 erties; and

1 (4) reducing transaction costs and paperwork,
2 and preventing needless duplication of effort and
3 delay at all levels of government.

4 **TITLE I—BROWNFIELD REMEDI-**
5 **ATION AND ENVIRONMENTAL**
6 **CLEANUP**

7 **SEC. 101. DEFINITIONS.**

8 In this title:

9 (1) ADMINISTRATOR.—The term “Adminis-
10 trator” means the Administrator of the Environ-
11 mental Protection Agency.

12 (2) BROWNFIELD SITE.—The term “brownfield
13 site” means a facility that has or is suspected of
14 having environmental contamination that—

15 (A) could prevent the timely use, develop-
16 ment, reuse, or redevelopment of the facility;
17 and

18 (B) is relatively limited in scope or severity
19 and can be comprehensively assessed and read-
20 ily analyzed.

21 (3) CONTAMINANT.—The term “contaminant”
22 includes any hazardous substance (as defined in sec-
23 tion 101 of the Comprehensive Environmental Re-
24 sponse, Compensation, and Liability Act of 1980 (42
25 U.S.C. 9601)).

1 (4) DISPOSAL.—The term “disposal” has the
2 meaning given the term in section 1004 of the Solid
3 Waste Disposal Act (42 U.S.C. 6903).

4 (5) ENVIRONMENT.—The term “environment”
5 has the meaning given the term in section 101 of the
6 Comprehensive Environmental Response, Compensa-
7 tion, and Liability Act of 1980 (42 U.S.C. 9601).

8 (6) ENVIRONMENTAL CONTAMINATION.—The
9 term “environmental contamination” means the ex-
10 istence at a facility of 1 or more contaminants that
11 may pose a threat to human health or the environ-
12 ment.

13 (7) FACILITY.—The term “facility” has the
14 meaning given the term in section 101 of the Com-
15 prehensive Environmental Response, Compensation,
16 and Liability Act of 1980 (42 U.S.C. 9601).

17 (8) GRANT.—The term “grant” includes a co-
18 operative agreement.

19 (9) GROUND WATER.—The term “ground
20 water” has the meaning given the term in section
21 101 of the Comprehensive Environmental Response,
22 Compensation, and Liability Act of 1980 (42 U.S.C.
23 9601).

24 (10) INDIAN TRIBE.—The term “Indian tribe”
25 has the meaning given the term in section 101 of the

1 Comprehensive Environmental Response, Compensa-
2 tion, and Liability Act of 1980 (42 U.S.C. 9601).

3 (11) LOCAL GOVERNMENT.—The term “local
4 government” has the meaning given the term “unit
5 of general local government” in the first sentence of
6 section 102(a)(1) of the Housing and Community
7 Development Act of 1974 (42 U.S.C. 5302(a)(1)),
8 except that the term includes an Indian tribe.

9 (12) NATURAL RESOURCES.—The term “natu-
10 ral resources” has the meaning given the term in
11 section 101 of the Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980
13 (42 U.S.C. 9601).

14 (13) OWNER.—The term “owner” has the
15 meaning given the term in section 101 of the Com-
16 prehensive Environmental Response, Compensation,
17 and Liability Act of 1980 (42 U.S.C. 9601).

18 (14) PERSON.—The term “person” has the
19 meaning given the term in section 101 of the Com-
20 prehensive Environmental Response, Compensation,
21 and Liability Act of 1980 (42 U.S.C. 9601).

22 (15) PROSPECTIVE PURCHASER.—The term
23 “prospective purchaser” means a prospective pur-
24 chaser of a brownfield site.

1 (16) RELEASE.—The term “release” has the
2 meaning given the term in section 101 of the Com-
3 prehensive Environmental Response, Compensation,
4 and Liability Act of 1980 (42 U.S.C. 9601).

5 (17) RESPONSE ACTION.—The term “response
6 action” has the meaning given the term “response”
7 in section 101 of the Comprehensive Environmental
8 Response, Compensation, and Liability Act of 1980
9 (42 U.S.C. 9601).

10 (18) SITE ASSESSMENT.—

11 (A) IN GENERAL.—The term “site assess-
12 ment” means an investigation that determines
13 the nature and extent of a release or potential
14 release of a hazardous substance at a
15 brownfield site and meets the requirements of
16 subparagraph (B).

17 (B) INVESTIGATION.—For the purposes of
18 this paragraph, an investigation that meets the
19 requirements of this subparagraph—

20 (i) shall include—

21 (I) an onsite evaluation; and

22 (II) sufficient testing, sampling,
23 and other field-data-gathering activi-
24 ties to accurately determine whether
25 the brownfield site is contaminated

1 and the threats to human health and
2 the environment posed by the release
3 of contaminants at the brownfield
4 site; and

5 (ii) may include—

6 (I) review of such information re-
7 garding the brownfield site and pre-
8 vious uses as is available at the time
9 of the review; and

10 (II) an offsite evaluation, if ap-
11 propriate.

