

Calendar No. 371

105TH CONGRESS
2^D SESSION

S. 8

[Report No. 105-192]

A BILL

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

MAY 19, 1998

Reported with an amendment

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

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. SMITH of New Hampshire (for himself, Mr. CHAFEE, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. LUGAR, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. THURMOND, Mr. WARNER, Mr. MACK, Mr. COATS, Mr. FAIRCLOTH, Mr. BOND, Mr. KEMPTHORNE, Mr. INHOFE, Mr. THOMAS, and Mr. BENNETT)

MAY 19, 1998

Reported by Mr. CHAFEE, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Superfund Cleanup Acceleration Act of 1997.”

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

Sec. 1. Short title; table of contents.

TITLE I—BROWNFIELDS REVITALIZATION

Sec. 101. Brownfields.

Sec. 102. Assistance for qualifying State voluntary response programs.

Sec. 103. Enforcement in cases of a release subject to a State plan.

Sec. 104. Contiguous properties.

Sec. 105. Prospective purchasers and windfall liens.

Sec. 106. Safe harbor innocent landholders.

TITLE II—STATE ROLE

Sec. 201. Delegation to the States of authorities with respect to national priorities list facilities.

TITLE III—COMMUNITY PARTICIPATION

Sec. 301. Community response organizations; technical assistance grants; improvement of public participation in the superfund decision-making process.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

Sec. 401. Definitions.

Sec. 402. Selection and implementation of remedial actions.

Sec. 403. Remedy selection methodology.

Sec. 404. Remedy selection procedures.

Sec. 405. Completion of physical construction and delisting.

Sec. 406. Transition rules for facilities currently involved in remedy selection.

Sec. 407. National Priorities List.

TITLE V—LIABILITY

Sec. 501. Liability exceptions and limitations.

Sec. 502. Contribution from the Fund.

Sec. 503. Allocation of liability for certain facilities.

Sec. 504. Liability of response action contractors.

Sec. 505. Release of evidence.

Sec. 506. Contribution protection.

Sec. 507. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.

Sec. 508. Common carriers.

Sec. 509. Limitation on liability of railroad owners.

Sec. 510. Liability of recyclers.

TITLE VI—FEDERAL FACILITIES

- Sec. 601. Transfer of authorities.
 Sec. 602. Limitation on criminal liability of Federal officers, employees, and agents.
 Sec. 603. Innovative technologies for remedial action at Federal facilities.

TITLE VII—NATURAL RESOURCE DAMAGES

- Sec. 701. Restoration of natural resources.
 Sec. 702. Assessment of injury to and restoration of natural resources.
 Sec. 703. Consistency between response actions and resource restoration standards.
 Sec. 704. Contribution.

TITLE VIII—MISCELLANEOUS

- Sec. 801. Result-oriented cleanups.
 Sec. 802. National Priorities List.
 Sec. 803. Obligations from the fund for response actions.

TITLE IX—FUNDING

Subtitle A—General Provisions

- Sec. 901. Authorization of appropriations from the Fund.
 Sec. 902. Orphan share funding.
 Sec. 903. Department of Health and Human Services.
 Sec. 904. Limitations on research, development, and demonstration programs.
 Sec. 905. Authorization of appropriations from general revenues.
 Sec. 906. Additional limitations.
 Sec. 907. Reimbursement of potentially responsible parties.

1 **TITLE I—BROWNFIELDS** 2 **REVITALIZATION**

3 **SEC. 101. BROWNFIELDS.**

4 (a) **IN GENERAL.**—Title I of the Comprehensive En-
 5 vironmental Response, Compensation, and Liability Act of
 6 1980 (42 U.S.C. 9601 et seq.) is amended by adding at
 7 the end the following:

8 **“SEC. 127. BROWNFIELDS.**

9 “(a) **DEFINITIONS.**—In this section:

10 “(1) **ADMINISTRATIVE COST.**—The term ‘ad-
 11 ministrative cost’ does not include the cost of—

1 “(A) investigation and identification of the
2 extent of contamination;

3 “(B) design and performance of a response
4 action; or

5 “(C) monitoring of natural resources.

6 “(2) BROWNFIELD FACILITY.—The term
7 ‘brownfield facility’ means—

8 “(A) a parcel of land that contains an
9 abandoned, idled, or underused commercial or
10 industrial facility; the expansion or redevelop-
11 ment of which is complicated by the presence or
12 potential presence of a hazardous substance;
13 but

14 “(B) does not include—

15 “(i) a facility that is the subject of a
16 removal or planned removal under title I;

17 “(ii) a facility that is listed or has
18 been proposed for listing on the National
19 Priorities List or that has been delisted
20 under section 134(d)(5);

21 “(iii) a facility that is subject to cor-
22 rective action under section 3004(u) or
23 3008(h) of the Solid Waste Disposal Act
24 (42 U.S.C. 6924(u) or 6928(h)) at the
25 time at which an application for a grant

1 concerning the facility is submitted under
2 this section;

3 “(iv) a land disposal unit with respect
4 to which—

5 “(I) a closure notification under
6 subtitle C of the Solid Waste Disposal
7 Act (42 U.S.C. 6921 et seq.) has been
8 submitted; and

9 “(II) closure requirements have
10 been specified in a closure plan or
11 permit;

12 “(v) a facility with respect to which
13 an administrative order on consent or judi-
14 cial consent decree requiring cleanup has
15 been entered into by the United States
16 under this Act, the Solid Waste Disposal
17 Act (42 U.S.C. 6901 et seq.), the Federal
18 Water Pollution Control Act (33 U.S.C.
19 1251 et seq.), the Toxic Substances Con-
20 trol Act (15 U.S.C. 2601 et seq.), or the
21 Safe Drinking Water Act (42 U.S.C. 300f
22 et seq.);

23 “(vi) a facility that is owned or oper-
24 ated by a department, agency, or instru-
25 mentality of the United States; or

1 “(vii) a portion of a facility, for which
2 portion, assistance for response activity
3 has been obtained under subtitle I of the
4 Solid Waste Disposal Act (42 U.S.C. 6991
5 et seq.) from the Leaking Underground
6 Storage Tank Trust Fund established
7 under section 9508 of the Internal Reve-
8 nue Code of 1986.

9 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
10 tity’ means—

11 “(A) a general purpose unit of local gov-
12 ernment;

13 “(B) a land clearance authority or other
14 quasi-governmental entity that operates under
15 the supervision and control of or as an agent of
16 a general purpose unit of local government;

17 “(C) a regional council or group of general
18 purpose units of local government;

19 “(D) a redevelopment agency that is char-
20 tered or otherwise sanctioned by a State; and

21 “(E) an Indian tribe.

22 “(b) BROWNFIELD CHARACTERIZATION GRANT PRO-
23 GRAM.—

24 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
25 ministrators shall establish a program to provide

1 grants for the site characterization and assessment
2 of brownfield facilities.

3 ~~“(2) ASSISTANCE FOR SITE CHARACTERIZATION~~
4 ~~AND ASSESSMENT.—~~

5 ~~“(A) IN GENERAL.—On approval of an ap-~~
6 ~~plication made by an eligible entity, the Admin-~~
7 ~~istrator may make grants out of the Fund to~~
8 ~~the eligible entity to be used for the site charac-~~
9 ~~terization and assessment of 1 or more~~
10 ~~brownfield facilities or to capitalize a revolving~~
11 ~~loan fund.~~

12 ~~“(B) APPROPRIATE INQUIRY.—A site char-~~
13 ~~acterization and assessment carried out with~~
14 ~~the use of a grant under subparagraph (A)~~
15 ~~shall be performed in accordance with section~~
16 ~~101(35)(B).~~

17 ~~“(3) MAXIMUM GRANT AMOUNT.—A grant~~
18 ~~under subparagraph (A) shall not exceed, with re-~~
19 ~~spect to any individual brownfield facility covered by~~
20 ~~the grant, \$100,000 for any fiscal year or \$200,000~~
21 ~~in total.~~

22 ~~“(c) BROWNFIELD REMEDIATION GRANT PRO-~~
23 ~~GRAM.—~~

24 ~~“(1) ESTABLISHMENT OF PROGRAM.—The Ad-~~
25 ~~ministrator shall establish a program to provide~~

1 grants to be used for capitalization of revolving loan
 2 funds for response actions (excluding site character-
 3 ization and assessment) at brownfield facilities.

4 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
 5 AND ASSESSMENT.—

6 “(A) IN GENERAL.—On approval of an ap-
 7 plication made by a State or an eligible entity,
 8 the Administrator may make grants out of the
 9 Fund to the State or eligible entity to capitalize
 10 a revolving loan fund to be used for response
 11 actions (excluding site characterization and as-
 12 sessment) at 1 or more brownfield facilities.

13 “(B) APPROPRIATE INQUIRY.—A site char-
 14 acterization and assessment carried out with
 15 the use of a grant under subparagraph (A)
 16 shall be performed in accordance with section
 17 101(35)(B).

18 “(3) MAXIMUM GRANT AMOUNT.—A grant
 19 under subparagraph (A) shall not exceed, with re-
 20 spect to any individual brownfield facility covered by
 21 the grant, \$150,000 for any fiscal year or \$300,000
 22 in total.

23 “(d) GENERAL PROVISIONS.—

24 “(1) SUNSET.—No amount shall be available
 25 from the Fund for purposes of this section after the

1 fifth fiscal year after the date of enactment of this
2 section.

3 “(2) PROHIBITION.—No part of a grant under
4 this section may be used for payment of penalties,
5 fines, or administrative costs.

6 “(3) AUDITS.—The Inspector General of the
7 Environmental Protection Agency shall audit an ap-
8 propriate number of grants made under subsections
9 (b)(2) and (c)(2) to ensure that funds are used for
10 the purposes described in this section.

11 “(4) AGREEMENTS.—Each grant made under
12 this section shall be subject to an agreement that—

13 “(A) requires the eligible entity to comply
14 with all applicable State laws (including regula-
15 tions);

16 “(B) requires that the eligible entity shall
17 use the grant exclusively for purposes specified
18 in subsection (b)(2) or (c)(2);

19 “(C) in the case of an application by a
20 State under subsection (c)(2), payment by the
21 State of a matching share of at least 50 percent
22 of the costs of the response action for which the
23 grant is made, from other sources of State
24 funding; and

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

5 “(5) LEVERAGING.—An eligible entity that re-
6 ceives a grant under paragraph (1) may use the
7 funds for part of a project at a brownfield facility
8 for which funding is received from other sources, but
9 the grant shall be used only for the purposes de-
10 scribed in subsection (b)(2) or (c)(2).

11 “(e) GRANT APPLICATIONS.—

12 “(1) IN GENERAL.—Any eligible entity may
13 submit an application to the Administrator, through
14 a regional office of the Environmental Protection
15 Agency and in such form as the Administrator may
16 require, for a grant under this section for 1 or more
17 brownfield facilities.

18 “(2) APPLICATION REQUIREMENTS.—An appli-
19 cation for a grant under this section shall include—

20 “(A) an identification of each brownfield
21 facility for which the grant is sought and a de-
22 scription of the redevelopment plan for the area
23 or areas in which the brownfield facilities are
24 located, including a description of the nature

1 and extent of any known or suspected environ-
2 mental contamination within the area;

3 “(B) an analysis that demonstrates the po-
4 tential of the grant to stimulate economic devel-
5 opment on completion of the planned response
6 action, including a projection of the number of
7 jobs expected to be created at each facility after
8 remediation and redevelopment and, to the ex-
9 tent feasible, a description of the type and skill
10 level of the jobs and a projection of the in-
11 creases in revenues accruing to Federal, State,
12 and local governments from the jobs; and

13 “(C) information relevant to the ranking
14 criteria stated in paragraph (4).

15 “(3) APPROVAL.—

16 “(A) INITIAL GRANT.—On or about March
17 30 and September 30 of the first fiscal year fol-
18 lowing the date of enactment of this section, the
19 Administrator shall make grants under this sec-
20 tion to eligible entities that submit applications
21 before those dates that the Administrator deter-
22 mines have the highest rankings under ranking
23 criteria established under paragraph (4).

24 “(B) SUBSEQUENT GRANTS.—Beginning
25 with the second fiscal year following the date of

1 enactment of this section, the Administrator
2 shall make an annual evaluation of each appli-
3 cation received during the prior fiscal year and
4 make grants under this section to eligible enti-
5 ties that submit applications during the prior
6 year that the Administrator determines have
7 the highest rankings under the ranking criteria
8 established under paragraph (4).

9 “(4) RANKING CRITERIA.—The Administrator
10 shall establish a system for ranking grant applica-
11 tions that includes the following criteria:

12 “(A) The extent to which a grant will stim-
13 ulate the availability of other funds for environ-
14 mental remediation and subsequent redevelop-
15 ment of the area in which the brownfield facili-
16 ties are located.

17 “(B) The potential of the development plan
18 for the area in which the brownfield facilities
19 are located to stimulate economic development
20 of the area on completion of the cleanup, such
21 as the following:

22 “(i) The relative increase in the esti-
23 mated fair market value of the area as a
24 result of any necessary response action.

1 “(ii) The potential of a grant to cre-
2 ate new or expand existing business and
3 employment opportunities (particularly
4 full-time employment opportunities) on
5 completion of any necessary response ac-
6 tion.

7 “(iii) The estimated additional tax
8 revenues expected to be generated by eco-
9 nomic redevelopment in the area in which
10 a brownfield facility is located.

11 “(iv) The estimated extent to which a
12 grant would facilitate the identification of
13 or facilitate a reduction of health and envi-
14 ronmental risks.

15 “(v) The financial involvement of the
16 State and local government in any re-
17 sponse action planned for a brownfield fa-
18 cility and the extent to which the response
19 action and the proposed redevelopment is
20 consistent with any applicable State or
21 local community economic development
22 plan.

23 “(vi) The extent to which the site
24 characterization and assessment or re-
25 sponse action and subsequent development

1 of a brownfield facility involves the active
 2 participation and support of the local com-
 3 munity.

4 “(vii) Such other factors as the Ad-
 5 ministrator considers appropriate to carry
 6 out the purposes of this section.”.

7 (b) FUNDING.—Section 111 of the Comprehensive
 8 Environmental Response, Compensation, and Liability Act
 9 of 1980 (42 U.S.C. 9611) is amended by adding at the
 10 end the following:

11 “(q) BROWNFIELD CHARACTERIZATION GRANT PRO-
 12 GRAM.—For each of fiscal years 1998 through 2002, not
 13 more than \$15,000,000 of the amounts available in the
 14 Fund may be used to carry out section 127(b).

15 “(r) BROWNFIELD REMEDIATION GRANT PRO-
 16 GRAM.—For each of fiscal years 1998 through 2002, not
 17 more than \$25,000,000 of the amounts available in the
 18 Fund may be used to carry out section 127(e).”.

19 **SEC. 102. ASSISTANCE FOR QUALIFYING STATE VOL-**
 20 **UNTARY RESPONSE PROGRAMS.**

21 (a) DEFINITION.—Section 101 of the Comprehensive
 22 Environmental Response, Compensation, and Liability Act
 23 of 1980 (42 U.S.C. 9601) is amended by adding at the
 24 end the following:

1 ~~“(3) Streamlined procedures to ensure expedi-~~
2 ~~tious voluntary response actions.~~

3 ~~“(4) Oversight and enforcement authorities or~~
4 ~~other mechanisms that are adequate to ensure~~
5 ~~that—~~

6 ~~“(A) voluntary response actions will pro-~~
7 ~~tect human health and the environment and be~~
8 ~~conducted in accordance with applicable Federal~~
9 ~~and State law; and~~

10 ~~“(B) if the person conducting the vol-~~
11 ~~untary response action fails to complete the~~
12 ~~necessary response activities, including oper-~~
13 ~~ation and maintenance or long-term monitoring~~
14 ~~activities, the necessary response activities are~~
15 ~~completed.~~

16 ~~“(5) Mechanisms for approval of a voluntary re-~~
17 ~~sponse action plan.~~

18 ~~“(6) A requirement for certification or similar~~
19 ~~documentation from the State to the person conduct-~~
20 ~~ing the voluntary response action indicating that the~~
21 ~~response is complete.~~

22 ~~“(e) COMPLIANCE WITH ACT.—A person that con-~~
23 ~~ducts a voluntary response action under this section at a~~
24 ~~facility that is listed or proposed for listing on the Na-~~
25 ~~tional Priorities List shall implement applicable provisions~~

1 of this Act or of similar provisions of State law in a man-
2 ner comporting with State policy, so long as the remedial
3 action that is selected protects human health and the envi-
4 ronment to the same extent as would a remedial action
5 selected by the Administrator under section 121(a).”.

6 (c) FUNDING.—Section 111 of the Comprehensive
7 Environmental Response, Compensation, and Liability Act
8 of 1980 (42 U.S.C. 9611) (as amended by section 101(b))
9 is amended by adding at the end the following:

10 “(s) QUALIFYING STATE VOLUNTARY RESPONSE
11 PROGRAM.—For each of fiscal years 1998 through 2002,
12 not more than \$25,000,000 of the amounts available in
13 the Fund may be used for assistance to States to establish
14 and administer qualifying State voluntary response pro-
15 grams, during the first 5 full fiscal years following the
16 date of enactment of this subparagraph, distributed
17 among each of the States that notifies the Administrator
18 of the State’s intent to establish a qualifying State vol-
19 untary response program and each of the States with a
20 qualifying State voluntary response program. For each fis-
21 cal year there shall be available to each eligible entity a
22 grant in the amount of at least \$250,000.”.

1 **SEC. 103. ENFORCEMENT IN CASES OF A RELEASE SUBJECT**
2 **TO A STATE PLAN.**

3 Title I of the Comprehensive Environmental Re-
4 sponse, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9601 et seq.) is amended by adding at the end
6 the following:

7 **“SEC. 129. ENFORCEMENT IN CASES OF A RELEASE SUB-**
8 **JECT TO A STATE PLAN.**

9 “(a) **IN GENERAL.**—In the case of a facility at which
10 there is a release or threatened release of a hazardous sub-
11 stance subject to a State remedial action plan or with re-
12 spect to which the State has provided certification or simi-
13 lar documentation that response action has been com-
14 pleted under a State remedial action plan, neither the
15 President nor any other person may use any authority
16 under this Act to take an administrative or judicial en-
17 forcement action or to bring a private civil action against
18 any person regarding any matter that is within the scope
19 of the plan.

20 “(b) **RELEASES NOT SUBJECT TO STATE PLANS.**—
21 For any facility at which there is a release or threatened
22 release of hazardous substances that is not subject to a
23 State remedial action plan, the President shall provide no-
24 tice to the State within 48 hours after issuing an order
25 under section 106(a) addressing a release or threatened
26 release. Such an order shall cease to have force or effect

1 on the date that is 90 days after issuance unless the State
 2 concurs in the continuation of the order.

3 “(e) COST OR DAMAGE RECOVERY ACTIONS.—Sub-
 4 section (a) does not apply to an action brought by a State
 5 or Indian tribe for the recovery of costs or damages under
 6 section 107.”.