12 (19) STATE.—The term “State” has the mean-
13 ing given the term in section 101 of the Comprehen-
14 sive Environmental Response, Compensation, and
15 Liability Act of 1980 (42 U.S.C. 9601).

16 **SEC. 102. INVENTORY AND ASSESSMENT GRANT PROGRAM.**

17 (a) IN GENERAL.—The Administrator shall establish
18 a program to award grants to States or local governments
19 to inventory brownfield sites and to conduct site assess-
20 ments of brownfield sites.

21 (b) SCOPE OF PROGRAM.—

22 (1) GRANT AWARDS.—To carry out subsection
23 (a), the Administrator may, on approval of an appli-
24 cation, provide financial assistance to a State or
25 local government.

1 (2) GRANT APPLICATION.—An application for a
2 grant under this section shall include, to the extent
3 practicable, each of the following:

4 (A) An identification of the brownfield
5 sites for which assistance is sought and a de-
6 scription of the effect of the brownfield sites on
7 the community, including a description of the
8 nature and extent of any known or suspected
9 environmental contamination within the areas.

10 (B) A description of the need of the appli-
11 cant for financial assistance to inventory
12 brownfield sites and conduct site assessments.

13 (C) A demonstration of the potential of the
14 grant assistance to stimulate economic develop-
15 ment, including the extent to which the assist-
16 ance will stimulate the availability of other
17 funds for site assessment, site identification, or
18 environmental remediation and subsequent re-
19 development of the areas in which eligible
20 brownfield sites are situated.

21 (D) A description of the local commitment
22 as of the date of the application, which shall in-
23 clude a community involvement plan that dem-
24 onstrates meaningful community involvement.

1 (E) A plan that shows how the site assess-
2 ment, site identification, or environmental re-
3 mediation and subsequent development will be
4 implemented, including—

5 (i) an environmental plan that ensures
6 the use of sound environmental procedures;

7 (ii) an explanation of the appropriate
8 government authority and support for the
9 project as in existence on the date of the
10 application;

11 (iii) proposed funding mechanisms for
12 any additional work; and

13 (iv) a proposed land ownership plan.

14 (F) A statement on the long-term benefits
15 and the sustainability of the proposed project
16 that includes—

17 (i) the ability of the project to be rep-
18 licated nationally and measures of success
19 of the project; and

20 (ii) to the extent known, the potential
21 of the plan for each area in which an eligi-
22 ble brownfield site is situated to stimulate
23 economic development of the area on com-
24 pletion of the environmental remediation.

1 (G) Such other factors as the Adminis-
 2 trator considers relevant to carry out this title.

3 (3) APPROVAL OF APPLICATION.—

4 (A) IN GENERAL.—In making a decision
 5 whether to approve an application under para-
 6 graph (1), the Administrator shall—

7 (i) consider the need of the State or
 8 local government for financial assistance to
 9 carry out this section;

10 (ii) consider the ability of the appli-
 11 cant to carry out an inventory and site as-
 12 sessment under this section;

13 (iii) ensure a fair distribution of grant
 14 funds between urban and nonurban areas;
 15 and

16 (iv) consider such other factors as the
 17 Administrator considers relevant to carry
 18 out this section.

19 (B) GRANT CONDITIONS.—As a condition
 20 of awarding a grant under this section, the Ad-
 21 ministrator may, on the basis of the criteria
 22 considered under subparagraph (A), attach
 23 such conditions to the grant as the Adminis-
 24 trator determines appropriate.

1 (4) GRANT AMOUNT.—The amount of a grant
2 awarded to any State or local government under
3 subsection (a) for inventory and site assessment of
4 1 or more brownfield sites shall not exceed
5 \$200,000.

6 (5) TERMINATION OF GRANTS.—If the Admin-
7 istrator determines that a State or local government
8 that receives a grant under this subsection is in vio-
9 lation of a condition of a grant referred to in para-
10 graph (3)(B), the Administrator may terminate the
11 grant made to the State or local government and re-
12 quire full or partial repayment of the grant.

13 **SEC. 103. GRANTS FOR REVOLVING LOAN PROGRAMS.**

14 (a) IN GENERAL.—

15 (1) ESTABLISHMENT.—The Administrator shall
16 establish a program to award grants to be used by
17 State or local governments to capitalize revolving
18 loan funds for the cleanup of brownfield sites.

19 (2) LOANS.—The loans may be provided by the
20 State or local government to finance cleanups of
21 brownfield sites by the State or local government, or
22 by an owner or a prospective purchaser of a
23 brownfield site (including a local government) at
24 which a cleanup is being conducted or is proposed to
25 be conducted.

1 (b) SCOPE OF PROGRAM.—

2 (1) IN GENERAL.—

3 (A) GRANTS.—In carrying out subsection
4 (a), the Administrator may award a grant to a
5 State or local government that submits an ap-
6 plication to the Administrator that is approved
7 by the Administrator.

8 (B) USE OF GRANT.—The grant shall be
9 used by the State or local government to cap-
10 italize a revolving loan fund to be used for
11 cleanup of 1 or more brownfield sites.

12 (C) GRANT APPLICATION.—An application
13 for a grant under this section shall be in such
14 form as the Administrator determines appro-
15 priate. At a minimum, the application shall in-
16 clude the following:

17 (i) Evidence that the grant applicant
18 has the financial controls and resources to
19 administer a revolving loan fund in accord-
20 ance with this title.

21 (ii) Provisions that—

22 (I) ensure that the grant appli-
23 cant has the ability to monitor the use
24 of funds provided to loan recipients
25 under this title;

1 (II) ensure that any cleanup con-
2 ducted by the applicant is protective
3 of human health and the environment;
4 and

5 (III) ensure that any cleanup
6 funded under this Act will comply
7 with all applicable Federal and State
8 laws that apply to the cleanup.

9 (iii) Identification of the criteria to be
10 used by the State or local government in
11 providing for loans under the program.
12 The criteria shall include the financial
13 standing of the applicants for the loans,
14 the use to which the loans will be put, the
15 provisions to be used to ensure repayment
16 of the loan funds, and the following:

17 (I) A complete description of the
18 financial standing of the applicant
19 that includes a description of the as-
20 sets, cash flow, and liabilities of the
21 applicant.

22 (II) A written statement that at-
23 tests that the cleanup of the site
24 would not occur without access to the
25 revolving loan fund.

1 (III) The proposed method, and
 2 anticipated period of time required, to
 3 clean up the environmental contami-
 4 nation at the brownfield site.

5 (IV) An estimate of the proposed
 6 total cost of the cleanup to be con-
 7 ducted at the brownfield site.

8 (V) An analysis that dem-
 9 onstrates the potential of the
 10 brownfield site for stimulating eco-
 11 nomic development on completion of
 12 the cleanup of the brownfield site.

13 (2) GRANT APPROVAL.—In determining wheth-
 14 er to award a grant under this section, the Adminis-
 15 trator shall consider—

16 (A) the need of the State or local govern-
 17 ment for financial assistance to clean up
 18 brownfield sites that are the subject of the ap-
 19 plication, taking into consideration the financial
 20 resources available to the State or local govern-
 21 ment;

22 (B) the ability of the State or local govern-
 23 ment to ensure that the applicants repay the
 24 loans in a timely manner;

1 (C) the extent to which the cleanup of the
2 brownfield site or sites would reduce health and
3 environmental risks caused by the release of
4 contaminants at, or from, the brownfield site or
5 sites;

6 (D) the demonstrable potential of the
7 brownfield site or sites for stimulating economic
8 development on completion of the cleanup;

9 (E) the demonstrated ability of the State
10 or local government to administer such a loan
11 program;

12 (F) the demonstrated experience of the
13 State or local government regarding brownfield
14 sites and the reuse of contaminated land, in-
15 cluding whether the government has received
16 any grant under the Comprehensive Environ-
17 mental Response, Compensation, and Liability
18 Act of 1980 (42 U.S.C. 9601 et seq.) to assess
19 brownfield sites, except that applicants who
20 have not previously received such a grant may
21 be considered for awards under this section;

22 (G) the efficiency of having the loan ad-
23 ministered by the level of government rep-
24 resented by the applicant entity;

1 (H) the experience of administering any
2 loan programs by the entity, including the loan
3 repayment rates;

4 (I) the demonstrations made regarding the
5 ability of the State or local government to en-
6 sure a fair distribution of grant funds among
7 brownfield sites within the jurisdiction of the
8 State or local government; and

9 (J) such other factors as the Administrator
10 considers relevant to carry out this section.

11 (3) GRANT AMOUNT.—The amount of a grant
12 made to a State or local applicant under this section
13 shall not exceed \$500,000.

14 (4) REVOLVING LOAN FUND APPROVAL.—Each
15 application for a grant to capitalize a revolving loan
16 fund under this section shall, as a condition of ap-
17 proval by the Administrator, include a written state-
18 ment by the State or local government that—

19 (A) cleanups to be funded under the loan
20 program of the State or local government shall
21 be conducted under the auspices of, and in com-
22 pliance with, the State voluntary cleanup pro-
23 gram or State Superfund program or Federal
24 authority;

1 (B) the cleanup or proposed voluntary
2 cleanup is cost-effective; and

3 (C) the estimated total cost of the cleanup
4 is reasonable.