7 **SEC. 104. CONTIGUOUS PROPERTIES.**

8 (a) IN GENERAL.—Section 107 of the Comprehensive
 9 Environmental Response, Compensation, and Liability Act
 10 of 1980 (42 U.S.C. 9607(a)) is amended by adding at the
 11 end the following:

12 “(o) CONTIGUOUS PROPERTIES.—

13 “(1) NOT CONSIDERED TO BE AN OWNER OR
 14 OPERATOR.—A person that owns or operates real
 15 property that is contiguous to or otherwise similarly
 16 situated with respect to real property on which there
 17 has been a release or threatened release of a hazard-
 18 ous substance and that is or may be contaminated
 19 by the release shall not be considered to be an owner
 20 or operator of a vessel or facility under subsection
 21 (a) (1) or (2) solely by reason of the contamination
 22 if—

23 “(A) the person did not cause, contribute,
 24 or consent to the release or threatened release;
 25 and

1 “(B) the person is not liable, and is not af-
2 filiated with any other person that is liable, for
3 any response costs at the facility, through any
4 direct or indirect familial relationship, or any
5 contractual, corporate, or financial relationship
6 other than that created by the instruments by
7 which title to the facility is conveyed or fi-
8 nanced.

9 “(2) COOPERATION, ASSISTANCE, AND AC-
10 CESS.—Notwithstanding paragraph (1), a person de-
11 scribed in paragraph (1) shall provide full coopera-
12 tion, assistance, and facility access to the persons
13 that are responsible for response actions at the facil-
14 ity, including the cooperation and access necessary
15 for the installation, integrity, operation, and mainte-
16 nance of any complete or partial response action at
17 the facility.

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

19 “(A) issue an assurance that no enforce-
20 ment action under this Act will be initiated
21 against a person described in paragraph (1);
22 and

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

1 (b) ~~CONFORMING AMENDMENT.~~—Section 107(a) of
 2 the Comprehensive Environmental Response, Compensa-
 3 tion, and Liability Act of 1980 (42 U.S.C. 9607) is
 4 amended by striking “of this section” and inserting “and
 5 the exemptions and limitations stated in this section”.

6 **SEC. 105. PROSPECTIVE PURCHASERS AND WINDFALL**
 7 **LIENS.**

8 (a) ~~DEFINITION.~~—Section 101 of the Comprehensive
 9 Environmental Response, Compensation, and Liability Act
 10 of 1980 (42 U.S.C. 9601) (as amended by section 102(a))
 11 is amended by adding at the end the following:

12 “(40) ~~BONA FIDE PROSPECTIVE PURCHASER.~~—

13 The term ‘bona fide prospective purchaser’ means a
 14 person that acquires ownership of a facility after the
 15 date of enactment of this paragraph, or a tenant of
 16 such a person, that establishes each of the following
 17 by a preponderance of the evidence:

18 “(A) ~~DISPOSAL PRIOR TO ACQUISITION.~~—

19 All active disposal of hazardous substances at
 20 the facility occurred before the person acquired
 21 the facility.

22 “(B) ~~INQUIRIES.~~—

23 “(i) ~~IN GENERAL.~~—The person made
 24 all appropriate inquiries into the previous
 25 ownership and uses of the facility and the

1 facility's real property in accordance with
2 generally accepted good commercial and
3 customary standards and practices.

4 “(ii) STANDARDS AND PRACTICES.—

5 The standards and practices referred to in
6 paragraph (35)(B)(ii) or those issued or
7 adopted by the Administrator under that
8 paragraph shall be considered to satisfy
9 the requirements of this subparagraph.

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

11 of property for residential or other similar
12 use purchased by a nongovernmental or
13 noncommercial entity, a facility inspection
14 and title search that reveal no basis for
15 further investigation shall be considered to
16 satisfy the requirements of this subpara-
17 graph.

18 “(C) NOTICES.—The person provided all

19 legally required notices with respect to the dis-
20 covery or release of any hazardous substances
21 at the facility.

22 “(D) CARE.—The person exercised appro-

23 priate care with respect to each hazardous sub-
24 stance found at the facility by taking reasonable
25 steps to stop any continuing release, prevent

1 any threatened future release and prevent or
 2 limit human or natural resource exposure to
 3 any previously released hazardous substance.

4 “(E) COOPERATION, ASSISTANCE, AND AC-
 5 CESS.—The person provides full cooperation,
 6 assistance, and facility access to the persons
 7 that are responsible for response actions at the
 8 facility, including the cooperation and access
 9 necessary for the installation, integrity, oper-
 10 ation, and maintenance of any complete or par-
 11 tial response action at the facility.

12 “(F) RELATIONSHIP.—The person is not
 13 liable, and is not affiliated with any other per-
 14 son that is liable, for any response costs at the
 15 facility, through any direct or indirect familial
 16 relationship, or any contractual, corporate, or
 17 financial relationship other than that created by
 18 the instruments by which title to the facility is
 19 conveyed or financed.”.

20 (b) AMENDMENT.—Section 107 of the Comprehen-
 21 sive Environmental Response, Compensation, and Liabil-
 22 ity Act of 1980 (42 U.S.C. 9607) (as amended by section
 23 104) is amended by adding at the end the following:

24 “(p) PROSPECTIVE PURCHASER AND WINDFALL
 25 LIEN.—

1 “(1) LIMITATION ON LIABILITY.—Notwith-
2 standing subsection (a), a bona fide prospective pur-
3 chaser whose potential liability for a release or
4 threatened release is based solely on the purchaser’s
5 being considered to be an owner or operator of a fa-
6 cility shall not be liable as long as the bona fide pro-
7 spective purchaser does not impede the performance
8 of a response action or natural resource restoration.

9 “(2) LIEN.—If there are unrecovered response
10 costs at a facility for which an owner of the facility
11 is not liable by reason of section 101(20)(G)(iii) and
12 each of the conditions described in paragraph (3) is
13 met, the United States shall have a lien on the facil-
14 ity, or may obtain from appropriate responsible
15 party a lien on any other property or other assur-
16 ances of payment satisfactory to the Administrator,
17 for such unrecovered costs.

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

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

23 “(B) FAIR MARKET VALUE.—The response
24 action increases the fair market value of the fa-
25 cility above the fair market value of the facility

1 that existed 180 days before the response action
2 was initiated.

3 ~~“(C) SALE.—A sale or other disposition of~~
4 ~~all or a portion of the facility has occurred.~~

5 ~~“(4) AMOUNT.—A lien under paragraph (2)—~~

6 ~~“(A) shall not exceed the increase in fair~~
7 ~~market value of the property attributable to the~~
8 ~~response action at the time of a subsequent sale~~
9 ~~or other disposition of the property;~~

10 ~~“(B) shall arise at the time at which costs~~
11 ~~are first incurred by the United States with re-~~
12 ~~spect to a response action at the facility;~~

13 ~~“(C) shall be subject to the requirements~~
14 ~~of subsection (1)(3); and~~

15 ~~“(D) shall continue until the earlier of sat-~~
16 ~~isfaction of the lien or recovery of all response~~
17 ~~costs incurred at the facility.”.~~

18 **SEC. 106. SAFE HARBOR INNOCENT LANDHOLDERS.**

19 (a) ~~AMENDMENT.—Section 101(35) of the Com-~~
20 ~~prehensive Environmental Response, Compensation, and~~
21 ~~Liability Act of 1980 (42 U.S.C. 9601(35)) is amended~~
22 ~~by striking subparagraph (B) and inserting the following:~~

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

1 “(i) ALL APPROPRIATE INQUIRIES.—
2 To establish that the defendant had no
3 reason to know of the matter described in
4 subparagraph (A)(i), the defendant must
5 show that, at or prior to the date on which
6 the defendant acquired the facility, the de-
7 fendant undertook all appropriate inquiries
8 into the previous ownership and uses of the
9 facility in accordance with generally ac-
10 cepted good commercial and customary
11 standards and practices.

12 “(ii) STANDARDS AND PRACTICES.—
13 The Administrator shall by regulation es-
14 tablish as standards and practices for the
15 purpose of clause (i)—

16 “(I) the American Society for
17 Testing and Materials (ASTM) Stand-
18 ard E1527-94, entitled ‘Standard
19 Practice for Environmental Site As-
20 sessments: Phase I Environmental
21 Site Assessment Process’; or

22 “(II) alternative standards and
23 practices under clause (iii).

24 “(iii) ALTERNATIVE STANDARDS AND
25 PRACTICES.—

1 “(I) IN GENERAL.—The Admin-
2 istrator may by regulation issue alter-
3 native standards and practices or des-
4 ignate standards developed by other
5 organizations than the American Soci-
6 ety for Testing and Materials after
7 conducting a study of commercial and
8 industrial practices concerning the
9 transfer of real property in the United
10 States.

11 “(II) CONSIDERATIONS.—In
12 issuing or designating alternative
13 standards and practices under sub-
14 clause (I), the Administrator shall
15 consider including each of the follow-
16 ing:

17 “(aa) The results of an in-
18 quiry by an environmental pro-
19 fessional.

20 “(bb) Interviews with past
21 and present owners, operators,
22 and occupants of the facility and
23 the facility’s real property for the
24 purpose of gathering information
25 regarding the potential for con-

1 tamination at the facility and the
2 facility's real property.

3 “(cc) Reviews of historical
4 sources, such as chain of title
5 documents, aerial photographs,
6 building department records, and
7 land use records to determine
8 previous uses and occupancies of
9 the real property since the prop-
10 erty was first developed.

11 “(dd) Searches for recorded
12 environmental cleanup liens, filed
13 under Federal, State, or local
14 law, against the facility or the fa-
15 cility's real property.

16 “(ee) Reviews of Federal,
17 State, and local government
18 records (such as waste disposal
19 records), underground storage
20 tank records, and hazardous
21 waste handling, generation, treat-
22 ment, disposal, and spill records,
23 concerning contamination at or
24 near the facility or the facility's
25 real property.

1 “(ff) Visual inspections of
2 the facility and facility’s real
3 property and of adjoining prop-
4 erties.

5 “(gg) Specialized knowledge
6 or experience on the part of the
7 defendant.

8 “(hh) The relationship of
9 the purchase price to the value of
10 the property if the property was
11 uncontaminated.

12 “(ii) Commonly known or
13 reasonably ascertainable informa-
14 tion about the property.

15 “(jj) The degree of obvious-
16 ness of the presence or likely
17 presence of contamination at the
18 property, and the ability to detect
19 such contamination by appro-
20 priate investigation.

21 “(iv) SITE INSPECTION AND TITLE
22 SEARCH.—In the case of property for resi-
23 dential use or other similar use purchased
24 by a nongovernmental or noncommercial
25 entity, a facility inspection and title search

1 that reveal no basis for further investiga-
2 tion shall be considered to satisfy the re-
3 quirements of this subparagraph.”.

4 (b) STANDARDS AND PRACTICES.—

5 (1) ESTABLISHMENT BY REGULATION.—The
6 Administrator of the Environmental Protection
7 Agency shall issue the regulation required by section
8 101(35)(B)(ii) of the Comprehensive Environmental
9 Response, Compensation, and Liability Act of 1980
10 (as added by subsection (a)) not later than 1 year
11 after the date of enactment of this Act.

12 (2) INTERIM STANDARDS AND PRACTICES.—
13 Until the Administrator issues the regulation de-
14 scribed in paragraph (1), in making a determination
15 under section 101(35)(B)(i) of the Comprehensive
16 Environmental Response, Compensation, and Liabil-
17 ity Act of 1980 (as added by subsection (a)), there
18 shall be taken into account—

19 (A) any specialized knowledge or experi-
20 ence on the part of the defendant;

21 (B) the relationship of the purchase price
22 to the value of the property if the property was
23 uncontaminated;

24 (C) commonly known or reasonably ascer-
25 tainable information about the property;

1 (D) the degree of obviousness of the pres-
 2 ence or likely presence of contamination at the
 3 property; and

4 (E) the ability to detect the contamination
 5 by appropriate investigation.

6 **TITLE II—STATE ROLE**

7 **SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES** 8 **WITH RESPECT TO NATIONAL PRIORITIES** 9 **LIST FACILITIES.**

10 (a) IN GENERAL.—Title I of the Comprehensive En-
 11 vironmental Response, Compensation, and Liability Act of
 12 1980 (42 U.S.C. 9601 et seq.) (as amended by section
 13 103) is amended by adding at the end the following:

14 **“SEC. 130. DELEGATION TO THE STATES OF AUTHORITIES** 15 **WITH RESPECT TO NATIONAL PRIORITIES** 16 **LIST FACILITIES.**

17 “(a) DEFINITIONS.—In this section:

18 “(1) COMPREHENSIVE DELEGATION STATE.—

19 The term ‘comprehensive delegation State’, with re-
 20 spect to a facility, means a State to which the Ad-
 21 ministrator has delegated authority to perform all of
 22 the categories of delegable authority.

23 “(2) DELEGABLE AUTHORITY.—The term ‘dele-
 24 gable authority’ means authority to perform (or en-

1 sure performance of) all of the authorities included
2 in any 1 or more of the categories of authority:

3 “(A) CATEGORY A.—All authorities nec-
4 essary to perform technical investigations, eval-
5 uations, and risk analyses, including—

6 “(i) a preliminary assessment or facil-
7 ity evaluation under section 104;

8 “(ii) facility characterization under
9 section 104;

10 “(iii) a remedial investigation under
11 section 104;

12 “(iv) a facility-specific risk evaluation
13 under section 131;

14 “(v) enforcement authority related to
15 the authorities described in clauses (i)
16 through (iv); and

17 “(vi) any other authority identified by
18 the Administrator under subsection (b).

19 “(B) CATEGORY B.—All authorities nec-
20 essary to perform alternatives development and
21 remedy selection, including—

22 “(i) a feasibility study under section
23 104; and

1 “(ii)(I) remedial action selection
2 under section 121 (including issuance of a
3 record of decision); or

4 “(II) remedial action planning under
5 section 133(b)(5);

6 “(iii) enforcement authority related to
7 the authorities described in clauses (i) and
8 (ii); and

9 “(iv) any other authority identified by
10 the Administrator under subsection (b).

11 “(C) CATEGORY C.—All authorities nec-
12 essary to perform remedial design, including—

13 “(i) remedial design under section
14 121;

15 “(ii) enforcement authority related to
16 the authority described in clause (i); and

17 “(iii) any other authority identified by
18 the Administrator under subsection (b).

19 “(D) CATEGORY D.—All authorities nec-
20 essary to perform remedial action and operation
21 and maintenance, including—

22 “(i) a removal under section 104;

23 “(ii) a remedial action under section
24 104 or section 10 (a) or (b);

1 “(iii) operation and maintenance
2 under section 104(e);

3 “(iv) enforcement authority related to
4 the authorities described in clauses (i)
5 through (iii); and

6 “(v) any other authority identified by
7 the Administrator under subsection (b).

8 “(E) CATEGORY E.—All authorities nec-
9 essary to perform information collection and al-
10 location of liability, including—

11 “(i) information collection activity
12 under section 104(e);

13 “(ii) allocation of liability under sec-
14 tion 136;

15 “(iii) a search for potentially respon-
16 sible parties under section 104 or 107;

17 “(iv) settlement under section 122;

18 “(v) enforcement authority related to
19 the authorities described in clauses (i)
20 through (iv); and

21 “(vi) any other authority identified by
22 the Administrator under subsection (b).

23 “(3) DELEGATED STATE.—The term ‘delegated
24 State’ means a State to which delegable authority
25 has been delegated under subsection (e), except as

1 may be provided in a delegation agreement in the
2 case of a limited delegation of authority under sub-
3 section (e)(5).

4 “(4) DELEGATED AUTHORITY.—The term ‘dele-
5 gated authority’ means a delegable authority that
6 has been delegated to a delegated State under this
7 section.

8 “(5) DELEGATED FACILITY.—The term ‘dele-
9 gated facility’ means a non-federal listed facility
10 with respect to which a delegable authority has been
11 delegated to a State under this section.

12 “(6) ENFORCEMENT AUTHORITY.—The term
13 “enforcement authority” means all authorities nec-
14 essary to recover response costs, require potentially
15 responsible parties to perform response actions, and
16 otherwise compel implementation of a response ac-
17 tion, including—

18 “(A) issuance of an order under section
19 106(a);

20 “(B) a response action cost recovery under
21 section 107;

22 “(C) imposition of a civil penalty or award
23 under section 109 (a)(1)(D) or (b)(4);

24 “(D) settlement under section 122; and

1 “(E) any other authority identified by the
2 Administrator under subsection (b).

3 “(7) NONCOMPREHENSIVE DELEGATION
4 STATE.—The term ‘noncomprehensive delegation
5 State’, with respect to a facility, means a State to
6 which the Administrator has delegated authority to
7 perform fewer than all of the categories of delegable
8 authority.

9 “(8) NONDELEGABLE AUTHORITY.—The term
10 ‘nondelegable authority’ means authority to—

11 “(A) make grants to community response
12 organizations under section 117; and

13 “(B) conduct research and development ac-
14 tivities under any provision of this Act.

15 “(9) NON-FEDERAL LISTED FACILITY.—The
16 term ‘non-federal listed facility’ means a facility
17 that—

18 “(A) is not owned or operated by a depart-
19 ment, agency, or instrumentality of the United
20 States in any branch of the Government; and

21 “(B) is listed on the National Priorities
22 List.

23 “(b) IDENTIFICATION OF DELEGABLE AUTHORI-
24 TIES.—

1 “(1) IN GENERAL.—The President shall by reg-
2 ulation identify all of the authorities of the Adminis-
3 trator that shall be included in a delegation of any
4 category of delegable authority described in sub-
5 section (a)(2).

6 “(2) LIMITATION.—The Administrator shall not
7 identify a nondelegable authority for inclusion in a
8 delegation of any category of delegable authority.

9 “(c) DELEGATION OF AUTHORITY.—

10 “(1) IN GENERAL.—Pursuant to an approved
11 State application, the Administrator shall delegate
12 authority to perform 1 or more delegable authorities
13 with respect to 1 or more non-Federal listed facili-
14 ties in the State.

15 “(2) APPLICATION.—An application under
16 paragraph (1) shall—

17 “(A) identify each non-Federal listed facil-
18 ity for which delegation is requested;

19 “(B) identify each delegable authority that
20 is requested to be delegated for each non-Fed-
21 eral listed facility for which delegation is re-
22 quested; and

23 “(C) certify that the State, supported by
24 such documentation as the State, in consulta-

tion with the Administrator, considers to be appropriate—

“(i) has statutory and regulatory authority (including appropriate enforcement authority) to perform the requested delegable authorities in a manner that is protective of human health and the environment;

“(ii) has resources in place to adequately administer and enforce the authorities;

“(iii) has procedures to ensure public notice and, as appropriate, opportunity for comment on remedial action plans, consistent with sections 117 and 133; and

“(iv) agrees to exercise its enforcement authorities to require that persons that are potentially liable under section 107(a), to the extent practicable, perform and pay for the response actions set forth in each category described in subsection (a)(2).