5 (c) GRANT AGREEMENTS.—Each grant under this
6 section for a revolving loan fund shall be made pursuant
7 to a grant agreement. At a minimum, the grant agreement
8 shall include provisions that ensure the following:

9 (1) COMPLIANCE WITH LAW.—The grant recipi-
10 ent will include in all loan agreements a requirement
11 that the loan recipient shall comply with all applica-
12 ble Federal and State laws applicable to the cleanup
13 and shall ensure that the cleanup is protective of
14 human health and the environment.

15 (2) REPAYMENT.—The State or local govern-
16 ment will require repayment of the loan consistent
17 with this title.

18 (3) USE OF FUNDS.—The State or local govern-
19 ment will use the funds solely for purposes of estab-
20 lishing and capitalizing a loan program in accord-
21 ance with this title and of cleaning up the environ-
22 mental contamination at the brownfield site or sites.

23 (4) REPAYMENT OF FUNDS.—The State or local
24 government will require in each loan agreement, and
25 take necessary steps to ensure, that the loan recipi-

1 ent will use the loan funds solely for the purposes
2 stated in paragraph (3), and will require the return
3 of any excess funds immediately on a determination
4 by the appropriate State or local official that the
5 cleanup has been completed.

6 (5) NONTRANSFERABILITY.—The funds will not
7 be transferable, unless the Administrator agrees to
8 the transfer in writing.

9 (6) LIENS.—

10 (A) DEFINITIONS.—In this paragraph, the
11 terms “security interest” and “purchaser” have
12 the meanings given the terms in section
13 6323(h) of the Internal Revenue Code of 1986.

14 (B) LIENS.—A lien in favor of the grant
15 recipient shall arise on the contaminated prop-
16 erty subject to a loan under this section.

17 (C) COVERAGE.—The lien shall cover all
18 real property included in the legal description of
19 the property at the time the loan agreement
20 provided for in this section is signed, and all
21 rights to the property, and shall continue until
22 the terms and conditions of the loan agreement
23 have been fully satisfied.

24 (D) TIMING.—The lien shall—

1 (i) arise at the time a security interest
 2 is appropriately recorded in the real prop-
 3 erty records of the appropriate office of the
 4 State, county, or other governmental sub-
 5 division, as designated by State law, in
 6 which the real property subject to the lien
 7 is located; and

8 (ii) be subject to the rights of any
 9 purchaser, holder of a security interest, or
 10 judgment lien creditor whose interest is or
 11 has been perfected under applicable State
 12 law before the notice has been filed in the
 13 appropriate office of the State, county, or
 14 other governmental subdivision, as des-
 15 ignated by State law, in which the real
 16 property subject to the lien is located.

17 (7) OTHER CONDITIONS.—The State or local
 18 government will comply with such other terms and
 19 conditions as the Administrator determines are nec-
 20 essary to protect the financial interests of the Unit-
 21 ed States and to protect human health and the envi-
 22 ronment.

23 (d) AUDITS.—

24 (1) IN GENERAL.—The Inspector General of
 25 the Environmental Protection Agency shall audit a

1 portion of the grants awarded under this section to
 2 ensure that all funds are used for the purposes set
 3 forth in this section.

4 (2) FUTURE GRANTS.—The result of the audit
 5 shall be taken into account in awarding any future
 6 grants to the State or local government.

7 **SEC. 104. ECONOMIC REDEVELOPMENT GRANTS.**

8 (a) EXPENDITURES FROM THE SUPERFUND.—
 9 Amounts in the Hazardous Substance Superfund estab-
 10 lished by section 9507 of the Internal Revenue Code of
 11 1986 shall be made available consistent with, and for the
 12 purposes of carrying out, the grant programs established
 13 under sections 102 and 103.

14 (b) AUTHORITY TO AWARD GRANTS.—There is au-
 15 thorized to be appropriated from the Hazardous Sub-
 16 stance Superfund for grants to State and local govern-
 17 ments under sections 102 and 103, \$25,000,000 for each
 18 of fiscal years 1998 through 2002.

19 **SEC. 105. REPORTS.**

20 (a) IN GENERAL.—Not later than 1 year after the
 21 date of enactment of this Act, and not later than January
 22 31 of each of the 3 calendar years thereafter, the Adminis-
 23 trator shall prepare and submit a report describing the
 24 results of each program established under this title to—

1 (1) the Committee on Environment and Public
2 Works of the Senate; and

3 (2) the Committee on Commerce of the House
4 of Representatives.

5 (b) CONTENTS OF REPORT.—Each report shall, with
6 respect to each of the programs established under this
7 title, include a description of—

8 (1) the number of applications received by the
9 Administrator during the preceding calendar year;

10 (2) the number of applications approved by the
11 Administrator during the preceding calendar year;
12 and

13 (3) the allocation of assistance under sections
14 102 and 103 among the States and local govern-
15 ments.