“(3) APPROVAL OF APPLICATION.—

“(A) IN GENERAL.—Not later than 60 days after receiving an application under para-

1 graph (2) by a State that is authorized to ad-
2 minister and enforce the corrective action re-
3 quirements of a hazardous waste program
4 under section 3006 of the Solid Waste Disposal
5 Act (42 U.S.C. 6926), and not later than 120
6 days after receiving an application from a State
7 that is not authorized to administer and enforce
8 the corrective action requirements of a hazard-
9 ous waste program under section 3006 of the
10 Solid Waste Disposal Act (42 U.S.C. 6926), un-
11 less the State agrees to a greater length of time
12 for the Administrator to make a determination,
13 the Administrator shall—

14 “(i) issue a notice of approval of the
15 application (including approval or dis-
16 approval regarding any or all of the facili-
17 ties with respect to which a delegation of
18 authority is requested or with respect to
19 any or all of the authorities that are re-
20 quested to be delegated); or

21 “(ii) if the Administrator determines
22 that the State does not have adequate legal
23 authority, financial and personnel re-
24 sources, organization, or expertise to ad-
25 minister and enforce any of the requested

1 delegable authority, issue a notice of dis-
2 approval, including an explanation of the
3 basis for the determination.

4 “(B) FAILURE TO ACT.—If the Adminis-
5 trator does not issue a notice of approval or no-
6 tice of disapproval of all or any portion of an
7 application within the applicable time period
8 under subparagraph (A), the application shall
9 be deemed to have been granted.

10 “(C) RESUBMISSION OF APPLICATION.—

11 “(i) IN GENERAL.—If the Adminis-
12 trator disapproves an application under
13 paragraph (1), the State may resubmit the
14 application at any time after receiving the
15 notice of disapproval.

16 “(ii) FAILURE TO ACT.—If the Ad-
17 ministrator does not issue a notice of ap-
18 proval or notice of disapproval of a resub-
19 mitted application within the applicable
20 time period under subparagraph (A), the
21 resubmitted application shall be deemed to
22 have been granted.

23 “(D) NO ADDITIONAL TERMS OR CONDI-
24 TIONS.—The Administrator shall not impose
25 any term or condition on the approval of an ap-

1 plication that meets the requirements stated in
2 paragraph (2) (except that any technical defi-
3 ciencies in the application be corrected).

4 “(E) JUDICIAL REVIEW.—The State (but
5 no other person) shall be entitled to judicial re-
6 view under section 113(b) of a disapproval of a
7 resubmitted application.

8 “(4) DELEGATION AGREEMENT.—On approval
9 of a delegation of authority under this section, the
10 Administrator and the delegated State shall enter
11 into a delegation agreement that identifies each cat-
12 egory of delegable authority that is delegated with
13 respect to each delegated facility.

14 “(5) LIMITED DELEGATION.—

15 “(A) IN GENERAL.—In the case of a State
16 that does not meet the requirements of para-
17 graph (2)(C) the Administrator may delegate to
18 the State limited authority to perform, ensure
19 the performance of, or supervise or otherwise
20 participate in the performance of 1 or more del-
21 egable authorities, as appropriate in view of the
22 extent to which the State has the required legal
23 authority, financial and personnel resources, or-
24 ganization, and expertise.

1 “(B) SPECIAL PROVISIONS.—In the case of
2 a limited delegation of authority to a State
3 under subparagraph (A), the Administrator
4 shall specify the extent to which the State shall
5 be considered to be a delegated State for the
6 purposes of this Act.

7 “(d) PERFORMANCE OF DELEGATED AUTHORI-
8 TIES.—

9 “(1) IN GENERAL.—A delegated State shall
10 have sole authority (except as provided in paragraph
11 (6)(B), subsection (e)(4), and subsection (g)) to per-
12 form a delegated authority with respect to a dele-
13 gated facility.

14 “(2) AGREEMENTS FOR PERFORMANCE OF DEL-
15 EGATED AUTHORITIES.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), a delegated State may enter
18 into an agreement with a political subdivision of
19 the State, an interstate body comprised of that
20 State and another delegated State or States, or
21 a combination of such subdivisions or interstate
22 bodies, providing for the performance of any
23 category of delegated authority with respect to
24 a delegated facility in the State if the parties to
25 the agreement agree in the agreement to under-

1 take response actions that are consistent with
2 this Act.

3 “(B) NO AGREEMENT WITH POTENTIALLY
4 RESPONSIBLE PARTY.—A delegated State shall
5 not enter into an agreement under subpara-
6 graph (A) with a political subdivision or inter-
7 state body that is, or includes as a component
8 an entity that is, a potentially responsible party
9 with respect to a delegated facility covered by
10 the agreement.

11 “(C) CONTINUING RESPONSIBILITY.—A
12 delegated State that enters into an agreement
13 under subparagraph (A)—

14 “(i) shall exercise supervision over
15 and approve the activities of the parties to
16 the agreement; and

17 “(ii) shall remain responsible for en-
18 suring performance of the delegated au-
19 thority.

20 “(3) COMPLIANCE WITH ACT.—

21 “(A) NONCOMPREHENSIVE DELEGATION
22 STATES.—A noncomprehensive delegation State
23 shall implement each applicable provision of
24 this Act (including regulations and guidance
25 issued by the Administrator) so as to perform

1 each delegated authority with respect to a dele-
2 gated facility in the same manner as would the
3 Administrator with respect to a facility that is
4 not a delegated facility.

5 “(B) COMPREHENSIVE DELEGATION
6 STATES.—

7 “(i) IN GENERAL.—A comprehensive
8 delegation State shall implement applicable
9 provisions of this Act or of similar provi-
10 sions of State law in a manner comporting
11 with State policy, so long as the remedial
12 action that is selected protects human
13 health and the environment to the same
14 extent as would a remedial action selected
15 by the Administrator under section 121.

16 “(ii) COSTLIER REMEDIAL ACTION.—

17 “(I) IN GENERAL.—A delegated
18 State may select a remedial action for
19 a delegated facility that has a greater
20 response cost (including operation and
21 maintenance costs) than the response
22 cost for a remedial action that would
23 be selected by the Administrator
24 under section 121, if the State pays
25 for the difference in cost.

1 “(H) NO COST RECOVERY.—If a
2 delegated State selects a more costly
3 remedial action under subclause (I),
4 the State shall not be entitled to seek
5 cost recovery under this Act or any
6 other Federal or State law from any
7 other person for the difference in cost.

8 “(4) JUDICIAL REVIEW.—An order that is
9 issued under section 106 by a delegated State with
10 respect to a delegated facility shall be reviewable
11 only in United States district court under section
12 113.

13 “(5) DELISTING OF NATIONAL PRIORITIES LIST
14 FACILITIES.—

15 “(A) DELISTING.—After notice and an op-
16 portunity for public comment, a delegated State
17 may remove from the National Priorities List
18 all or part of a delegated facility—

19 “(i) if the State makes a finding that
20 no further action is needed to be taken at
21 the facility (or part of the facility) under
22 any applicable law to protect human health
23 and the environment consistent with sec-
24 tion 121(a) (1) and (2);

1 “(ii) with the concurrence of the po-
2 tentially responsible parties, if the State
3 has an enforceable agreement to perform
4 all required remedial action and operation
5 and maintenance for the facility or if the
6 cleanup will proceed at the facility under
7 section 3004 (u) or (v) of the Solid Waste
8 Disposal Act (42 U.S.C. 6924 (u), (v)); or

9 “(iii) if the State is a comprehensive
10 delegation State with respect to the facil-
11 ity.

12 “(B) EFFECT OF DELISTING.—A delisting
13 under subparagraph (A) (ii) or (iii) shall not af-
14 fect—

15 “(i) the authority or responsibility of
16 the State to complete remedial action and
17 operation and maintenance;

18 “(ii) the eligibility of the State for
19 funding under this Act;

20 “(iii) notwithstanding the limitation
21 on section 104(e)(1), the authority of the
22 Administrator to make expenditures from
23 the Fund relating to the facility; or

24 “(iv) the enforceability of any consent
25 order or decree relating to the facility.

1 “(C) NO RELISTING.—

2 “(i) IN GENERAL.—Except as pro-
3 vided in clause (ii), the Administrator shall
4 not relist on the National Priorities List a
5 facility or part of a facility that has been
6 removed from the National Priorities List
7 under subparagraph (A).

8 “(ii) CLEANUP NOT COMPLETED.—
9 The Administrator may relist a facility or
10 part of a facility that has been removed
11 from the National Priorities List under
12 subparagraph (A) if cleanup is not com-
13 pleted in accordance with the enforceable
14 agreement under subparagraph (A)(ii).

15 “(6) COST RECOVERY.—

16 “(A) RECOVERY BY A DELEGATED
17 STATE.—Of the amount of any response costs
18 recovered from a responsible party by a dele-
19 gated State for a delegated facility under sec-
20 tion 107—

21 “(i) 25 percent of the amount of any
22 Federal response cost recovered with re-
23 spect to a facility, plus an amount equal to
24 the amount of response costs incurred by

1 the State with respect to the facility, may
2 be retained by the State; and

3 “(ii) the remainder shall be deposited
4 in the Hazardous Substances Superfund
5 established under subchapter A of chapter
6 98 of the Internal Revenue Code of 1986.

7 “(B) RECOVERY BY THE ADMINIS-
8 TRATOR.—

9 “(i) IN GENERAL.—The Administrator
10 may take action under section 107 to re-
11 cover response costs from a responsible
12 party for a delegated facility if—

13 “(I) the delegated State notifies
14 the Administrator in writing that the
15 delegated State does not intend to
16 pursue action for recovery of response
17 costs under section 107 against the
18 responsible party; or

19 “(II) the delegated State fails to
20 take action to recover response costs
21 within a reasonable time in light of
22 applicable statutes of limitation.

23 “(ii) NOTICE.—If the Administrator
24 proposes to commence an action for recov-
25 ery of response costs under section 107,

1 the Administrator shall give the State writ-
 2 ten notice and allow the State at least 90
 3 days after receipt of the notice to com-
 4 mence the action.

5 “(iii) NO FURTHER ACTION.—If the
 6 Administrator takes action against a po-
 7 tentially responsible party under section
 8 107 relating to a release from a delegated
 9 facility, the delegated State may not take
 10 any other action for recovery of response
 11 costs relating to that release under this
 12 Act or any other Federal or State law.

13 “(e) FEDERAL RESPONSIBILITIES AND AUTHORI-
 14 TIES.—

15 “(1) REVIEW USE OF FUNDS.—

16 “(A) IN GENERAL.—The Administrator
 17 shall review the certification submitted by the
 18 Governor under subsection (f)(8) not later than
 19 120 days after the date of its submission.

20 “(B) FINDING OF USE OF FUNDS INCON-
 21 SISTENT WITH THIS ACT.—If the Administrator
 22 finds that funds were used in a manner that is
 23 inconsistent with this Act, the Administrator
 24 shall notify the Governor in writing not later

1 than 120 days after receiving the Governor's
2 certification.

3 “(C) EXPLANATION.—Not later than 30
4 days after receiving a notice under subpara-
5 graph (B), the Governor shall—

6 “(i) explain why the Administrator's
7 finding is in error; or

8 “(ii) explain to the Administrator's
9 satisfaction how any misapplication or mis-
10 use of funds will be corrected.

11 “(D) FAILURE TO EXPLAIN.—If the Gov-
12 ernor fails to make an explanation under sub-
13 paragraph (C) to the Administrator's satisfac-
14 tion, the Administrator may request reimburse-
15 ment of such amount of funds as the Adminis-
16 trator finds was misapplied or misused.

17 “(E) REPAYMENT OF FUNDS.—If the Ad-
18 ministrator fails to obtain reimbursement from
19 the State within a reasonable period of time,
20 the Administrator may, after 30 days' notice to
21 the State, bring a civil action in United States
22 district court to recover from the delegated
23 State any funds that were advanced for a pur-
24 pose or were used for a purpose or in a manner
25 that is inconsistent with this Act.

1 “(2) WITHDRAWAL OF DELEGATION OF AU-
2 THORITY.—

3 “(A) DELEGATED STATES.—If at any time
4 the Administrator finds that contrary to a cer-
5 tification made under subsection (e)(2), a dele-
6 gated State—

7 “(i) lacks the required financial and
8 personnel resources, organization, or exper-
9 tise to administer and enforce the re-
10 quested delegated authorities;

11 “(ii) does not have adequate legal au-
12 thority to request and accept delegation; or

13 “(iii) is failing to materially carry out
14 the State’s delegated authorities;

15 the Administrator may withdraw a delegation of
16 authority with respect to a delegated facility
17 after providing notice and opportunity to cor-
18 rect deficiencies under subparagraph (D).

19 “(B) STATES WITH LIMITED DELEGATIONS
20 OF AUTHORITY.—If the Administrator finds
21 that a State to which a limited delegation of au-
22 thority was made under subsection (e)(5) has
23 materially breached the delegation agreement,
24 the Administrator may withdraw the delegation

1 after providing notice and opportunity to cor-
2 rect deficiencies under subparagraph (D).

3 ~~“(C) NOTICE AND OPPORTUNITY TO COR-~~
4 ~~RECT.—If the Administrator proposes to with-~~
5 ~~draw a delegation of authority for any or all~~
6 ~~delegated facilities, the Administrator shall give~~
7 ~~the State written notice and allow the State at~~
8 ~~least 90 days after the date of receipt of the no-~~
9 ~~tice to correct the deficiencies cited in the no-~~
10 ~~tice.~~

11 ~~“(D) FAILURE TO CORRECT.—If the Ad-~~
12 ~~ministrator finds that the deficiencies have not~~
13 ~~been corrected within the time specified in a no-~~
14 ~~tice under subparagraph (C), the Administrator~~
15 ~~may withdraw delegation of authority after pro-~~
16 ~~viding public notice and opportunity for com-~~
17 ~~ment.~~

18 ~~“(E) JUDICIAL REVIEW.—A decision of the~~
19 ~~Administrator to withdraw a delegation of au-~~
20 ~~thority shall be subject to judicial review under~~
21 ~~section 113(b).~~

22 ~~“(3) RULE OF CONSTRUCTION.—Nothing in~~
23 ~~this section shall be construed to affect the authority~~
24 ~~of the Administrator under this Act to—~~

1 “(A) take a response action at a facility
2 listed on the National Priorities List in a State
3 to which a delegation of authority has not been
4 made under this section or at a facility not in-
5 cluded in a delegation of authority; or

6 “(B) perform a delegable authority with
7 respect to a facility that is not included among
8 the authorities delegated to a State with respect
9 to the facility.

10 “(4) RETAINED AUTHORITY.—

11 “(A) NOTICE.—Before performing an
12 emergency removal action under section 104 at
13 a delegated facility, the Administrator shall no-
14 tify the delegated States of the Administrator’s
15 intention to perform the removal.

16 “(B) STATE ACTION.—If, after receiving a
17 notice under subparagraph (A), the delegated
18 State notifies the Administrator within 48
19 hours that the State intends to take action to
20 perform an emergency removal at the delegated
21 facility, the Administrator shall not perform the
22 emergency removal action unless the Adminis-
23 trator determines that the delegated State has
24 failed to act within a reasonable period of time
25 to perform the emergency removal.

1 “(C) IMMEDIATE AND SIGNIFICANT DAN-
2 GER.—If the Administrator finds that an emer-
3 gency at a delegated facility poses an immediate
4 and significant danger to human health or the
5 environment, the Administrator shall not be re-
6 quired to provide notice under subparagraph
7 (A).

8 “(5) PROHIBITED ACTIONS.—Except as pro-
9 vided in subsections (d)(6)(B), (e)(4), and (g) or ex-
10 cept with the concurrence of the delegated State, the
11 President, the Administrator, and the Attorney Gen-
12 eral shall not take any action under section 104,
13 106, 107, 109, 121, or 122 in performance of a del-
14 egable authority that has been delegated to a State
15 with respect to a delegated facility.

16 “(f) FUNDING.—

17 “(1) IN GENERAL.—The Administrator shall
18 provide grants to or enter into contracts or coopera-
19 tive agreements with delegated States to carry out
20 this section.

21 “(2) NO CLAIM AGAINST FUND.—Notwithstand-
22 ing any other law, funds to be granted under this
23 subsection shall not constitute a claim against the
24 Fund or the United States.

1 “(3) INSUFFICIENT FUNDS AVAILABLE.—If
 2 funds are unavailable in any fiscal year to satisfy all
 3 commitments made under this section by the Admin-
 4 istrator, the Administrator shall have sole authority
 5 and discretion to establish priorities and to delay
 6 payments until funds are available.

7 “(4) DETERMINATION OF COSTS ON A FACIL-
 8 ITY-SPECIFIC BASIS.—The Administrator shall—

9 “(A) determine—

10 “(i) the delegable authorities the costs
 11 of performing which it is practicable to de-
 12 termine on a facility-specific basis; and

13 “(ii) the delegable authorities the
 14 costs of performing which it is not prac-
 15 ticable to determine on a facility-specific
 16 basis; and

17 “(B) publish a list describing the delegable
 18 authorities in each category.

19 “(5) FACILITY-SPECIFIC GRANTS.—The costs
 20 described in paragraph (4)(A)(ii) shall be funded as
 21 such costs arise with respect to each delegated facil-
 22 ity.

23 “(6) NONFACILITY-SPECIFIC GRANTS.—

1 “(A) IN GENERAL.—The costs described in
2 paragraph (4)(A)(ii) shall be funded through
3 nonfacility-specific grants under this paragraph.

4 “(B) FORMULA.—The Administrator shall
5 establish a formula under which funds available
6 for nonfacility-specific grants shall be allocated
7 among the delegated States, taking into consid-
8 eration—

9 “(i) the cost of administering the dele-
10 gated authority;

11 “(ii) the number of sites for which the
12 State has been delegated authority;

13 “(iii) the types of activities for which
14 the State has been delegated authority;

15 “(iv) the number of facilities within
16 the State that are listed on the National
17 Priorities List or are delegated facilities
18 under section 130(d)(5);

19 “(v) the number of other high priority
20 facilities within the State;

21 “(vi) the need for the development of
22 the State program;

23 “(vii) the need for additional person-
24 nel;

1 “(viii) the amount of resources avail-
2 able through State programs for the clean-
3 up of contaminated sites; and

4 “(ix) the benefit to human health and
5 the environment of providing the funding.

6 “(7) PERMITTED USE OF GRANT FUNDS.—A
7 delegated State may use grant funds, in accordance
8 with this Act and the National Contingency Plan, to
9 take any action or perform any duty necessary to
10 implement the authority delegated to the State
11 under this section.

12 “(8) COST SHARE.—

13 “(A) ASSURANCE.—A delegated State to
14 which a grant is made under this subsection
15 shall provide an assurance that the State will
16 pay any amount required under section
17 104(e)(3).

18 “(B) PROHIBITED USE OF GRANT
19 FUNDS.—A delegated State to which a grant is
20 made under this subsection may not use grant
21 funds to pay any amount required under section
22 104(e)(3).

23 “(9) CERTIFICATION OF USE OF FUNDS.—

24 “(A) IN GENERAL.—Not later than 1 year
25 after the date on which a delegated State re-

1 ceives funds under this subsection, and annually
2 thereafter, the Governor of the State shall sub-
3 mit to the Administrator—

4 “(i) a certification that the State has
5 used the funds in accordance with the re-
6 quirements of this Act and the National
7 Contingency Plan; and

8 “(ii) information describing the man-
9 ner in which the State used the funds.

10 “(B) REGULATIONS.—Not later than 1
11 year after the date of enactment of this section,
12 the Administrator shall issue a regulation de-
13 scribing with particularity the information that
14 a State shall be required to provide under sub-
15 paragraph (A)(ii).

16 “(g) COOPERATIVE AGREEMENTS.—Nothing in this
17 section shall affect the authority of the Administrator
18 under section 104(d)(1) to enter into a cooperative agree-
19 ment with a State, a political subdivision of a State, or
20 an Indian tribe to carry out actions under section 104.”.

21 (b) STATE COST SHARE.—Section 104(e) of the
22 Comprehensive Environmental Response, Compensation,
23 and Liability Act of 1980 (42 U.S.C. 9604(e)) is amend-
24 ed—

1 (1) by striking “(c)(1) Unless” and inserting
2 the following:

3 “~~(c) MISCELLANEOUS LIMITATIONS AND REQUIRE-~~
4 MENTS.—

5 “~~(1) CONTINUANCE OF OBLIGATIONS FROM~~
6 FUND.—Unless”;

7 (2) by striking “(2) The President” and insert-
8 ing the following:

9 “~~(2) CONSULTATION.—The President~~”; and

10 (3) by striking paragraph (3) and inserting the
11 following:

12 “~~(3) STATE COST SHARE.—~~

13 “~~(A) IN GENERAL.—The Administrator~~
14 shall not provide any remedial action under this
15 section unless the State in which the release oc-
16 curs first enters into a contract or cooperative
17 agreement with the Administrator providing as-
18 surances deemed adequate by the Administrator
19 that the State will pay, in cash or through in-
20 kind contributions, a specified percentage of the
21 costs of the remedial action and operation and
22 maintenance costs.

23 “~~(B) ACTIVITIES WITH RESPECT TO~~
24 WHICH STATE COST SHARE IS REQUIRED.—No

1 State cost share shall be required except for re-
2 medial actions under section 104.

3 ~~“(C) SPECIFIED PERCENTAGE.—~~

4 ~~“(i) IN GENERAL.—The specified per-~~
5 ~~centage of costs that a State shall be re-~~
6 ~~quired to share shall be the lower of 10~~
7 ~~percent or the percentage determined~~
8 ~~under clause (ii).~~

9 ~~“(ii) MAXIMUM IN ACCORDANCE WITH~~
10 ~~LAW PRIOR TO 1996 AMENDMENTS.—~~

11 ~~“(I) On petition by a State, the~~
12 ~~Director of the Office of Management~~
13 ~~and Budget (referred to in this clause~~
14 ~~as the ‘Director’), after providing pub-~~
15 ~~lic notice and opportunity for com-~~
16 ~~ment, shall establish a cost share per-~~
17 ~~centage, which shall be uniform for all~~
18 ~~facilities in the State, at the percent-~~
19 ~~age rate at which the total amount of~~
20 ~~anticipated payments by the State~~
21 ~~under the cost share for all facilities~~
22 ~~in the State for which a cost share is~~
23 ~~required most closely approximates~~
24 ~~the total amount of estimated cost~~
25 ~~share payments by the State for facili-~~

1 ties that would have been required
2 under cost share requirements that
3 were applicable prior to the date of
4 enactment of this subparagraph, ad-
5 justed to reflect the extent to which
6 the State's ability to recover costs
7 under this Act were reduced by reason
8 of enactment of amendments to this
9 Act by the Superfund Cleanup Accel-
10 eration Act of 1997.

11 “(H) The Director may adjust a
12 State's cost share under this clause
13 not more frequently than every 3
14 years.

15 “(D) INDIAN TRIBES.—In the case of re-
16 medial action to be taken on land or water held
17 by an Indian Tribe, held by the United States
18 in trust for Indians, held by a member of an In-
19 dian Tribe (if the land or water is subject to a
20 trust restriction on alienation), or otherwise
21 within the borders of an Indian reservation, the
22 requirements of this paragraph shall not
23 apply.”.

24 (e) USES OF FUND.—Section 111(a) of the Com-
25 prehensive Environmental Response, Compensation, and

1 Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by
 2 inserting after paragraph (6) the following:

3 “(7) GRANTS TO DELEGATED STATES.—Making
 4 a grant to a delegated State under section 130(f).”.

5 (d) RELATIONSHIP TO OTHER LAWS.—

6 (1) IN GENERAL.—Section 114(b) of the Com-
 7 prehensive Environmental Response, Compensation,
 8 and Liability Act of 1980 (42 U.S.C. 9614(b)) is
 9 amended by striking “removal” each place it appears
 10 and inserting “response”.

11 (2) CONFORMING AMENDMENT.—Section
 12 101(37)(B) of the Comprehensive Environmental
 13 Response, Compensation, and Liability Act of 1980
 14 (42 U.S.C. 9601(37)(B)) is amended by striking
 15 “section 114(c)” and inserting “section 114(b)”.

16 **TITLE III—COMMUNITY** 17 **PARTICIPATION**

18 **SEC. 301. COMMUNITY RESPONSE ORGANIZATIONS; TECH-** 19 **NICAL ASSISTANCE GRANTS; IMPROVEMENT** 20 **OF PUBLIC PARTICIPATION IN THE SUPER-** 21 **FUND DECISIONMAKING PROCESS.**

22 (a) AMENDMENT.—Section 117 of the Comprehen-
 23 sive Environmental Response, Compensation, and Liabil-
 24 ity Act of 1980 (42 U.S.C. 9617) is amended by striking
 25 subsection (c) and inserting the following:

1 “(e) COMMUNITY RESPONSE ORGANIZATIONS.—

2 “(1) ESTABLISHMENT.—The Administrator
3 shall create a community response organization for
4 a facility that is listed or proposed for listing on the
5 National Priorities List—

6 “(A) if the Administrator determines that
7 a representative public forum will be helpful in
8 promoting direct, regular, and meaningful con-
9 sultation among persons interested in remedial
10 action at the facility; or

11 “(B) at the request of—

12 “(i) 50 individuals residing in, or at
13 least 20 percent of the population of, the
14 area in which the facility is located;

15 “(ii) a representative group of the po-
16 tentially responsible parties; or

17 “(iii) any local governmental entity
18 with jurisdiction over the facility.

19 “(2) RESPONSIBILITIES.—A community re-
20 sponse organization shall—

21 “(A) solicit the views of the local commu-
22 nity on various issues affecting the development
23 and implementation of remedial actions at the
24 facility;

1 “(B) serve as a conduit of information to
2 and from the community to appropriate Fed-
3 eral, State, and local agencies and potentially
4 responsible parties;

5 “(C) serve as a representative of the local
6 community during the remedial action planning
7 and implementation process; and

8 “(D) provide reasonable notice of and op-
9 portunities to participate in the meetings and
10 other activities of the community response orga-
11 nization.

12 “(3) ACCESS TO DOCUMENTS.—The Adminis-
13 trator shall provide a community response organiza-
14 tion access to documents in possession of the Fed-
15 eral Government regarding response actions at the
16 facility that do not relate to liability and are not
17 protected from disclosure as confidential business in-
18 formation.

19 “(4) COMMUNITY RESPONSE ORGANIZATION
20 INPUT.—

21 “(A) CONSULTATION.—The Administrator
22 (or if the remedial action plan is being prepared
23 or implemented by a party other than the Ad-
24 ministrator, the other party) shall—

1 “(i) consult with the community re-
2 sponse organization in developing and im-
3 plementing the remedial action plan; and

4 “(ii) keep the community response or-
5 ganization informed of progress in the de-
6 velopment and implementation of the re-
7 medial action plan.

8 “(B) **TIMELY SUBMISSION OF COM-**
9 **MENTS.**—The community response organization
10 shall provide its comments, information, and
11 recommendations in a timely manner to the Ad-
12 ministrators (and other party).

13 “(C) **CONSENSUS.**—The community re-
14 sponse organization shall attempt to achieve
15 consensus among its members before providing
16 comments and recommendations to the Admin-
17 istrator (and other party); but if consensus can-
18 not be reached, the community response organi-
19 zation shall report or allow presentation of di-
20 vergent views.

21 “(5) **TECHNICAL ASSISTANCE GRANTS.**—

22 “(A) **PREFERRED RECIPIENT.**—If a com-
23 munity response organization exists for a facil-
24 ity, the community response organization shall

1 be the preferred recipient of a technical assist-
2 ance grant under subsection (f).

3 “(B) PRIOR AWARD.—If a technical assist-
4 ance grant concerning a facility has been
5 awarded prior to establishment of a community
6 response organization—

7 “(i) the recipient of the grant shall co-
8 ordinate its activities and share informa-
9 tion and technical expertise with the com-
10 munity response organization; and

11 “(ii) 1 person representing the grant
12 recipient shall serve on the community re-
13 sponse organization.

14 “(6) MEMBERSHIP.—

15 “(A) NUMBER.—The Administrator shall
16 select not less than 15 nor more than 20 per-
17 sons to serve on a community response organi-
18 zation.

19 “(B) NOTICE.—Before selecting members
20 of the community response organization, the
21 Administrator shall provide a notice of intent to
22 establish a community response organization to
23 persons who reside in the local community.

24 “(C) REPRESENTED GROUPS.—The Ad-
25 ministrator shall, to the extent practicable, ap-

1 point members to the community response orga-
2 nization from each of the following groups of
3 persons:

4 “(i) Persons who reside or own resi-
5 dential property near the facility;

6 “(ii) Persons who, although they may
7 not reside or own property near the facil-
8 ity, may be adversely affected by a release
9 from the facility.

10 “(iii) Persons who are members of the
11 local public health or medical community
12 and are practicing in the community.

13 “(iv) Representatives of Indian tribes
14 or Indian communities that reside or own
15 property near the facility or that may be
16 adversely affected by a release from the fa-
17 cility.

18 “(v) Local representatives of citizen,
19 environmental, or public interest groups
20 with members residing in the community.

21 “(vi) Representatives of local govern-
22 ments, such as city or county governments,
23 or both, and any other governmental unit
24 that regulates land use or land use plan-
25 ning in the vicinity of the facility.

1 “(vii) Members of the local business
2 community.

3 “(D) PROPORTION.—Local residents shall
4 comprise not less than 60 percent of the mem-
5 bership of a community response organization.

6 “(E) PAY.—Members of a community re-
7 sponse organization shall serve without pay.

8 “(7) PARTICIPATION BY GOVERNMENT REP-
9 PRESENTATIVES.—Representatives of the Adminis-
10 trator, the Administrator of the Agency for Toxic
11 Substances and Disease Registry, other Federal
12 agencies, and the State, as appropriate, shall partici-
13 pate in community response organization meetings
14 to provide information and technical expertise, but
15 shall not be members of the community response or-
16 ganization.

17 “(8) ADMINISTRATIVE SUPPORT.—The Admin-
18 istrator, to the extent practicable, shall provide ad-
19 ministrative services and meeting facilities for com-
20 munity response organizations.

21 “(9) FACA.—The Federal Advisory Committee
22 Act (5 U.S.C. App.) shall not apply to a community
23 response organization.

24 “(f) TECHNICAL ASSISTANCE GRANTS.—

25 “(1) DEFINITIONS.—In this subsection:

1 “(A) AFFECTED CITIZEN GROUP.—The
2 term ‘affected citizen group’ means a group of
3 2 or more individuals who may be affected by
4 the release or threatened release of a hazardous
5 substance, pollutant, or contaminant at any fa-
6 cility on the State Registry or the National Pri-
7 orities List.

8 “(B) TECHNICAL ASSISTANCE GRANT.—
9 The term ‘technical assistance grant’ means a
10 grant made under paragraph (2).

11 “(2) AUTHORITY.—

12 “(A) IN GENERAL.—In accordance with a
13 regulation issued by the Administrator, the Ad-
14 ministratoꝛ may make grants available to af-
15 fected citizen groups.

16 “(B) AVAILABILITY OF APPLICATION
17 PROCESS.—To ensure that the application proce-
18 ss for a technical assistance grant is available
19 to all affected citizen groups, the Administrator
20 shall periodically review the process and, based
21 on the review, implement appropriate changes
22 to improve availability.

23 “(3) SPECIAL RULES.—

1 “(A) NO MATCHING CONTRIBUTION.—No
2 matching contribution shall be required for a
3 technical assistance grant.

4 “(B) AVAILABILITY IN ADVANCE.—The
5 Administrator shall make all or a portion (but
6 not less than \$5,000 or 10 percent of the grant
7 amount, whichever is greater) of the grant
8 amount available to a grant recipient in ad-
9 vance of the total expenditures to be covered by
10 the grant.

11 “(4) LIMIT PER FACILITY.—

12 “(A) 1 GRANT PER FACILITY.—Not more
13 than 1 technical assistance grant may be made
14 with respect to a single facility, but the grant
15 may be renewed to facilitate public participation
16 at all stages of response action.

17 “(B) DURATION.—The Administrator shall
18 set a limit by regulation on the number of years
19 for which a technical assistance grant may be
20 made available based on the duration, type, and
21 extent of response action at a facility.

22 “(5) AVAILABILITY FOR FACILITIES NOT YET
23 LISTED.—Subject to paragraph (6), 1 or more tech-
24 nical assistance grants shall be made available to af-
25 fected citizen groups in communities containing fa-

1 facilities on the State Registry as of the date on which
2 the grant is awarded.

3 ~~“(6) FUNDING LIMIT.—~~

4 ~~“(A) PERCENTAGE OF TOTAL APPROPRIA-~~
5 ~~TIONS.—Not more than 2 percent of the funds~~
6 ~~made available to carry out this Act for a fiscal~~
7 ~~year may be used to make technical assistance~~
8 ~~grants.~~

9 ~~“(B) ALLOCATION BETWEEN LISTED AND~~
10 ~~UNLISTED FACILITIES.—Not more than the~~
11 ~~portion of funds equal to $\frac{1}{3}$ of the total amount~~
12 ~~of funds used to make technical assistance~~
13 ~~grants for a fiscal year may be used for tech-~~
14 ~~nical assistance grants with respect to facilities~~
15 ~~not listed on the National Priorities List.~~

16 ~~“(7) FUNDING AMOUNT.—~~

17 ~~“(A) IN GENERAL.—Except as provided in~~
18 ~~subparagraph (B), the amount of a technical~~
19 ~~assistance grant may not exceed \$50,000 for a~~
20 ~~single grant recipient.~~

21 ~~“(B) INCREASE.—The Administrator may~~
22 ~~increase the amount of a technical assistance~~
23 ~~grant, or renew a previous technical assistance~~
24 ~~grant, up to a total grant amount not exceeding~~
25 ~~\$100,000, to reflect the complexity of the re-~~

1 sponse action, the nature and extent of con-
 2 tamination at the facility, the level of facility
 3 activity, projected total needs as requested by
 4 the grant recipient, the size and diversity of the
 5 affected population, and the ability of the grant
 6 recipient to identify and raise funds from other
 7 non-Federal sources.

8 “(8) USE OF TECHNICAL ASSISTANCE
 9 GRANTS.—

10 “(A) PERMITTED USE.—A technical assist-
 11 ance grant may be used to obtain technical as-
 12 sistance in interpreting information with regard
 13 to—

14 “(i) the nature of the hazardous sub-
 15 stances located at a facility;

16 “(ii) the work plan;

17 “(iii) the facility evaluation;

18 “(iv) a proposed remedial action plan,
 19 a remedial action plan, and a final reme-
 20 dial design for a facility;

21 “(v) response actions carried out at
 22 the facility; and

23 “(vi) operation and maintenance ac-
 24 tivities at the facility.

1 “(B) PROHIBITED USE.—A technical as-
 2 sistance grant may not be used for the purpose
 3 of collecting field sampling data.

4 “(9) GRANT GUIDELINES.—

5 “(A) IN GENERAL.—Not later than 90
 6 days after the date of enactment of this para-
 7 graph, the Administrator shall develop and pub-
 8 lish guidelines concerning the management of
 9 technical assistance grants by grant recipients.

10 “(B) HIRING OF EXPERTS.—A recipient of
 11 a technical assistance grant that hires technical
 12 experts and other experts shall act in accord-
 13 ance with the guidelines under subparagraph
 14 (A).

15 “(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN
 16 THE SUPERFUND DECISIONMAKING PROCESS.—

17 “(1) IN GENERAL.—

18 “(A) MEETINGS AND NOTICE.—In order to
 19 provide an opportunity for meaningful public
 20 participation in every significant phase of re-
 21 sponse activities under this Act, the Adminis-
 22 trator shall provide the opportunity for, and
 23 publish notice of, public meetings before or dur-
 24 ing performance of—

1 “(i) a facility evaluation, as appro-
2 priate;

3 “(ii) announcement of a proposed re-
4 medial action plan; and

5 “(iii) completion of a final remedial
6 design.

7 “(B) INFORMATION.—A public meeting
8 under subparagraph (A) shall be designed to
9 obtain information from the community, and
10 disseminate information to the community, with
11 respect to a facility concerning the Administra-
12 tor’s facility activities and pending decisions.

13 “(2) PARTICIPANTS AND SUBJECT.—The Ad-
14 ministrator shall provide reasonable notice of an op-
15 portunity for public participation in meetings in
16 which—

17 “(A) the participants include Federal offi-
18 cials (or State officials, if the State is conduct-
19 ing response actions under a delegated or au-
20 thorized program or through facility referral)
21 with authority to make significant decisions af-
22 fecting a response action; and other persons
23 (unless all of such other persons are coregu-
24 lators that are not potentially responsible par-
25 ties or are government contractors); and

1 “(B) the subject of the meeting involves
2 discussions directly affecting—

3 “(i) a legally enforceable work plan
4 document, or any significant amendment
5 to the document, for a removal, facility
6 evaluation, proposed remedial action plan,
7 final remedial design, or remedial action
8 for a facility on the National Priorities
9 List; or

10 “(ii) the final record of information on
11 which the Administrator will base a hazard
12 ranking system score for a facility.

13 “(3) LIMITATION.—Nothing in this subsection
14 shall be construed—

15 “(A) to provide for public participation in
16 or otherwise affect any negotiation, meeting, or
17 other discussion that concerns only the poten-
18 tial liability or settlement of potential liability
19 of any person, whether prior to or following the
20 commencement of litigation or administrative
21 enforcement action;

22 “(B) to provide for public participation in
23 or otherwise affect any negotiation, meeting, or
24 other discussion that is attended only by rep-
25 resentatives of the United States (or of a de-

1 partment, agency, or instrumentality of the
 2 United States) with attorneys representing the
 3 United States (or of a department, agency, or
 4 instrumentality of the United States); or

5 “(C) to waive, compromise, or affect any
 6 privilege that may be applicable to a commu-
 7 nication related to an activity described in sub-
 8 paragraph (A) or (B).

9 “(4) EVALUATION.—

10 “(A) IN GENERAL.—To the extent prac-
 11 ticable, before and during the facility evalua-
 12 tion, the Administrator shall solicit and evalu-
 13 ate concerns, interests, and information from
 14 the community.

15 “(B) PROCEDURE.—An evaluation under
 16 subparagraph (A) shall include, as appro-
 17 priate—

18 “(i) face-to-face community surveys to
 19 identify the location of private drinking
 20 water wells, historic and current or poten-
 21 tial use of water, and other environmental
 22 resources in the community;

23 “(ii) a public meeting;

24 “(iii) written responses to significant
 25 concerns; and

1 “(iv) other appropriate participatory
2 activities.

3 ~~“(5) VIEWS AND PREFERENCES.—~~

4 “(A) SOLICITATION.—During the facility
5 evaluation, the Administrator (or other person
6 performing the facility evaluation) shall solicit
7 the views and preferences of the community on
8 the remediation and disposition of hazardous
9 substances or pollutants or contaminants at the
10 facility.