16 **SEC. 106. LIMITATIONS ON USE OF FUNDS.**

17 (a) EXCLUDED FACILITIES.—A grant for site inven-
18 tory and assessment under section 102 or to capitalize a
19 revolving loan fund under section 103 may not be used
20 for any activity involving—

21 (1) a facility that is the subject of a planned or
22 an ongoing response action under the Comprehensive
23 Environmental Response, Compensation, and Liabil-
24 ity Act of 1980 (42 U.S.C. 9601 et seq.), except for
25 a facility for which a preliminary assessment, site in-

1 investigation, or removal action has been completed
2 and with respect to which the Administrator has de-
3 cided not to take further response action, including
4 cost recovery action;

5 (2) a facility included, or proposed for inclu-
6 sion, on the National Priorities List maintained by
7 the Administrator under the Comprehensive Envi-
8 ronmental Response, Compensation, and Liability
9 Act of 1980 (42 U.S.C. 9601 et seq.);

10 (3) a facility with respect to which a record of
11 decision, other than a no-action record of decision,
12 has been issued by the President under section 104
13 of the Comprehensive Environmental Response,
14 Compensation, and Liability Act of 1980 (42 U.S.C.
15 9604) with respect to the facility;

16 (4) a facility that is subject to corrective action
17 under section 3004(u), 3008(h) of the Solid Waste
18 Disposal Act (42 U.S.C. 6924(u) or 6928(h)) to
19 which a corrective action permit or order has been
20 issued or modified to require the implementation of
21 corrective measures;

22 (5) any land disposal unit with respect to which
23 a closure notification under subtitle C of the Solid
24 Waste Disposal Act (42 U.S.C. 6921 et seq.) has

1 been submitted and closure requirements have been
2 specified in a closure plan or permit;

3 (6) a facility at which there has been a release
4 of a polychlorinated biphenyl and that is subject to
5 the Toxic Substances Control Act (15 U.S.C. 2601
6 et seq.);

7 (7) a facility with respect to which an adminis-
8 trative order on consent or a judicial consent decree
9 requiring cleanup has been entered into by the
10 President and is in effect under—

11 (A) the Comprehensive Environmental Re-
12 sponse, Compensation, and Liability Act of
13 1980 (42 U.S.C. 9601 et seq.);

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

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

18 (D) the Toxic Substances Control Act (15
19 U.S.C. 2601 et seq.); or

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

22 (8) a facility at which assistance for response
23 activities may be obtained under subtitle I of the
24 Solid Waste Disposal Act (42 U.S.C. 6991 et seq.)
25 from the Leaking Underground Storage Tank Trust

1 Fund established by section 9508 of the Internal
2 Revenue Code of 1986; and

3 (9) a facility owned or operated by a depart-
4 ment, agency, or instrumentality of the United
5 States, except for land held in trust by the United
6 States for an Indian tribe.

7 (b) FINES AND COST-SHARING.—A grant made
8 under this title may not be used to pay any fine or penalty
9 owed to a State or the Federal Government, or to meet
10 any Federal cost-sharing requirement.

11 (c) OTHER LIMITATIONS.—

12 (1) IN GENERAL.—Funds made available to a
13 State or local government under the grant programs
14 established under sections 102 and 103 shall be used
15 only to inventory and assess brownfield sites as au-
16 thorized by this title and for capitalizing a revolving
17 loan fund as authorized by this title, respectively.

18 (2) RESPONSIBILITY FOR CLEANUP ACTION.—
19 Funds made available under this title may not be
20 used to relieve a local government or State of the
21 commitment or responsibilities of the local govern-
22 ment or State under State law to assist or carry out
23 cleanup actions at brownfield sites.

1 **SEC. 107. EFFECT ON OTHER LAWS.**

2 Nothing in this title affects the liability or response
3 authorities for environmental contamination under any
4 other law (including any regulation), including—

5 (1) the Comprehensive Environmental Re-
6 sponse, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9601 et seq.);

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

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

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

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

16 **SEC. 108. REGULATIONS.**

17 (a) IN GENERAL.—The Administrator may issue
18 such regulations as are necessary to carry out this title.

19 (b) PROCEDURES AND STANDARDS.—The regulations
20 shall include such procedures and standards as the Admin-
21 istrator considers necessary, including procedures and
22 standards for evaluating an application for a grant or loan
23 submitted under this title.

1 **SEC. 109. AUTHORIZATIONS OF APPROPRIATIONS.**

2 (a) SITE ASSESSMENT PROGRAM.—There is author-
 3 ized to be appropriated to carry out section 102
 4 \$10,000,000 for each of fiscal years 1998 through 2002.