11 “(B) CONSIDERATION.—The views and
12 preferences of the community shall be described
13 in the facility evaluation and considered in the
14 screening of remedial alternatives for the facil-
15 ity.

16 ~~“(6) ALTERNATIVES.—Members of the commu-
17 nity may propose remedial action alternatives, and
18 the Administrator shall consider such alternatives in
19 the same manner as the Administrator considers al-
20 ternatives proposed by potentially responsible par-
21 ties.~~

22 ~~“(7) INFORMATION.—~~

23 “(A) THE COMMUNITY.—The Adminis-
24 trator, with the assistance of the community re-
25 sponse organization under subsection (g) if

1 there is one, shall provide information to the
2 community and seek comment from the commu-
3 nity throughout all significant phases of the re-
4 sponse action at the facility.

5 “(B) TECHNICAL STAFF.—The Adminis-
6 trator shall ensure that information gathered
7 from the community during community out-
8 reach efforts reaches appropriate technical staff
9 in a timely and effective manner.

10 “(C) RESPONSES.—The Administrator
11 shall ensure that reasonable written or other
12 appropriate responses will be made to such in-
13 formation.

14 “(8) NONPRIVILEGED INFORMATION.—
15 Throughout all phases of response action at a facil-
16 ity, the Administrator shall make all nonprivileged
17 information relating to a facility available to the
18 public for inspection and copying without the need
19 to file a formal request, subject to reasonable service
20 charges as appropriate.

21 “(9) PRESENTATION.—

22 “(A) DOCUMENTS.—

23 “(i) IN GENERAL.—The Adminis-
24 trator, in carrying out responsibilities
25 under this Act, shall ensure that the pres-

1 entation of information on risk is complete
2 and informative.

3 “(ii) RISK.—To the extent feasible,
4 documents prepared by the Administrator
5 and made available to the public that pur-
6 port to describe the degree of risk to
7 human health shall be consistent with the
8 risk communication principles outlined in
9 section 131(e).

10 “(B) COMPARISONS.—The Administrator,
11 in carrying out responsibilities under this Act,
12 shall provide comparisons of the level of risk
13 from hazardous substances found at the facility
14 to comparable levels of risk from those hazard-
15 ous substances ordinarily encountered by the
16 general public through other sources of expo-
17 sure.

18 “(10) REQUIREMENTS.—

19 “(A) LENGTHY REMOVAL ACTIONS.—Not-
20 withstanding any other provision of this sub-
21 section, in the case of a removal action taken
22 in accordance with section 104 that is expected
23 to require more than 180 days to complete, and
24 in any case in which implementation of a re-
25 moval action is expected to obviate or that in

1 fact obviates the need to conduct a long-term
2 remedial action—

3 “(i) the Administrator shall, to the
4 maximum extent practicable, allow for pub-
5 lic participation consistent with paragraph
6 (1); and

7 “(ii) the removal action shall achieve
8 the goals of protecting human health and
9 the environment in accordance with section
10 121(a)(1).

11 “(B) OTHER REMOVAL ACTIONS.—In the
12 ease of all other removal actions, the Adminis-
13 trator may provide the community with notice
14 of the anticipated removal action and a public
15 comment period, as appropriate.”

16 (b) ISSUANCE OF GUIDELINES.—The Administrator
17 of the Environmental Protection Agency shall issue guide-
18 lines under section 117(c)(9) of the Comprehensive Envi-
19 ronmental Response, Compensation, and Liability Act of
20 1980, as added by subsection (a), not later than 90 days
21 after the date of enactment of this Act.

1 **TITLE IV—SELECTION OF**
2 **REMEDIAL ACTIONS**

3 **SEC. 401. DEFINITIONS.**

4 Section 101 of the Comprehensive Environmental Re-
5 sponse, Compensation, and Liability Act of 1980 (42
6 U.S.C. 9601) (as amended by section 105(a)) is amended
7 by adding at the end the following:

8 “(41) ACTUAL OR PLANNED OR REASONABLY
9 ANTICIPATED FUTURE USE OF THE LAND AND
10 WATER RESOURCES.—The term ‘actual or planned
11 or reasonably anticipated future use of the land and
12 water resources’ means—

13 “(A) the actual use of the land, surface
14 water, and ground water at a facility on the
15 date of submittal of the proposed remedial ac-
16 tion plan; and

17 “(B)(i) with respect to land—

18 “(I) the use of land that is authorized
19 by the zoning or land use decisions for-
20 mally adopted, at or prior to the time of
21 the initiation of the facility evaluation, by
22 the local land use planning authority for a
23 facility and the land immediately adjacent
24 to the facility; and

1 “(H) any other reasonably anticipated
2 use that the local land use authority, in
3 consultation with the community response
4 organization (if any), determines to have a
5 substantial probability of occurring based
6 on recent (as of the time of the determina-
7 tion) development patterns in the area in
8 which the facility is located and on popu-
9 lation projections for the area; and

10 “(ii) with respect to water resources, the
11 future use of the surface water and ground
12 water that is potentially affected by releases
13 from a facility that is reasonably anticipated, by
14 the governmental unit that regulates surface or
15 ground water use or surface or ground water
16 use planning in the vicinity of the facility, on
17 the date of submission of the proposed remedial
18 action plan.

19 “(42) SUSTAINABILITY.—The term ‘sustain-
20 ability’, for the purpose of section 121(a)(1)(B)(ii),
21 means the ability of an ecosystem to continue to
22 function within the normal range of its variability
23 absent the effects of a release of a hazardous sub-
24 stance.’”.

1 **SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL**
 2 **ACTIONS.**

3 Section 121 of the Comprehensive Environmental Re-
 4 sponse, Compensation, and Liability Act of 1980 (42
 5 U.S.C. 9621) is amended—

6 (1) by striking the section heading and sub-
 7 sections (a) and (b) and inserting the following:

8 **“SEC. 121. SELECTION AND IMPLEMENTATION OF REME-**
 9 **DIAL ACTIONS.**

10 **“(a) GENERAL RULES.—**

11 **“(1) SELECTION OF COST-EFFECTIVE REME-**
 12 **DIAL ACTION THAT PROTECTS HUMAN HEALTH AND**
 13 **THE ENVIRONMENT.—**

14 **“(A) IN GENERAL.—**The Administrator
 15 shall select a cost-effective remedial action that
 16 achieves the goals of protecting human health
 17 and the environment as stated in subparagraph
 18 (B), and complies with other applicable Federal
 19 and State laws in accordance with subpara-
 20 graph (C) on the basis of a facility-specific risk
 21 evaluation in accordance with section 131 and
 22 in accordance with the criteria stated in sub-
 23 paragraph (D) and the requirements of para-
 24 graph (2).

25 **“(B) GOALS OF PROTECTING HUMAN**
 26 **HEALTH AND THE ENVIRONMENT.—**

1 “(i) PROTECTION OF HUMAN
2 HEALTH.—A remedial action shall be con-
3 sidered to protect human health if, consid-
4 ering the expected exposures associated
5 with the actual or planned or reasonably
6 anticipated future use of the land and
7 water resources and on the basis of a facil-
8 ity-specific risk evaluation in accordance
9 with section 131, the remedial action
10 achieves a residual risk—

11 “(I) from exposure to nonthresh-
12 old carcinogenic hazardous sub-
13 stances, pollutants, or contaminants
14 such that cumulative lifetime addi-
15 tional cancer from exposure to haz-
16 ardous substances from releases at
17 the facility range from 10^{-4} to 10^{-6}
18 for the affected population; and

19 “(II) from exposure to threshold
20 carcinogenic and noncarcinogenic haz-
21 ardous substances, pollutants, or con-
22 taminants at the facility, that does
23 not exceed a hazard index of 1.

24 “(ii) PROTECTION OF THE ENVIRON-
25 MENT.—A remedial action shall be consid-

1 ered to be protective of the environment if
2 the remedial action—

3 “(I) protects ecosystems from
4 significant threats to their sustain-
5 ability arising from exposure to re-
6 leases of hazardous substances at a
7 site; and

8 “(II) does not cause a greater
9 threat to the sustainability of eco-
10 systems than a release of a hazardous
11 substance.

12 “(iii) PROTECTION OF GROUND
13 WATER.—A remedial action shall prevent
14 or eliminate any actual human ingestion of
15 drinking water containing any hazardous
16 substance from the release at levels—

17 “(I) in excess of the maximum
18 contaminant level established under
19 the Safe Drinking Water Act (42
20 U.S.C. 300f et seq.); or

21 “(II) if no such maximum con-
22 taminant level has been established
23 for the hazardous substance, at levels
24 that meet the goals for protection of
25 human health under clause (i).

1 “(C) COMPLIANCE WITH FEDERAL AND
2 STATE LAWS.—

3 “(i) SUBSTANTIVE REQUIREMENTS.—

4 “(I) IN GENERAL.—Subject to
5 clause (iii) and subparagraphs (A)
6 and (D) and paragraph (2), a reme-
7 dial action shall—

8 “(aa) comply with the sub-
9 stantive requirements of all pro-
10 mulgated standards, require-
11 ments, criteria, and limitations
12 under each Federal law and each
13 State law relating to the environ-
14 ment or to the siting of facilities
15 (including a State law that im-
16 poses a more stringent standard,
17 requirement, criterion, or limita-
18 tion than Federal law) that is ap-
19 plicable to the conduct or oper-
20 ation of the remedial action or to
21 determination of the level of
22 cleanup for remedial actions; and

23 “(bb) comply with or attain
24 any other promulgated standard,
25 requirement, criterion, or limita-

1 tion under any State law relating
2 to the environment or siting of
3 facilities, as determined by the
4 State, after the date of enact-
5 ment of the Superfund Cleanup
6 Acceleration Act of 1997,
7 through a rulemaking procedure
8 that includes public notice, com-
9 ment, and written response com-
10 ment, and opportunity for judi-
11 cial review, but only if the State
12 demonstrates that the standard,
13 requirement, criterion, or limita-
14 tion is of general applicability
15 and is consistently applied to re-
16 medial actions under State law.

17 “(II) IDENTIFICATION OF FACILI-
18 TIES.—Compliance with a State
19 standard, requirement, criterion, or
20 limitation described in subclause (I)
21 shall be required at a facility only if
22 the standard, requirement, criterion,
23 or limitation has been identified by
24 the State to the Administrator in a

1 timely manner as being applicable to
2 the facility.

3 ~~“(III) PUBLISHED LISTS.—Each~~
4 State shall publish a comprehensive
5 list of the standards, requirements,
6 criteria, and limitations that the State
7 may apply to remedial actions under
8 this Act, and shall revise the list peri-
9 odically, as requested by the Adminis-
10 trator.

11 ~~“(IV) CONTAMINATED MEDIA.—~~
12 Compliance with this clause shall not
13 be required with respect to return, re-
14 placement, or disposal of contami-
15 nated media or residuals of contami-
16 nated media into the same media in
17 or very near then-existing areas of
18 contamination onsite at a facility.

19 ~~“(ii) PROCEDURAL REQUIREMENTS.—~~
20 Procedural requirements of Federal and
21 State standards, requirements, criteria,
22 and limitations (including permitting re-
23 quirements) shall not apply to response ac-
24 tions conducted onsite at a facility.

25 ~~“(iii) WAIVER PROVISIONS.—~~

1 “(I) DETERMINATION BY THE
2 PRESIDENT.—The Administrator shall
3 evaluate and determine if it is not ap-
4 propriate for a remedial action to at-
5 tain a Federal or State standard, re-
6 quirement, criterion, or limitation as
7 required by clause (i).

8 “(II) SELECTION OF REMEDIAL
9 ACTION THAT DOES NOT COMPLY.—
10 The Administrator may select a reme-
11 dial action at a facility that meets the
12 requirements of subparagraph (B) but
13 does not comply with or attain a Fed-
14 eral or State standard, requirement,
15 criterion, or limitation described in
16 clause (i) if the Administrator makes
17 any of the following findings:

18 “(aa) IMPROPER IDENTI-
19 FICATION.—The standard, re-
20 quirement, criterion, or limita-
21 tion, which was improperly iden-
22 tified as an applicable require-
23 ment under clause (i)(I)(aa), fails
24 to comply with the rulemaking
25 requirements of clause (i)(I)(bb).

1 “(bb) PART OF REMEDIAL
2 ACTION.—The selected remedial
3 action is only part of a total re-
4 medial action that will comply
5 with or attain the applicable re-
6 quirements of clause (i) when the
7 total remedial action is com-
8 pleted.

9 “(cc) GREATER RISK.—
10 Compliance with or attainment of
11 the standard, requirement, cri-
12 terion, or limitation at the facil-
13 ity will result in greater risk to
14 human health or the environment
15 than alternative options.

16 “(dd) TECHNICALLY IM-
17 PRACTICABILITY.—Compliance
18 with or attainment of the stand-
19 ard, requirement, criterion, or
20 limitation is technically imprac-
21 ticable.

22 “(ee) EQUIVALENT TO
23 STANDARD OF PERFORMANCE.—
24 The selected remedial action will
25 attain a standard of performance

1 that is equivalent to that re-
2 quired under a standard, require-
3 ment, criterion, or limitation de-
4 scribed in clause (i) through use
5 of another approach.

6 “(ff) INCONSISTENT APPLI-
7 CATION.—With respect to a State
8 standard, requirement, criterion,
9 limitation, or level, the State has
10 not consistently applied (or dem-
11 onstrated the intention to apply
12 consistently) the standard, re-
13 quirement, criterion, or limitation
14 or level in similar circumstances
15 to other remedial actions in the
16 State.

17 “(gg) BALANCE.—In the
18 case of a remedial action to be
19 undertaken under section 104 or
20 136 using amounts from the
21 Fund, a selection of a remedial
22 action that complies with or at-
23 tains a standard, requirement,
24 criterion, or limitation described
25 in clause (i) will not provide a

1 balance between the need for pro-
2 tection of public health and wel-
3 fare and the environment at the
4 facility; and the need to make
5 amounts from the Fund available
6 to respond to other facilities that
7 may present a threat to public
8 health or welfare or the environ-
9 ment; taking into consideration
10 the relative immediacy of the
11 threats presented by the various
12 facilities.

13 “(III) PUBLICATION.—The Ad-
14 ministrator shall publish any findings
15 made under subclause (II), including
16 an explanation and appropriate docu-
17 mentation.

18 “(D) REMEDY SELECTION CRITERIA.—In
19 selecting a remedial action from among alter-
20 natives that achieve the goals stated in sub-
21 paragraph (B) pursuant to a facility-specific
22 risk evaluation in accordance with section 131,
23 the Administrator shall balance the following
24 factors, ensuring that no single factor predomi-
25 nates over the others:

1 “(i) The effectiveness of the remedy in
2 protecting human health and the environ-
3 ment.

4 “(ii) The reliability of the remedial ac-
5 tion in achieving the protectiveness stand-
6 ards over the long term.

7 “(iii) Any short-term risk to the af-
8 fected community, those engaged in the re-
9 medial action effort, and to the environ-
10 ment posed by the implementation of the
11 remedial action.

12 “(iv) The acceptability of the remedial
13 action to the affected community.

14 “(v) The implementability and tech-
15 nical feasibility of the remedial action from
16 an engineering perspective.

17 “(vi) The reasonableness of the cost.

18 “(2) TECHNICAL IMPRACTICABILITY.—

19 “(A) MINIMIZATION OF RISK.—If the Ad-
20 ministrators, after reviewing the remedy selec-
21 tion criteria stated in paragraph (1)(D), finds
22 that achieving the goals stated in paragraph
23 (1)(B) is technically impracticable, the Admin-
24 istrator shall evaluate remedial measures that
25 mitigate the risks to human health and the en-

1 vironment and select a technically practicable
2 remedial action that will most closely achieve
3 the goals stated in paragraph (1) through cost-
4 effective means:

5 “(B) BASIS FOR FINDING.—A finding of
6 technical impracticability may be made on the
7 basis of a determination, supported by appro-
8 priate documentation, that, at the time at
9 which the finding is made—

10 “(i) there is no known reliable means
11 of achieving at a reasonable cost the goals
12 stated in paragraph (1)(B); and

13 “(ii) it has not been shown that such
14 a means is likely to be developed within a
15 reasonable period of time.

16 “(3) PRESUMPTIVE REMEDIAL ACTIONS.—A re-
17 medial action that implements a presumptive reme-
18 dial action issued under section 132 shall be consid-
19 ered to achieve the goals stated in paragraph (1)(B)
20 and balance adequately the factors stated in para-
21 graph (1)(D).

22 “(4) GROUND WATER.—

23 “(A) IN GENERAL.—The Administrator or
24 the preparer of the remedial action plan shall
25 select a cost effective remedial action for

1 ground water that achieves the goals of protect-
2 ing human health and the environment as stat-
3 ed in paragraph (1)(B) and with the require-
4 ments of this paragraph, and complies with
5 other applicable Federal and State laws in ac-
6 cordance with subparagraph (C) on the basis of
7 a facility-specific risk evaluation in accordance
8 with section 131 and in accordance with the cri-
9 teria stated in subparagraph (D) and the re-
10 quirements of paragraph (2). If appropriate, a
11 remedial action for ground water shall be
12 phased, allowing collection of sufficient data to
13 evaluate the effect of any other remedial action
14 taken at the site and to determine the appro-
15 priate scope of the remedial action.

16 “(B) CONSIDERATIONS FOR GROUND
17 WATER REMEDIAL ACTION.—A decision regard-
18 ing a remedial action for ground water shall
19 take into consideration—

20 “(i) the actual or planned or reason-
21 ably anticipated future use of ground
22 water and the timing of that use; and

23 “(ii) any attenuation or biodegrada-
24 tion that would occur if no remedial action
25 were taken.

1 “(C) UNCONTAMINATED GROUND
2 WATER.—A remedial action shall protect
3 uncontaminated ground water that is suitable
4 for use as drinking water by humans or live-
5 stock if the water is uncontaminated and suit-
6 able for such use at the time of submission of
7 the proposed remedial action plan. A remedial
8 action to protect uncontaminated ground water
9 may utilize natural attenuation (which may in-
10 clude dilution or dispersion, but in conjunction
11 with biodegradation or other levels of attenu-
12 ation necessary to facilitate the remediation of
13 contaminated ground water) so long as the re-
14 medial action does not interfere with the actual
15 or planned or reasonably anticipated future use
16 of the uncontaminated ground water.

17 “(D) CONTAMINATED GROUND WATER.—

18 “(i) IN GENERAL.—In the case of con-
19 taminated ground water for which the ac-
20 tual or planned or reasonably anticipated
21 future use of the resource is as drinking
22 water for humans or livestock, if the Ad-
23 ministrator determines that restoration of
24 some portion of the contaminated ground
25 water to a condition suitable for the use is

1 technically practicable, the Administrator
2 shall seek to restore the ground water to a
3 condition suitable for the use.

4 “(ii) DETERMINATION OF RESTORA-
5 TION PRACTICABILITY.—In making a de-
6 termination regarding the technical prac-
7 ticability of ground water restoration—

8 “(I) there shall be no presump-
9 tion of the technical practicability;
10 and

11 “(II) the determination of tech-
12 nical practicability shall, to the extent
13 practicable, be made on the basis of
14 projections, modeling, or other analy-
15 sis on a site-specific basis without a
16 requirement for the construction or
17 installation and operation of a reme-
18 dial action.

19 “(iii) DETERMINATION OF NEED FOR
20 AND METHODS OF RESTORATION.—In
21 making a determination and selecting a re-
22 medial action regarding restoration of con-
23 taminated ground water the Administrator
24 shall take into account—

1 “(I) the ability to substantially
2 accelerate the availability of ground
3 water for use as drinking water be-
4 yond the rate achievable by natural
5 attenuation; and

6 “(II) the nature and timing of
7 the actual or planned or reasonably
8 anticipated use of such ground water.

9 “(iv) RESTORATION TECHNICALLY IM-
10 PRACTICABLE.—

11 “(I) IN GENERAL.—A remedial
12 action for contaminated ground water
13 having an actual or planned or rea-
14 sonably anticipated future use as a
15 drinking water source for humans or
16 livestock for which attainment of the
17 levels described in paragraph
18 (1)(B)(iii) is technically impracticable
19 shall be selected in accordance with
20 paragraph (1)(D)(2).

21 “(II) NO INGESTION.—Selected
22 remedies may rely on point-of-use
23 treatment or other measures to ensure
24 that there will be no ingestion of
25 drinking water at levels exceeding the

1 requirement of paragraph (1)(B)(iii)
2 (I) or (II).

3 ~~“(III) INCLUSION AS PART OF~~
4 ~~OPERATION AND MAINTENANCE.—The~~
5 ~~operation and maintenance of any~~
6 ~~treatment device installed at the point~~
7 ~~of use shall be included as part of the~~
8 ~~operation and maintenance of the~~
9 ~~remedy.~~

10 ~~“(E) GROUND WATER NOT SUITABLE FOR~~
11 ~~USE AS DRINKING WATER.—Notwithstanding~~
12 ~~any other evaluation or determination of the po-~~
13 ~~tential suitability of ground water for drinking~~
14 ~~water use, ground water that is not suitable for~~
15 ~~use as drinking water by humans or livestock~~
16 ~~because of naturally occurring conditions, or is~~
17 ~~so contaminated by the effects of broad-scale~~
18 ~~human activity unrelated to a specific facility or~~
19 ~~release that restoration of drinking water qual-~~
20 ~~ity is technically impracticable or is physically~~
21 ~~incapable of yielding a quantity of 150 gallons~~
22 ~~per day of water to a well or spring, shall be~~
23 ~~considered to be not suitable for use as drinking~~
24 ~~water.~~

1 “(F) OTHER GROUND WATER.—Remedial
 2 action for contaminated ground water (other
 3 than ground water having an actual or planned
 4 or reasonably anticipated future use as a drink-
 5 ing water source for humans or livestock) shall
 6 attain levels appropriate for the then-current or
 7 reasonably anticipated future use of the ground
 8 water, or levels appropriate considering the
 9 then-current use of any ground water or surface
 10 water to which the contaminated ground water
 11 discharges.

12 “(5) OTHER CONSIDERATIONS APPLICABLE TO
 13 REMEDIAL ACTIONS.—A remedial action that uses
 14 institutional and engineering controls shall be con-
 15 sidered to be on an equal basis with all other reme-
 16 dial action alternatives.”;

17 (2) by redesignating subsection (e) as sub-
 18 section (b);

19 (3) by striking subsection (d); and

20 (4) by redesignating subsections (e) and (f) as
 21 subsections (e) and (d), respectively.

22 **SEC. 403. REMEDY SELECTION METHODOLOGY.**

23 Title I of the Comprehensive Environmental Re-
 24 sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9601 et seq.) (as amended by section 201(a)) is
2 amended by adding at the end the following:

3 **“SEC. 131. FACILITY-SPECIFIC RISK EVALUATIONS.**

4 “(a) USES.—

5 “(1) IN GENERAL.—A facility-specific risk eval-
6 uation shall be used to—

7 “(A) identify the significant components of
8 potential risk posed by a facility;

9 “(B) screen out potential contaminants,
10 areas, or exposure pathways from further study
11 at a facility;

12 “(C) compare the relative protectiveness of
13 alternative potential remedies proposed for a fa-
14 cility; and

15 “(D) demonstrate that the remedial action
16 selected for a facility is capable of protecting
17 human health and the environment considering
18 the actual or planned or reasonably anticipated
19 future use of the land and water resources.

20 “(2) COMPLIANCE WITH PRINCIPLES.—A facil-
21 ity-specific risk evaluation shall comply with the
22 principles stated in this section to ensure that—

23 “(A) actual or planned or reasonably an-
24 ticipated future use of the land and water re-
25 sources is given appropriate consideration; and

1 “(B) all of the components of the evalua-
2 tion are, to the maximum extent practicable,
3 scientifically objective and inclusive of all rel-
4 evant data.

5 “(b) RISK EVALUATION PRINCIPLES.—A facility-spe-
6 cific risk evaluation shall—

7 “(1) be based on actual information or scientific
8 estimates of exposure considering the actual or
9 planned or reasonably anticipated future use of the
10 land and water resources to the extent that sub-
11 stituting such estimates for those made using stand-
12 ard assumptions alters the basis for decisions to be
13 made;

14 “(2) be comprised of components each of which
15 is, to the maximum extent practicable, scientifically
16 objective, and inclusive of all relevant data;

17 “(3) use chemical and facility-specific data and
18 analysis (such as bioavailability, exposure, and fate
19 and transport evaluations) in preference to default
20 assumptions when—

21 “(A) such data and analysis are likely to
22 vary by facility; and

23 “(B) facility-specific risks are to be com-
24 municated to the public or the use of such data

1 and analysis alters the basis for decisions to be
2 made; and

3 “(4) use a range and distribution of realistic
4 and scientifically supportable assumptions when
5 chemical and facility-specific data are not available;
6 if the use of such assumptions would communicate
7 more accurately the consequences of the various de-
8 cision options.

9 “(e) RISK COMMUNICATION PRINCIPLES.—The docu-
10 ment reporting the results of a facility-specific risk evalua-
11 tion shall—

12 “(1) contain an explanation that clearly com-
13 municates the risks at the facility;

14 “(2) identify and explain all assumptions used
15 in the evaluation; any alternative assumptions that,
16 if made, could materially affect the outcome of the
17 evaluation; the policy or value judgments used in
18 choosing the assumptions; and whether empirical
19 data conflict with or validate the assumptions;

20 “(3) present—

21 “(A) a range and distribution of exposure
22 and risk estimates; including, if numerical esti-
23 mates are provided, central estimates of expo-
24 sure and risk using—

1 “(i) the most scientifically supportable
2 assumptions or a weighted combination of
3 multiple assumptions based on different
4 scenarios; or

5 “(ii) any other methodology designed
6 to characterize the most scientifically sup-
7 portable estimate of risk given the infor-
8 mation that is available at the time of the
9 facility-specific risk evaluation; and

10 “(B) a statement of the nature and mag-
11 nitude of the scientific and other uncertainties
12 associated with those estimates;

13 “(4) state the size of the population potentially
14 at risk from releases from the facility and the likeli-
15 hood that potential exposures will occur based on the
16 actual or planned or reasonably anticipated future
17 use of the land and water resources; and

18 “(5) compare the risks from the facility to
19 other risks commonly experienced by members of the
20 local community in their daily lives and similar risks
21 regulated by the Federal Government.

22 “(d) REGULATIONS.—Not later than 18 months after
23 the date of enactment of this section, the Administrator
24 shall issue a final regulation implementing this section
25 that promotes a realistic characterization of risk that nei-

1 ther minimizes nor exaggerates the risks and potential
2 risks posed by a facility or a proposed remedial action.

3 **“SEC. 132. PRESUMPTIVE REMEDIAL ACTIONS.**

4 “(a) IN GENERAL.—Not later than 1 year after the
5 date of enactment of this section, the Administrator shall
6 issue a final regulation establishing presumptive remedial
7 actions for commonly encountered types of facilities with
8 reasonably well understood contamination problems and
9 exposure potential.

10 “(b) PRACTICABILITY AND COST-EFFECTIVENESS.—
11 Such presumptive remedies must have been demonstrated
12 to be technically practicable and cost-effective methods of
13 achieving the goals of protecting human health and the
14 environment stated in section 121(a)(1)(B).

15 “(c) VARIATIONS.—The Administrator may issue var-
16 ious presumptive remedial actions based on various uses
17 of land and water resources, various environmental media,
18 and various types of hazardous substances, pollutants, or
19 contaminants.

20 “(d) ENGINEERING CONTROLS.—Presumptive reme-
21 dial actions are not limited to treatment remedies, but
22 may be based on, or include, institutional and standard
23 engineering controls.”.

1 **SEC. 404. REMEDY SELECTION PROCEDURES.**

2 Title I of the Comprehensive Environmental Re-
 3 sponse, Compensation, and Liability Act of 1980 (42
 4 U.S.C. 9601 et seq.) (as amended by section 403) is
 5 amended by adding at the end the following:

6 **“SEC. 133. REMEDIAL ACTION PLANNING AND IMPLEMEN-**
 7 **TATION.**

8 **“(a) IN GENERAL.—**

9 **“(1) BASIC RULES.—**

10 **“(A) PROCEDURES.—**A remedial action
 11 with respect to a facility that is listed or pro-
 12 posed for listing on the National Priorities List
 13 shall be developed and selected in accordance
 14 with the procedures set forth in this section.

15 **“(B) NO OTHER PROCEDURES OR RE-**
 16 **QUIREMENTS.—**The procedures stated in this
 17 section are in lieu of any procedures or require-
 18 ments under any other law to conduct remedial
 19 investigations, feasibility studies, record of deci-
 20 sions, remedial designs, or remedial actions.

21 **“(C) LIMITED REVIEW.—**In a case in
 22 which the potentially responsible parties pre-
 23 pare a remedial action plan, only the work plan,
 24 facility evaluation, proposed remedial action
 25 plan, and final remedial design shall be subject

1 to review, comment, and approval by the Ad-
2 ministrator.

3 ~~“(D) DESIGNATION OF POTENTIALLY RE-~~
4 ~~SPONSIBLE PARTIES TO PREPARE WORK PLAN,~~
5 ~~FACILITY EVALUATION, PROPOSED REMEDIAL~~
6 ~~ACTION, AND REMEDIAL DESIGN AND TO IM-~~
7 ~~PLEMENT THE REMEDIAL ACTION PLAN.—In~~
8 ~~the case of a facility for which the Adminis-~~
9 ~~trator is not required to prepare a work plan,~~
10 ~~facility evaluation, proposed remedial action,~~
11 ~~and remedial design and implement the reme-~~
12 ~~dial action plan—~~

13 ~~“(i) if a potentially responsible party~~
14 ~~or group of potentially responsible par-~~
15 ~~ties—~~

16 ~~“(I) expresses an intention to~~
17 ~~prepare a work plan, facility evalua-~~
18 ~~tion, proposed remedial action plan,~~
19 ~~and remedial design and to implement~~
20 ~~the remedial action plan (not includ-~~
21 ~~ing any such expression of intention~~
22 ~~that the Administrator finds is not~~
23 ~~made in good faith); and~~

24 ~~“(II) demonstrates that the po-~~
25 ~~tentially responsible party or group of~~

1 potentially responsible parties has the
2 financial resources and the expertise
3 to perform those functions;

4 the Administrator shall designate the po-
5 tentially responsible party or group of po-
6 tentially responsible parties to perform
7 those functions; and

8 “(ii) if more than 1 potentially re-
9 sponsible party or group of potentially re-
10 sponsible parties—

11 “(I) expresses an intention to
12 prepare a work plan, facility evalua-
13 tion, proposed remedial action plan,
14 and remedial design and to implement
15 the remedial action plan (not includ-
16 ing any such expression of intention
17 that the Administrator finds is not
18 made in good faith); and

19 “(II) demonstrates that the po-
20 tentially responsible parties or group
21 of potentially responsible parties has
22 the financial resources and the exper-
23 tise to perform those functions;

24 the Administrator, based on an assessment
25 of the various parties’ comparative finan-

1 cial resources, technical expertise, and his-
 2 tories of cooperation with respect to facili-
 3 ties that are listed on the National Prior-
 4 ities List, shall designate 1 potentially re-
 5 sponsible party or group of potentially re-
 6 sponsible parties to perform those func-
 7 tions.

8 “(E) APPROVAL REQUIRED AT EACH STEP
 9 OF PROCEDURE.—No action shall be taken with
 10 respect to a facility evaluation, proposed reme-
 11 dial action plan, remedial action plan, or reme-
 12 dial design, respectively, until a work plan, fa-
 13 cility evaluation, proposed remedial action plan,
 14 and remedial action plan, respectively, have
 15 been approved by the Administrator.

16 “(F) NATIONAL CONTINGENCY PLAN.—
 17 The Administrator shall conform the National
 18 Contingency Plan regulations to reflect the pro-
 19 cedures stated in this section.

20 “(2) USE OF PRESUMPTIVE REMEDIAL AC-
 21 TIONS.—

22 “(A) PROPOSAL TO USE.—In a case in
 23 which a presumptive remedial action applies,
 24 the Administrator (if the Administrator is con-
 25 ducting the remedial action) or the preparer of

1 the remedial action plan may, after conducting
2 a facility evaluation, propose a presumptive re-
3 medial action for the facility, if the Adminis-
4 trator or preparer shows with appropriate docu-
5 mentation that the facility fits the generic clas-
6 sification for which a presumptive remedial ac-
7 tion has been issued and performs an engineer-
8 ing evaluation to demonstrate that the pre-
9 sumptive remedial action can be applied at the
10 facility.

11 “(B) LIMITATION.—The Administrator
12 may not require a potentially responsible party
13 to implement a presumptive remedial action.

14 “(b) REMEDIAL ACTION PLANNING PROCESS.—

15 “(1) IN GENERAL.—The Administrator or a po-
16 tentially responsible party shall prepare and imple-
17 ment a remedial action plan for a facility.

18 “(2) CONTENTS.—A remedial action plan shall
19 consist of—

20 “(A) the results of a facility evaluation, in-
21 cluding any screening analysis performed at the
22 facility;

23 “(B) a discussion of the potentially viable
24 remedies that are considered to be reasonable
25 under section 121(a), the respective capital

1 costs, operation and maintenance costs, and es-
2 timated present worth costs of the remedies,
3 and how the remedies balance the factors stated
4 in section 121(a)(1)(D);

5 “(C) a description of the remedial action to
6 be taken;

7 “(D) a description of the facility-specific
8 risk-based evaluation under section 131 and a
9 demonstration that the selected remedial action
10 will satisfy sections 121(a) and 132; and

11 “(E) a realistic schedule for conducting the
12 remedial action, taking into consideration facil-
13 ity-specific factors.

14 “(3) WORK PLAN.—

15 “(A) IN GENERAL.—Prior to preparation
16 of a remedial action plan, the preparer shall de-
17 velop a work plan, including a community infor-
18 mation and participation plan, which generally
19 describes how the remedial action plan will be
20 developed.

21 “(B) SUBMISSION.—A work plan shall be
22 submitted to the Administrator, the State, the
23 community response organization, the local li-
24 brary, and any other public facility designated
25 by the Administrator.

1 “(C) PUBLICATION.—The Administrator
2 or other person that prepares a work plan shall
3 publish in a newspaper of general circulation in
4 the area where the facility is located, and post
5 in conspicuous places in the local community, a
6 notice announcing that the work plan is avail-
7 able for review at the local library and that
8 comments concerning the work plan can be sub-
9 mitted to the preparer of the work plan, the
10 Administrator, the State, or the local commu-
11 nity response organization.

12 “(D) FORWARDING OF COMMENTS.—If
13 comments are submitted to the Administrator,
14 the State, or the community response organiza-
15 tion, the Administrator, State, or community
16 response organization shall forward the com-
17 ments to the preparer of the work plan.

18 “(E) NOTICE OF DISAPPROVAL.—If the
19 Administrator does not approve a work plan,
20 the Administrator shall—

21 “(i) identify to the preparer of the
22 work plan, with specificity, any deficiencies
23 in the submission; and

24 “(ii) require that the preparer submit
25 a revised work plan within a reasonable pe-

1 riod of time, which shall not exceed 90
2 days except in unusual circumstances, as
3 determined by the Administrator.

4 “(4) FACILITY EVALUATION.—

5 “(A) IN GENERAL.—The Administrator (or
6 the preparer of the facility evaluation) shall
7 conduct a facility evaluation at each facility to
8 characterize the risk posed by the facility by
9 gathering enough information necessary to—

10 “(i) assess potential remedial alter-
11 natives, including ascertaining, to the de-
12 gree appropriate, the volume and nature of
13 the contaminants, their location, potential
14 exposure pathways and receptors;

15 “(ii) discern the actual or planned or
16 reasonably anticipated future use of the
17 land and water resources; and

18 “(iii) screen out any uncontaminated
19 areas, contaminants, and potential path-
20 ways from further consideration.

21 “(B) SUBMISSION.—A draft facility eval-
22 uation shall be submitted to the Administrator
23 for approval.

24 “(C) PUBLICATION.—Not later than 30
25 days after submission, or in a case in which the

1 Administrator is preparing the remedial action
2 plan, after the completion of the draft facility
3 evaluation, the Administrator shall publish in a
4 newspaper of general circulation in the area
5 where the facility is located, and post in con-
6 spicuous places in the local community, a notice
7 announcing that the draft facility evaluation is
8 available for review and that comments con-
9 cerning the evaluation can be submitted to the
10 Administrator, the State, and the community
11 response organization.

12 “(D) AVAILABILITY OF COMMENTS.—If
13 comments are submitted to the Administrator,
14 the State, or the community response organiza-
15 tion, the Administrator, State, or community
16 response organization shall make the comments
17 available to the preparer of the facility evalua-
18 tion.

19 “(E) NOTICE OF APPROVAL.—If the Ad-
20 ministrator approves a facility evaluation, the
21 Administrator shall—

22 “(i) notify the community response or-
23 ganization; and

24 “(ii) publish in a newspaper of general
25 circulation in the area where the facility is

1 located, and post in conspicuous places in
2 the local community, a notice of approval.

3 “(F) NOTICE OF DISAPPROVAL.—If the
4 Administrator does not approve a facility eval-
5 uation, the Administrator shall—

6 “(i) identify to the preparer of the fa-
7 cility evaluation, with specificity, any defi-
8 ciencies in the submission; and

9 “(ii) require that the preparer submit
10 a revised facility evaluation within a rea-
11 sonable period of time, which shall not ex-
12 ceed 90 days except in unusual cir-
13 cumstances, as determined by the Adminis-
14 trator.

15 “(5) PROPOSED REMEDIAL ACTION PLAN.—

16 “(A) SUBMISSION.—In a case in which a
17 potentially responsible party prepares a reme-
18 dial action plan, the preparer shall submit the
19 remedial action plan to the Administrator for
20 approval and provide a copy to the local library.

21 “(B) PUBLICATION.—After receipt of the
22 proposed remedial action plan, or in a case in
23 which the Administrator is preparing the reme-
24 dial action plan, after the completion of the re-
25 medial action plan, the Administrator shall

1 cause to be published in a newspaper of general
2 circulation in the area where the facility is lo-
3 cated and posted in other conspicuous places in
4 the local community a notice announcing that
5 the proposed remedial action plan is available
6 for review at the local library and that com-
7 ments concerning the remedial action plan can
8 be submitted to the Administrator, the State,
9 and the community response organization.