5 (b) ECONOMIC REDEVELOPMENT ASSISTANCE PRO-
 6 GRAM.—There is authorized to be appropriated to carry
 7 out section 103 \$15,000,000 for each of fiscal years 1998
 8 through 2002.

9 (c) AVAILABILITY OF FUNDS.—The amounts appro-
 10 priated under this section shall remain available until ex-
 11 pended.

12 **TITLE II—PROSPECTIVE**
 13 **PURCHASERS**

14 **SEC. 201. LIMITATIONS ON LIABILITY FOR RESPONSE**
 15 **COSTS FOR PROSPECTIVE PURCHASERS.**

16 (a) LIMITATIONS ON LIABILITY.—Section 107 of the
 17 Comprehensive Environmental Response, Compensation,
 18 and Liability Act of 1980 (42 U.S.C. 9607) is amended
 19 by adding at the end the following:

20 “(n) LIMITATIONS ON LIABILITY FOR PROSPECTIVE
 21 PURCHASERS.—Notwithstanding paragraphs (1) through
 22 (4) of subsection (a), to the extent the liability of a person,
 23 with respect to a release or the threat of a release from
 24 a facility, is based solely on subsection (a)(1), the person
 25 shall not be liable under this Act if the person—

1 “(1) is a bona fide prospective purchaser of the
2 facility; and

3 “(2) does not impede the performance of any
4 response action or natural resource restoration at a
5 facility.”.

6 (b) PROSPECTIVE PURCHASER AND WINDFALL
7 LIEN.—Section 107 of the Comprehensive Environmental
8 Response, Compensation, and Liability Act of 1980 (as
9 amended by subsection (a)) is amended by inserting after
10 subsection (n) the following:

11 “(o) PROSPECTIVE PURCHASER AND WINDFALL
12 LIEN.—

13 “(1) IN GENERAL.—In any case in which there
14 are unrecovered response costs at a facility for which
15 an owner of the facility is not liable by reason of
16 subsection (n), and the conditions described in para-
17 graph (3) are met, the United States shall have a
18 lien on the facility, or may obtain, from the appro-
19 priate responsible party or parties, a lien on other
20 property or other assurances of payment satisfactory
21 to the Administrator, for the unrecovered costs.

22 “(2) AMOUNT; DURATION.—The lien—

23 “(A) shall be for an amount not to exceed
24 the increase in fair market value of the prop-
25 erty attributable to the response action at the

1 time of a subsequent sale or other disposition
 2 of the property;

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

6 “(C) shall be subject to the requirements
 7 for notice and validity specified in subsection
 8 (1)(3); and

9 “(D) shall continue until the earlier of sat-
 10 isfaction of the lien or recovery of all response
 11 costs incurred at the facility.

12 “(3) CONDITIONS.—The conditions referred to
 13 in paragraph (1) are the following:

14 “(A) RESPONSE ACTION.—A response ac-
 15 tion for which there are unrecovered costs is
 16 carried out at the facility.

17 “(B) FAIR MARKET VALUE.—The response
 18 action increases the fair market value of the fa-
 19 cility above the fair market value of the facility
 20 that existed on the date that is 180 days before
 21 the response action was commenced.”.

22 (c) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
 23 CHASER.—Section 101 of the Comprehensive Environ-
 24 mental Response, Compensation, and Liability Act of

1 1980 (42 U.S.C. 9601) is amended by adding at the end
 2 the following:

3 “(39) BONA FIDE PROSPECTIVE PURCHASER.—

4 The term ‘bona fide prospective purchaser’ means a
 5 person who acquires ownership of a facility after the
 6 date of enactment of the Brownfields and Environ-
 7 mental Cleanup Act of 1997, or a tenant of such a
 8 person, who can establish each of the following by a
 9 preponderance of the evidence:

10 “(A) DISPOSAL PRIOR TO ACQUISITION.—

11 All active disposal of hazardous substances at
 12 the facility occurred before the person acquired
 13 the facility.

14 “(B) INQUIRY.—

15 “(i) IN GENERAL.—The person made
 16 all appropriate inquiry into the previous
 17 ownership and uses of the facility in ac-
 18 cordance with generally accepted good
 19 commercial and customary standards and
 20 practices.

21 “(ii) STANDARDS.—The standards
 22 and practices issued by the Administrator
 23 under paragraph (35)(B)(ii) shall satisfy
 24 the requirements of this subparagraph.

1 “(iii) RESIDENTIAL PROPERTY.—In
 2 the case of property in residential or other
 3 similar use at the time of purchase by a
 4 nongovernmental or noncommercial entity,
 5 a site inspection and title search that re-
 6 veal no basis for further investigation shall
 7 satisfy the requirements of this subpara-
 8 graph.

9 “(C) NOTICES.—The person provided all
 10 legally required notices with respect to the dis-
 11 covery or release of any hazardous substances
 12 at the facility.

13 “(D) CARE.—The person exercised appro-
 14 priate care with respect to hazardous sub-
 15 stances found at the facility by taking reason-
 16 able steps to—

17 “(i) stop ongoing releases;

18 “(ii) prevent threatened future re-
 19 leases of hazardous substances; and

20 “(iii) prevent or limit human or natu-
 21 ral resource exposure to hazardous sub-
 22 stances previously released into the envi-
 23 ronment.

24 “(E) COOPERATION, ASSISTANCE, AND AC-
 25 CESS.—The person provides full cooperation,

1 assistance, and facility access to such persons
 2 as are authorized to conduct response actions at
 3 the facility, including the cooperation and ac-
 4 cess necessary for the installation, integrity, op-
 5 eration, and maintenance of any complete or
 6 partial response action at the facility.

7 “(F) RELATIONSHIP.—The person is not
 8 liable, or is not affiliated with any other person
 9 that is potentially liable, for response costs at
 10 the facility, through any direct or indirect fa-
 11 milial relationship, or any contractual, cor-
 12 porate, or financial relationship other than that
 13 created by the instruments by which title to the
 14 facility is conveyed or financed.”.

15 **TITLE III—INNOCENT** 16 **LANDOWNERS**

17 **SEC. 301. INNOCENT LANDOWNERS.**

18 (a) KNOWLEDGE OF INQUIRY REQUIREMENT.—Sec-
 19 tion 101(35) of the Comprehensive Environmental Re-
 20 sponse, Compensation, and Liability Act of 1980 (42
 21 U.S.C. 9601(35)) is amended by striking subparagraph
 22 (B) and inserting the following:

23 “(B) KNOWLEDGE OF INQUIRY REQUIRE-
 24 MENT.—

1 “(i) DEFINITION OF CONTAMINA-
2 TION.—In this subparagraph, the term
3 ‘contamination’ means an existing release,
4 a past release, or the threat of a release of
5 a hazardous substance.

6 “(ii) REQUIREMENT.—

7 “(I) INQUIRY.—To establish that
8 the defendant had no reason to know
9 (under subparagraph (A)(i)), the de-
10 fendant must have made, at the time
11 of the acquisition, all appropriate in-
12 quiry (as well as comply with clause
13 (vii)) into the previous ownership and
14 uses of the facility, consistent with
15 good commercial or customary prac-
16 tice in an effort to minimize liability.

17 “(II) CONSIDERATIONS.—For the
18 purpose of subclause (I) and until the
19 President issues or designates stand-
20 ards as provided in clause (iv), the
21 court shall take into account—

22 “(aa) any specialized knowl-
23 edge or experience on the part of
24 the defendant;

1 “(bb) the relationship of the
 2 purchase price to the value of the
 3 property if uncontaminated;

4 “(cc) commonly known or
 5 reasonably ascertainable informa-
 6 tion about the property;

7 “(dd) the obviousness of the
 8 presence or likely presence of
 9 contamination at the property;
 10 and

11 “(ee) the ability to detect
 12 the contamination by appropriate
 13 investigation.

14 “(iii) CONDUCT OF ENVIRONMENTAL
 15 ASSESSMENT.—A person who has acquired
 16 real property shall be considered to have
 17 made all appropriate inquiry within the
 18 meaning of clause (ii)(I) if—

19 “(I) the person establishes that,
 20 within 180 days prior to the date of
 21 acquisition, an environmental site as-
 22 sessment of the real property was con-
 23 ducted that meets the requirements of
 24 clause (iv); and

1 “(II) the person complies with
2 clause (vii).

3 “(iv) ENVIRONMENTAL SITE ASSESS-
4 MENT.—

5 “(I) IN GENERAL.—An environ-
6 mental site assessment meets the re-
7 quirements of this clause if the assess-
8 ment is conducted in accordance with
9 the standards set forth in the Amer-
10 ican Society for Testing and Materials
11 (ASTM) Standard E1527–94, titled
12 ‘Standard Practice for Environmental
13 Site Assessments: Phase I Environ-
14 mental Site Assessment Process’ or
15 with any alternative standards issued
16 by regulation by the President or is-
17 sued or developed by other entities
18 and designated by regulation by the
19 President.

20 “(II) STUDY OF PRACTICES.—
21 Before issuing or designating alter-
22 native standards under subclause (I),
23 the President shall conduct a study of
24 commercial and industrial practices
25 concerning environmental site assess-

1 ments in the transfer of real property
2 in the United States.