10 “(C) AVAILABILITY OF COMMENTS.—If
11 comments are submitted to a State or the com-
12 munity response organization, the State or com-
13 munity response organization shall make the
14 comments available to the preparer of the pro-
15 posed remedial action plan.

16 “(D) HEARING.—The Administrator shall
17 hold a public hearing at which the proposed re-
18 medial action plan shall be presented and public
19 comment received.

20 “(E) REMEDY REVIEW BOARDS.—

21 “(i) ESTABLISHMENT.—Not later
22 than 60 days after the date of enactment
23 of this section, the Administrator shall es-
24 tablish and appoint the members of 1 or
25 more remedy review boards (referred to in

1 this subparagraph as a “remedy review
2 board”), each consisting of independent
3 technical experts within Federal and State
4 agencies with responsibility for remediating
5 contaminated facilities.

6 “(ii) SUBMISSION OF REMEDIAL AC-
7 TION PLANS FOR REVIEW.—Subject to
8 clause (iii), a proposed remedial action
9 plan prepared by a potentially responsible
10 party or the Administrator may be submit-
11 ted to a remedy review board at the re-
12 quest of the person responsible for prepar-
13 ing or implementing the remedial action
14 plan.

15 “(iii) NO REVIEW.—The Adminis-
16 trator may preclude submission of a pro-
17 posed remedial action plan to a remedy re-
18 view board if the Administrator determines
19 that review by a remedy review board
20 would result in an unreasonably long delay
21 that would threaten human health or the
22 environment.

23 “(iv) RECOMMENDATIONS.—Not later
24 than 180 days after receipt of a request
25 for review (unless the Administrator, for

1 good cause, grants additional time); a remedy
2 review board shall provide recommendations
3 to the Administrator regarding whether the proposed remedial action
4 plan is—
5

6 “(I) consistent with the requirements and standards of section
7 121(a);
8

9 “(II) technically feasible or infeasible from an engineering perspective;
10
11 and

12 “(III) reasonable or unreasonable
13 in cost.

14 “(v) REVIEW BY THE ADMINISTRATOR.—
15

16 “(I) CONSIDERATION OF COMMENTS.—In reviewing a proposed remedial
17 action plan, a remedy review board shall consider any comments
18 submitted under subparagraphs (B) and (D) and shall provide an opportunity
19 for a meeting, if requested, with the person responsible for preparing or
20 implementing the remedial action plan.
21
22
23
24
25

1 “(H) STANDARD OF REVIEW.—In
2 determining whether to approve or
3 disapprove a proposed remedial action
4 plan, the Administrator shall give sub-
5 stantial weight to the recommenda-
6 tions of the remedy review board.

7 “(F) APPROVAL.—

8 “(i) IN GENERAL.—The Adminis-
9 trator shall approve a proposed remedial
10 action plan if the plan—

11 “(I) contains the information de-
12 scribed in section 131(b); and

13 “(II) satisfies section 121(a).

14 “(ii) DEFAULT.—If the Administrator
15 fails to issue a notice of disapproval of a
16 proposed remedial action plan in accord-
17 ance with subparagraph (G) within 180
18 days after the proposed plan is submitted,
19 the plan shall be considered to be approved
20 and its implementation fully authorized.

21 “(G) NOTICE OF APPROVAL.—If the Ad-
22 ministrator approves a proposed remedial action
23 plan, the Administrator shall—

24 “(i) notify the community response or-
25 ganization; and

1 “(ii) publish in a newspaper of general
2 circulation in the area where the facility is
3 located, and post in conspicuous places in
4 the local community, a notice of approval.

5 “(H) NOTICE OF DISAPPROVAL.—If the
6 Administrator does not approve a proposed re-
7 medial action plan, the Administrator shall—

8 “(i) inform the preparer of the pro-
9 posed remedial action plan, with specific-
10 ity, of any deficiencies in the submission;
11 and

12 “(ii) request that the preparer submit
13 a revised proposed remedial action plan
14 within a reasonable time, which shall not
15 exceed 90 days except in unusual cir-
16 cumstances, as determined by the Adminis-
17 trator.

18 “(I) JUDICIAL REVIEW.—A recommenda-
19 tion under subparagraph (E)(iv) and the Ad-
20 ministrator’s review of such a recommendation
21 shall be subject to the limitations on judicial re-
22 view under section 113(h).

23 “(6) IMPLEMENTATION OF REMEDIAL ACTION
24 PLAN.—A remedial action plan that has been ap-
25 proved or is considered to be approved under para-

1 graph (5) shall be implemented in accordance with
2 the schedule set forth in the remedial action plan.

3 “(7) REMEDIAL DESIGN.—

4 “(A) SUBMISSION.—A remedial design
5 shall be submitted to the Administrator, or in
6 a case in which the Administrator is preparing
7 the remedial action plan, shall be completed by
8 the Administrator.

9 “(B) PUBLICATION.—After receipt by the
10 Administrator of (or completion by the Admin-
11 istrator of) the remedial design, the Adminis-
12 trator shall—

13 “(i) notify the community response or-
14 ganization; and

15 “(ii) cause a notice of submission or
16 completion of the remedial design to be
17 published in a newspaper of general cir-
18 culation and posted in conspicuous places
19 in the area where the facility is located.

20 “(C) COMMENT.—The Administrator shall
21 provide an opportunity to the public to submit
22 written comments on the remedial design.

23 “(D) APPROVAL.—Not later than 90 days
24 after the submission to the Administrator of (or
25 completion by the Administrator of) the reme-

1 dial design, the Administrator shall approve or
2 disapprove the remedial design.

3 “(E) NOTICE OF APPROVAL.—If the Ad-
4 ministrator approves a remedial design, the Ad-
5 ministrator shall—

6 “(i) notify the community response or-
7 ganization; and

8 “(ii) publish in a newspaper of general
9 circulation in the area where the facility is
10 located, and post in conspicuous places in
11 the local community, a notice of approval.

12 “(F) NOTICE OF DISAPPROVAL.—If the
13 Administrator disapproves the remedial design,
14 the Administrator shall—

15 “(i) identify with specificity any defi-
16 ciencies in the submission; and

17 “(ii) allow the preparer submitting a
18 remedial design a reasonable time (which
19 shall not exceed 90 days except in unusual
20 circumstances, as determined by the Ad-
21 ministrator) in which to submit a revised
22 remedial design.

23 “(e) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

24 “(1) NOTICE OF SIGNIFICANT DEVIATION.—If
25 the Administrator determines that the implementa-

1 tion of the remedial action plan has deviated signifi-
 2 cantly from the plan, the Administrator shall provide
 3 the implementing party a notice that requires the
 4 implementing party, within a reasonable period of
 5 time specified by the Administrator, to—

6 “(A) comply with the terms of the remedial
 7 action plan; or

8 “(B) submit a notice for modifying the
 9 plan.

10 “(2) FAILURE TO COMPLY.—

11 “(A) CLASS ONE ADMINISTRATIVE PEN-
 12 ALTY.—In issuing a notice under paragraph
 13 (1), the Administrator may impose a class one
 14 administrative penalty consistent with section
 15 109(a).

16 “(B) ADDITIONAL ENFORCEMENT MEAS-
 17 URES.—If the implementing party fails to either
 18 comply with the plan or submit a proposed
 19 modification, the Administrator may pursue all
 20 additional appropriate enforcement measures
 21 pursuant to this Act.

22 “(d) MODIFICATIONS TO REMEDIAL ACTION.—

23 “(1) DEFINITION.—In this subsection, the term
 24 ‘major modification’ means a modification that—

1 “(A) fundamentally alters the interpreta-
2 tion of site conditions at the facility;

3 “(B) fundamentally alters the interpreta-
4 tion of sources of risk at the facility;

5 “(C) fundamentally alters the scope of pro-
6 tection to be achieved by the selected remedial
7 action;

8 “(D) fundamentally alters the performance
9 of the selected remedial action; or

10 “(E) delays the completion of the remedy
11 by more than 180 days.

12 “(2) MAJOR MODIFICATIONS.—

13 “(A) IN GENERAL.—If the Administrator
14 or other implementing party proposes a major
15 modification to the plan, the Administrator or
16 other implementing party shall demonstrate
17 that—

18 “(i) the major modification constitutes
19 the most cost-effective remedial alternative
20 that is technologically feasible and is not
21 unreasonably costly; and

22 “(ii) that the revised remedy will con-
23 tinue to satisfy section 121(a).

24 “(B) NOTICE AND COMMENT.—The Ad-
25 ministrator shall provide the implementing

1 party, the community response organization,
2 and the local community notice of the proposed
3 major modification and at least 30 days' oppor-
4 tunity to comment on any such proposed modi-
5 fication.

6 “(C) PROMPT ACTION.—At the end of the
7 comment period, the Administrator shall
8 promptly approve or disapprove the proposed
9 modification and order implementation of the
10 modification in accordance with any reasonable
11 and relevant requirements that the Adminis-
12 trator may specify.

13 “(3) MINOR MODIFICATIONS.—Nothing in this
14 section modifies the discretionary authority of the
15 Administrator to make a minor modification of a
16 record of decision or remedial action plan to conform
17 to the best science and engineering, the require-
18 ments of this Act, or changing conditions at a facil-
19 ity.”

20 **SEC. 405. COMPLETION OF PHYSICAL CONSTRUCTION AND**
21 **DELISTING.**

22 Title I of the Comprehensive Environmental Re-
23 sponse, Compensation, and Liability Act of 1980 (42
24 U.S.C. 9601 et seq.) (as amended by section 404) is
25 amended by adding at the end the following:

1 **“SEC. 134. COMPLETION OF PHYSICAL CONSTRUCTION AND**
2 **DELISTING.**

3 “(a) IN GENERAL.—

4 “(1) PROPOSED NOTICE OF COMPLETION AND
5 PROPOSED DELISTING.—Not later than 180 days
6 after the completion by the Administrator of phys-
7 ical construction necessary to implement a response
8 action at a facility, or not later than 180 days after
9 receipt of a notice of such completion from the im-
10 plementing party, the Administrator shall publish a
11 notice of completion and proposed delisting of the
12 facility from the National Priorities List in the Fed-
13 eral Register and in a newspaper of general circula-
14 tion in the area where the facility is located.

15 “(2) PHYSICAL CONSTRUCTION.—For the pur-
16 poses of paragraph (1), physical construction nec-
17 essary to implement a response action at a facility
18 shall be considered to be complete when—

19 “(A) construction of all systems, struc-
20 tures, devices, and other components necessary
21 to implement a response action for the entire
22 facility has been completed in accordance with
23 the remedial design plan; or

24 “(B) no construction, or no further con-
25 struction, is expected to be undertaken.

1 “(3) COMMENTS.—The public shall be provided
2 30 days in which to submit comments on the notice
3 of completion and proposed delisting.

4 “(4) FINAL NOTICE.—Not later than 60 days
5 after the end of the comment period, the Adminis-
6 trator shall—

7 “(A) issue a final notice of completion and
8 delisting or a notice of withdrawal of the pro-
9 posed notice until the implementation of the re-
10 medial action is determined to be complete; and

11 “(B) publish the notice in the Federal
12 Register and in a newspaper of general circula-
13 tion in the area where the facility is located.

14 “(5) FAILURE TO ACT.—If the Administrator
15 fails to publish a notice of withdrawal within the 60-
16 day period described in paragraph (4)—

17 “(A) the remedial action plan shall be
18 deemed to have been completed; and

19 “(B) the facility shall be delisted by oper-
20 ation of law.

21 “(6) EFFECT OF DELISTING.—The delisting of
22 a facility shall have no effect on—

23 “(A) liability allocation requirements or
24 cost-recovery provisions otherwise provided in
25 this Act;

1 “(B) any liability of a potentially respon-
2 sible party or the obligation of any person to
3 provide continued operation and maintenance;

4 “(C) the authority of the Administrator to
5 make expenditures from the Fund relating to
6 the facility; or

7 “(D) the enforceability of any consent
8 order or decree relating to the facility.

9 “~~(7) FAILURE TO MAKE TIMELY DIS-~~
10 ~~APPROVAL.—~~The issuance of a final notice of com-
11 pletion and delisting or of a notice of withdrawal
12 within the time required by subsection (a)(3) con-
13 stitutes a nondiscretionary duty within the meaning
14 of section 310(a)(2).

15 “(b) ~~CERTIFICATION.—~~A final notice of completion
16 and delisting shall include a certification by the Adminis-
17 trator that the facility has met all of the requirements of
18 the remedial action plan (except requirements for contin-
19 ued operation and maintenance).

20 “(c) ~~FUTURE USE OF A FACILITY.—~~

21 “(1) ~~FACILITY AVAILABLE FOR UNRESTRICTED~~
22 ~~USE.—~~If, after completion of physical construction,
23 a facility is available for unrestricted use and there
24 is no need for continued operation and maintenance,
25 the potentially responsible parties shall have no fur-

1 ther liability under any Federal, State, or local law
2 (including any regulation) for remediation at the fa-
3 cility, unless the Administrator determines, based on
4 new and reliable factual information about the facil-
5 ity, that the facility does not satisfy section 121(a).

6 ~~“(2) FACILITY NOT AVAILABLE FOR ANY~~
7 ~~USE.—If, after completion of physical construction,~~
8 ~~a facility is not available for any use or there are~~
9 ~~continued operation and maintenance requirements~~
10 ~~that preclude use of the facility, the Administrator~~
11 ~~shall—~~

12 ~~“(A) review the status of the facility every~~
13 ~~5 years; and~~

14 ~~“(B) require additional remedial action at~~
15 ~~the facility if the Administrator determines,~~
16 ~~after notice and opportunity for hearing, that~~
17 ~~the facility does not satisfy section 121(a).~~

18 ~~“(3) FACILITIES AVAILABLE FOR RESTRICTED~~
19 ~~USE.—The Administrator may determine that a fa-~~
20 ~~cility or portion of a facility is available for re-~~
21 ~~stricted use while a response action is under way or~~
22 ~~after physical construction has been completed. The~~
23 ~~Administrator shall make a determination that~~
24 ~~uncontaminated portions of the facility are available~~
25 ~~for unrestricted use when such use would not inter-~~

1 fere with ongoing operations and maintenance activi-
2 ties or endanger human health or the environment.

3 “(d) OPERATION AND MAINTENANCE.—The need to
4 perform continued operation and maintenance at a facility
5 shall not delay delisting of the facility or issuance of the
6 certification if performance of operation and maintenance
7 is subject to a legally enforceable agreement, order, or de-
8 cree.

9 “(e) CHANGE OF USE OF FACILITY.—

10 “(1) PETITION.—Any person may petition the
11 Administrator to change the use of a facility de-
12 scribed in subsection (c) (2) or (3) from that which
13 was the basis of the remedial action plan.

14 “(2) GRANT.—The Administrator may grant a
15 petition under paragraph (1) if the petitioner agrees
16 to implement any additional remedial actions that
17 the Administrator determines are necessary to con-
18 tinue to satisfy section 121(a), considering the dif-
19 ferent use of the facility.

20 “(3) RESPONSIBILITY FOR RISK.—When a peti-
21 tion has been granted under paragraph (2), the per-
22 son requesting the change in use of the facility shall
23 be responsible for all risk associated with altering
24 the facility and all costs of implementing any nec-
25 essary additional remedial actions.”.

1 **SEC. 406. TRANSITION RULES FOR FACILITIES CURRENTLY**
 2 **INVOLVED IN REMEDY SELECTION.**

3 Title I of the Comprehensive Environmental Re-
 4 sponse, Compensation, and Liability Act of 1980 (42
 5 U.S.C. 9601 et seq.) (as amended by section 405) is
 6 amended by adding at the end the following:

7 **“SEC. 135. TRANSITION RULES FOR FACILITIES INVOLVED**
 8 **IN REMEDY SELECTION ON DATE OF ENACT-**
 9 **MENT.**

10 **“(a) NO RECORD OF DECISION.—**

11 **“(1) OPTION.—**In the case of a facility or oper-
 12 able unit that, as of the date of enactment of this
 13 section, is the subject of a remedial investigation
 14 and feasibility study (whether completed or incom-
 15 plete), the potentially responsible parties or the Ad-
 16 ministrator may elect to follow the remedial action
 17 plan process stated in section 133 rather than the
 18 remedial investigation and feasibility study and
 19 record of decision process under regulations in effect
 20 on the date of enactment of this section that would
 21 otherwise apply if the requesting party notifies the
 22 Administrator and other potentially responsible par-
 23 ties of the election not later than 90 days after the
 24 date of enactment of this section.

25 **“(2) SUBMISSION OF FACILITY EVALUATION.—**

26 In a case in which the potentially responsible parties

1 have or the Administrator has made an election
2 under subsection (a), the potentially responsible par-
3 ties shall submit the proposed facility evaluation
4 within 180 days after the date on which notice of
5 the election is given.

6 “(b) REMEDY REVIEW BOARDS.—

7 “(1) AUTHORITY.—A remedy review board es-
8 tablished under section 133(b)(5)(E) (referred to in
9 this subsection as a ‘remedy review board’) shall
10 have authority to consider a petition under para-
11 graph (3) or (4) of this subsection.

12 “(2) GENERAL PROCEDURE.—

13 “(A) COMPLETION OF REVIEW.—The re-
14 view of a petition submitted to a remedy review
15 board under this subsection shall be completed
16 not later than 180 days after the receipt of the
17 petition unless the Administrator, for good
18 cause, grants additional time.

19 “(B) COSTS OF REVIEW.—All reasonable
20 costs incurred by a remedy review board, the
21 Administrator, or a State in conducting a re-
22 view or evaluating a petition for possible objec-
23 tion shall be borne by the petitioner.

24 “(C) DECISIONS.—At the completion of
25 the 180-day review period, a remedy review

1 board shall issue a written decision including
2 responses to all comments submitted during the
3 review process with regard to a petition.

4 “(D) OPPORTUNITY FOR COMMENT AND
5 MEETINGS.—In reviewing a petition under this
6 subsection, a remedy review board shall provide
7 an opportunity for all interested parties, includ-
8 ing representatives of the State and local com-
9 munity in which the facility is located, to com-
10 ment on the petition and, if requested, to meet
11 with the remedy review board under this sub-
12 section.

13 “(E) REVIEW BY THE ADMINISTRATOR.—

14 “(i) IN GENERAL.—The Administrator
15 shall have final review of any decision of a
16 remedy review board under this subsection.

17 “(ii) STANDARD OF REVIEW.—In con-
18 ducting a review of a decision of a remedy
19 review board under this subsection, the Ad-
20 ministrator shall accord substantial weight
21 to the remedy review board’s decision.

22 “(iii) REJECTION OF DECISION.—Any
23 determination to reject a remedy review
24 board’s decision under this subsection
25 must be approved by the Administrator or

1 the Assistant Administrator for Solid
2 Waste and Emergency Response.

3 “(F) JUDICIAL REVIEW.—A decision of a
4 remedy review board under subparagraph (C)
5 and the Administrator’s review of such a deci-
6 sion shall be subject to the limitations on judi-
7 cial review under section 113(h).

8 “(G) CALCULATIONS OF COST SAVINGS.—

9 “(i) IN GENERAL.—A determination
10 with respect to relative cost savings and
11 whether construction has begun shall be
12 based on operable units or distinct ele-
13 ments or phases of remediation and not on
14 the entire record of decision.