3 “(v) CONSIDERATIONS IN ISSUING
4 STANDARDS.—In issuing or designating
5 any standards under clause (iv), the Presi-
6 dent shall consider requirements governing
7 each of the following:

8 “(I) Conduct of an inquiry by an
9 environmental professional.

10 “(II) Interviews of each owner,
11 operator, and occupant of the prop-
12 erty to determine information regard-
13 ing the potential for contamination.

14 “(III) Review of historical
15 sources as necessary to determine
16 each previous use and occupancy of
17 the property since the property was
18 first developed. In this subclause, the
19 term ‘historical sources’ means any of
20 the following, if reasonably ascertain-
21 able: each recorded chain of title doc-
22 ument regarding the real property, in-
23 cluding each deed, easement, lease, re-
24 striction, and covenant, any aerial
25 photograph, fire insurance map, prop-

erty tax file, United States Geological Survey 7.5 minutes topographic map, local street directory, building department record, and zoning/land use record, and any other source that identifies a past use or occupancy of the property.

“(IV) Determination of the existence of any recorded environmental cleanup lien against the real property that has arisen under any Federal, State, or local law.

“(V) Review of reasonably ascertainable Federal, State, and local government records of any facility that is likely to cause or contribute to contamination at the real property, including, as appropriate—

“(aa) any investigation report for the facility;

“(bb) any record of activities likely to cause or contribute to contamination at the real property, including any landfill or other disposal location record,

1 underground storage tank record,
2 hazardous waste handler and
3 generator record, and spill re-
4 porting record; and

5 “(cc) any other reasonably
6 ascertainable Federal, State, and
7 local government environmental
8 record that could reflect an inci-
9 dent or activity that is likely to
10 cause or contribute to contamina-
11 tion at the real property.

12 “(VI) A visual site inspection of
13 the real property and each facility and
14 improvement on the real property and
15 a visual site inspection of each imme-
16 diately adjacent property, including an
17 investigation of any hazardous sub-
18 stance use, storage, treatment, or dis-
19 posal practice on the property.

20 “(VII) Any specialized knowledge
21 or experience on the part of the per-
22 son that acquired the property.

23 “(VIII) The relationship of the
24 purchase price to the value of the
25 property if uncontaminated.

1 “(IX) Commonly known or rea-
2 sonably ascertainable information
3 about the property.

4 “(X) The obviousness of the
5 presence or likely presence of contami-
6 nation at the property, and the ability
7 to detect the contamination by appro-
8 priate investigation.

9 “(vi) REASONABLY ASCERTAIN-
10 ABLE.—A record shall be considered to be
11 reasonably ascertainable for purposes of
12 clause (v) if a copy or reasonable facsimile
13 of the record is publicly available by re-
14 quest (within reasonable time and cost con-
15 straints) and the record is practicably
16 reviewable.

17 “(vii) APPROPRIATE INQUIRY.—A per-
18 son shall not be treated as having made all
19 appropriate inquiry under clause (ii)(I) un-
20 less—

21 “(I) the person has maintained a
22 compilation of the information re-
23 viewed and gathered in the course of
24 any environmental site assessment;

1 “(II) the person exercised appro-
2 priate care with respect to hazardous
3 substances found at the facility by
4 taking reasonable steps to—

5 “(aa) stop ongoing releases
6 of hazardous substances;

7 “(bb) prevent threatened fu-
8 ture releases of hazardous sub-
9 stances; and

10 “(cc) prevent or limit human
11 or natural resource exposure to
12 hazardous substances previously
13 released into the environment;
14 and

15 “(III) the person provides full co-
16 operation, assistance, and facility ac-
17 cess to such persons as are authorized
18 to conduct response actions at the fa-
19 cility, including the cooperation and
20 access necessary for the installation,
21 integrity, operation, and maintenance
22 of any complete or partial response
23 action at the facility.

24 “(viii) SITE INSPECTION AND TITLE
25 SEARCH.—In the case of property for resi-

1 dential use or other similar use purchased
 2 by a nongovernmental or noncommercial
 3 entity, a site inspection and title search
 4 that reveal no basis for further investiga-
 5 tion shall satisfy the requirements of
 6 clause (ii).”.

7 (b) REGULATORY AUTHORITY.—

8 (1) IN GENERAL.—The Administrator of the
 9 Environmental Protection Agency may—

10 (A) issue such regulations as the Adminis-
 11 trator considers necessary to carry out the
 12 amendment made by this section; and

13 (B) delegate and assign any duties or pow-
 14 ers imposed on or assigned to the Adminis-
 15 trator by the amendment made by this section,
 16 including the authority to issue regulations.

17 (2) AUTHORITY TO CLARIFY AND IMPLE-
 18 MENT.—The authority under paragraph (1) includes
 19 authority to clarify or interpret all terms, including
 20 the terms used in this section, and to implement any
 21 provision of the amendment made by this section.

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