15 “(ii) ITEMS NOT TO BE CONSID-
16 ERED.—In determining the amount of cost
17 savings—

18 “(I) there shall not be taken into
19 account any administrative, demobili-
20 zation, remobilization, or additional
21 investigation costs of the review or
22 modification of the remedy associated
23 with the alternative remedy; and

24 “(II) only the estimated cost sav-
25 ings of expenditures avoided by under-

1 taking the alternative remedy shall be
2 considered as cost savings.

3 ~~“(3) CONSTRUCTION NOT BEGUN.—~~

4 ~~“(A) PETITION.—In the case of a facility~~
5 ~~or operable unit with respect to which a record~~
6 ~~of decision has been signed but construction has~~
7 ~~not yet begun prior to the date of enactment of~~
8 ~~this section and which meet the criteria of sub-~~
9 ~~paragraph (B), the implementor of the record~~
10 ~~of decision may file a petition with a remedy re-~~
11 ~~view board not later than 90 days after the date~~
12 ~~of enactment of this section to determine~~
13 ~~whether an alternate remedy under section 133~~
14 ~~should apply to the facility or operable unit.~~

15 ~~“(B) CRITERIA FOR APPROVAL.—Subject~~
16 ~~to subparagraph (C), a remedy review board~~
17 ~~shall approve a petition described in subpara-~~
18 ~~graph (A) if—~~

19 ~~“(i) the alternative remedial action~~
20 ~~proposed in the petition satisfies section~~
21 ~~121(a);~~

22 ~~“(ii)(I) in the case of a record of deci-~~
23 ~~sion with an estimated implementation cost~~
24 ~~of between \$5,000,000 and \$10,000,000,~~
25 ~~the alternative remedial action achieves~~

1 cost savings of at least 25 percent of the
2 total costs of the record of decision; or

3 “(ii) in the case of a record of deci-
4 sion valued at a total cost greater than
5 \$10,000,000, the alternative remedial ac-
6 tion achieves cost savings of \$2,500,000 or
7 more;

8 “(iii) in the case of a record of deci-
9 sion involving ground water extraction and
10 treatment remedies for substances other
11 than dense, nonaqueous phase liquids, the
12 alternative remedial action achieves cost
13 savings of \$2,000,000 or more; or

14 “(iv) in the case of a record of deci-
15 sion intended primarily for the remediation
16 of dense, nonaqueous phase liquids, the al-
17 ternative remedial action achieves cost sav-
18 ings of \$1,000,000 or more.

19 “(C) CONTENTS OF PETITION.—For the
20 purposes of facility-specific risk assessment
21 under section 131, a petition described in sub-
22 paragraph (A) shall rely on risk assessment
23 data that were available prior to issuance of the
24 record of decision but shall consider the actual

1 or planned or reasonably anticipated future use
2 of the land and water resources.

3 “(D) INCORRECT DATA.—Notwithstanding
4 subparagraph (B) and (C), a remedy review
5 board may approve a petition if the petitioner
6 demonstrates that technical data generated sub-
7 sequent to the issuance of the record of decision
8 indicates that the decision was based on faulty
9 or incorrect information.

10 “(4) ADDITIONAL CONSTRUCTION.—

11 “(A) PETITION.—In the case of a facility
12 or operable unit with respect to which a record
13 of decision has been signed and construction
14 has begun prior to the date of enactment of this
15 section and which meets the criteria of subpara-
16 graph (B), but for which additional construc-
17 tion or long-term operation and maintenance
18 activities are anticipated, the implementor of
19 the record of decision may file a petition with
20 a remedy review board within 90 days after the
21 date of enactment of this section to determine
22 whether an alternative remedial action should
23 apply to the facility or operable unit.

24 “(B) CRITERIA FOR APPROVAL.—Subject
25 to subparagraph (C), a remedy review board

1 shall approve a petition described in subpara-
2 graph (A) if—

3 “(i) the alternative remedial action
4 proposed in the petition satisfies section
5 121(a); and

6 “(ii)(I) in the case of a record of deci-
7 sion valued at a total cost between
8 \$5,000,000 and \$10,000,000, the alter-
9 native remedial action achieves cost sav-
10 ings of at least 50 percent of the total
11 costs of the record of decision;

12 “(II) in the case of a record of deci-
13 sion valued at a total cost greater than
14 \$10,000,000, the alternative remedial ac-
15 tion achieves cost savings of \$5,000,000 or
16 more; or

17 “(III) in the case of a record of deci-
18 sion involving monitoring, operations, and
19 maintenance obligations where construction
20 is completed, the alternative remedial ac-
21 tion achieves cost savings of \$1,000,000 or
22 more.

23 “(C) INCORRECT DATA.—Notwithstanding
24 subparagraph (B), a remedy review board may
25 approve a petition if the petitioner dem-

1 onstrates that technical data generated subse-
2 quent to the issuance of the record of decision
3 indicates that the decision was based on faulty
4 or incorrect information, and the alternative re-
5 medial action achieves cost savings of at least
6 \$2,000,000.

7 “(D) MANDATORY REVIEW.—A remedy re-
8 view board shall not be required to entertain
9 more than 1 petition under subparagraph
10 (B)(ii)(III) or (C) with respect to a remedial
11 action plan.

12 “(5) DELAY.—In determining whether an alter-
13 native remedial action will substantially delay the
14 implementation of a remedial action of a facility, no
15 consideration shall be given to the time necessary to
16 review a petition under paragraph (3) or (4) by a
17 remedy review board or the Administrator.

18 “(6) OBJECTION BY THE GOVERNOR.—

19 “(A) NOTIFICATION.—Not later than 7
20 days after receipt of a petition under this sub-
21 section, a remedy review board shall notify the
22 Governor of the State in which the facility is lo-
23 cated and provide the Governor a copy of the
24 petition.

1 “(B) OBJECTION.—The Governor may ob-
2 ject to the petition or the modification of the
3 remedy, if not later than 90 days after receiving
4 a notification under subparagraph (A) the Gov-
5 ernor demonstrates to the remedy review board
6 that the selection of the proposed alternative
7 remedy would cause an unreasonably long delay
8 that would be likely to result in significant ad-
9 verse human health impacts, environmental
10 risks, disruption of planned future use, or eco-
11 nomic hardship.

12 “(C) DENIAL.—On receipt of an objection
13 and demonstration under subparagraph (C), the
14 remedy review board shall—

15 “(i) deny the petition; or

16 “(ii) consider any other action that
17 the Governor may recommend.

18 “(7) SAVINGS CLAUSE.—Notwithstanding any
19 other provision of this subsection, in the case of a
20 remedial action plan for which a final record of deci-
21 sion under section 121 has been published, if reme-
22 dial action was not completed pursuant to the reme-
23 dial action plan before the date of enactment of this
24 section, the Administrator or a State exercising au-
25 thority under section 130(d) may modify the reme-

1 dial action plan in order to conform the plan to the
2 requirements of this Act, as in effect on the date of
3 enactment of this section.”

4 **SEC. 407. NATIONAL PRIORITIES LIST.**

5 (a) AMENDMENTS.—Section 105 of the Comprehen-
6 sive Environmental Response, Compensation, and Liabil-
7 ity Act of 1980 (42 U.S.C. 9605) is amended—

8 (1) in subsection (a)(8) by adding at the end
9 the following:

10 “(C) provision that in listing a facility on the
11 National Priorities List, the Administrator shall not
12 include any parcel of real property at which no re-
13 lease has actually occurred, but to which a released
14 hazardous substance, pollutant, or contaminant has
15 migrated in ground water that has moved through
16 subsurface strata from another parcel of real estate
17 at which the release actually occurred, unless—

18 “(i) the ground water is in use as a public
19 drinking water supply or was in such use at the
20 time of the release; and

21 “(ii) the owner or operator of the facility
22 is liable, or is affiliated with any other person
23 that is liable, for any response costs at the fa-
24 cility, through any direct or indirect familial re-
25 lationship, or any contractual, corporate, or fi-

1 nancial relationship other than that created by
2 the instruments by which title to the facility is
3 conveyed or financed.”; and

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

5 “(h) LISTING OF PARTICULAR PARCELS.—

6 “(1) DEFINITION.—In subsection (a)(8)(C) and
7 paragraph (2) of this subsection, the term ‘parcel of
8 real property’ means a parcel, lot, or tract of land
9 that has a separate legal description from that of
10 any other parcel, lot, or tract of land the legal de-
11 scription and ownership of which has been recorded
12 in accordance with the law of the State in which it
13 is located.

14 “(2) STATUTORY CONSTRUCTION.—Nothing in
15 subsection (a)(8)(C) shall be construed to limit the
16 Administrator’s authority under section 104 to ob-
17 tain access to and undertake response actions at any
18 parcel of real property to which a released hazardous
19 substance, pollutant, or contaminant has migrated in
20 the ground water.”.

21 (b) REVISION OF NATIONAL PRIORITIES LIST.—The
22 President shall revise the National Priorities List to con-
23 form with the amendments made by subsection (a) not
24 later than 180 days of the date of enactment of this Act.

TITLE V—LIABILITY

2 SEC. 501. LIABILITY EXCEPTIONS AND LIMITATIONS.

3 (a) DEFINITIONS.—Section 101 of the Comprehen-
 4 sive Environmental Response, Liability, and Compensa-
 5 tion Act of 1980 (42 U.S.C. 9601) (as amended by section
 6 401) is amended by adding at the end of the following:

7 “(43) CODISPOSAL LANDFILLS.—The ‘term eo-
 8 disposal landfill’ means a landfill that—

9 “(A) was listed on the National Priorities
 10 List as of January 1, 1997;

11 “(B) received for disposal municipal solid
 12 waste or sewage sludge; and

13 “(C) may also have received, before the ef-
 14 fective date of requirements under subtitle C of
 15 the Solid Waste Disposal Act (42 U.S.C. 6921
 16 et seq.); any hazardous waste, if a substantial
 17 portion of the total volume of waste disposed of
 18 at the landfill consisted of municipal solid waste
 19 or sewage sludge that was transported to the
 20 landfill from outside the facility.

21 “(44) MUNICIPAL SOLID WASTE.—The term
 22 ‘municipal solid waste’—

23 “(A) means waste material generated by—

1 “(i) a household (such as a single- or
2 multi-family residence) or a public lodging
3 (such as a hotel or motel); or

4 “(ii) a commercial, institutional, or in-
5 dustrial source, to the extent that—

6 “(I) the waste material is essen-
7 tially the same as waste normally gen-
8 erated by a household or public lodg-
9 ing; or

10 “(II) the waste material is col-
11 lected and disposed of with other mu-
12 nicipal solid waste or sewage sludge as
13 part of normal municipal solid waste
14 collection services, and, regardless of
15 when generated, would be condi-
16 tionally exempt small quantity genera-
17 tor waste under the regulation issued
18 under section 3001(d) of the Solid
19 Waste Disposal Act (42 U.S.C.
20 6921(d)); and

21 “(B) includes food and yard waste, paper,
22 clothing, appliances, consumer product packag-
23 ing, disposable diapers, office supplies, cosmet-
24 ics, glass and metal food containers, elementary

1 or secondary school science laboratory waste,
2 and household hazardous waste; but

3 “(C) does not include combustion ash gen-
4 erated by resource recovery facilities or munici-
5 pal incinerators or waste from manufacturing
6 or processing (including pollution control) oper-
7 ations that is not essentially the same as waste
8 normally generated by a household or public
9 lodging.

10 “(45) MUNICIPALITY.—The term ‘municipality’
11 means—

12 “(A) means a political subdivision of a
13 State (including a city, county, village, town,
14 township, borough, parish, school district, sani-
15 tation district, water district, or other public
16 entity performing local governmental functions);
17 and

18 “(B) includes a natural person acting in
19 the capacity of an official, employee, or agent of
20 any entity described in subparagraph (A) in the
21 performance of a governmental function.

22 “(46) SEWAGE SLUDGE.—The term ‘sewage
23 sludge’ means solid, semisolid, or liquid residue re-
24 moved during the treatment of municipal waste

1 water, domestic sewage, or other waste water at or
2 by publicly owned treatment works.”.

3 (b) EXCEPTIONS AND LIMITATIONS.—Section 107 of
4 the Comprehensive Environmental Response, Compensa-
5 tion, and Liability Act of 1980 (42 U.S.C. 9607) (as
6 amended by section 306(b)) is amended by adding at the
7 end the following:

8 “(q) LIABILITY EXEMPTION FOR MUNICIPAL SOLID
9 WASTE AND SEWAGE SLUDGE.—No person (other than
10 the United States or a department, agency, or instrumen-
11 tality of the United States) shall be liable to the United
12 States or to any other person (including liability for con-
13 tribution) under this section for any response costs at a
14 facility listed on the National Priorities List to the extent
15 that—

16 “(1) the person is liable solely under subpara-
17 graph (C) or (D) of subsection (a)(1); and

18 “(2) the arrangement for disposal, treatment,
19 or transport for disposal or treatment, or the accept-
20 ance for transport for disposal or treatment, in-
21 volved only municipal solid waste or sewage sludge.

22 “(r) DE MINIMIS CONTRIBUTOR EXEMPTION.—

23 “(1) IN GENERAL.—In the case of a vessel or
24 facility that is not owned by the United States and
25 is listed on the National Priorities List, no person

1 described in subparagraph (C) or (D) of subsection
2 (a)(1) (other than the United States or any depart-
3 ment, agency, or instrumentality of the United
4 States) shall be liable to the United States or to any
5 other person (including liability for contribution) for
6 any response costs under this section incurred after
7 the date of enactment of this subsection, if no activ-
8 ity specifically attributable to the person resulted
9 in—

10 “(A) the disposal or treatment of more
11 than 1 percent of the volume of material con-
12 taining a hazardous substance at the vessel or
13 facility before January 1, 1997; or

14 “(B) the disposal or treatment of not more
15 than 200 pounds or 110 gallons of material
16 containing hazardous substances at the vessel
17 or facility before January 1, 1997, or such
18 greater amount as the Administrator may de-
19 termine by regulation.

20 “(2) EXCEPTION.—Paragraph (1) shall not
21 apply in a case in which the Administrator deter-
22 mines that material described in paragraph (1)(A)
23 or (B) has contributed or may contribute signifi-
24 cantly to the amount of response costs at the facil-
25 ity.

1 “(s) ~~SMALL BUSINESS EXEMPTION.~~—No person
2 (other than the United States or a department, agency,
3 or instrumentality of the United States) shall be liable to
4 the United States or to any person (including liability for
5 contribution) under this section for any response costs at
6 a facility listed on the National Priorities List incurred
7 after the date of enactment of this subsection if the person
8 is a business that, during the taxable year preceding the
9 date of transmittal of notification that the business is a
10 potentially responsible party, had on average fewer than
11 30 employees or for that taxable year reported \$3,000,000
12 or less in annual gross revenues.

13 “(t) ~~CODISPOSAL LANDFILL EXEMPTION AND LIMITATIONS.~~—

15 “(1) ~~EXEMPTION.~~—No person shall be liable to
16 the United States or to any person (including liability
17 for contribution) under this section for any re-
18 sponse costs at a facility listed on the National Pri-
19 orities List incurred after the date of enactment of
20 this subsection to the extent that—

21 “(A) the person is liable under subpara-
22 graph (C) or (D) of subsection (a)(1); and

23 “(B) the arrangement for disposal, treat-
24 ment, or transport for disposal or treatment or

1 the acceptance for disposal or treatment oc-
 2 curred with respect to a codisposal landfill.

3 ~~“(2) LIMITATIONS.—~~

4 ~~“(A) DEFINITIONS.—In this paragraph:~~

5 ~~“(i) LARGE MUNICIPALITY.—The~~
 6 ~~term ‘large municipality’ means a munici-~~
 7 ~~pality with a population of 100,000 or~~
 8 ~~more according to the 1990 census.~~

9 ~~“(ii) SMALL MUNICIPALITY.—The~~
 10 ~~term ‘small municipality’ means a munici-~~
 11 ~~pality with a population of less than~~
 12 ~~100,000 according to the 1990 census.~~

13 ~~“(B) AGGREGATE LIABILITY OF SMALL~~
 14 ~~MUNICIPALITIES.—With respect to a codisposal~~
 15 ~~landfill listed on the National Priorities List~~
 16 ~~that is owned or operated only by small munici-~~
 17 ~~palties and that is not subject to the criteria~~
 18 ~~for solid waste landfills published under subtitle~~
 19 ~~D of the Solid Waste Disposal Act (42 U.S.C.~~
 20 ~~6941 et seq.) at part 258 of title 40, Code of~~
 21 ~~Federal Regulations (or a successor regulation),~~
 22 ~~the aggregate liability of all small municipalities~~
 23 ~~for response costs incurred on or after the date~~
 24 ~~of enactment of this subsection shall be the~~
 25 ~~lesser of—~~

1 “(i) 10 percent of the total amount of
2 response costs at the facility; or

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

9 “(C) AGGREGATE LIABILITY OF LARGE
10 MUNICIPALITIES.—With respect to a codisposal
11 landfill listed on the National Priorities List
12 that is owned or operated only by large munici-
13 palities and that is not subject to the criteria
14 for solid waste landfills published under subtitle
15 D of the Solid Waste Disposal Act (42 U.S.C.
16 6941 et seq.) at part 258 of title 40, Code of
17 Federal Regulations (or a successor regulation),
18 the aggregate liability of all large municipalities
19 for response costs incurred on or after the date
20 of enactment of this subsection shall be the
21 lesser of—

22 “(i) 20 percent of the proportion of
23 the total amount of response costs at the
24 facility; or

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

7 “(D) AGGREGATE PERSONS OTHER THAN
8 MUNICIPALITIES.—With respect to a codisposal
9 landfill listed on the National Priorities List
10 that is owned or operated in whole or in part
11 by persons other than municipalities and that is
12 not subject to the criteria for solid waste land-
13 fills published under subtitle D of the Solid
14 Waste Disposal Act (42 U.S.C. 6941 et seq.) at
15 part 258 of title 40, Code of Federal Regula-
16 tions (or a successor regulation), the aggregate
17 liability of all persons other than municipalities
18 shall be the lesser of—

19 “(i) 30 percent of the proportion of
20 the total amount of response costs at the
21 facility; or

22 “(ii) the costs of compliance with the
23 requirements of subtitle D of the Solid
24 Waste Disposal Act (42 U.S.C. 6941 et
25 seq.) for the facility (as if the facility had

1 continued to accept municipal solid waste
2 through January 1, 1997).

3 “(E) AGGREGATE LIABILITY FOR MUNICI-
4 PALITIES AND NON-MUNICIPALITIES.—With re-
5 spect to a co-disposal landfill listed on the Na-
6 tional Priorities List that is owned and oper-
7 ated by a combination of small and large mu-
8 nicipalities or persons other than municipalities
9 and that is subject to the criteria for solid
10 waste landfills published under subtitle D of the
11 Solid Waste Disposal Act (42 U.S.C. 6941 et
12 seq.) at part 258 of title 40, Code of Federal
13 Regulations (or a successor regulation)—

14 “(i) the allocator shall determine the
15 proportion of the use of the landfill that
16 was made by small and large municipalities
17 and persons other than municipalities dur-
18 ing the time the facility was in operation;
19 and

20 “(ii) shall allocate among the parties
21 an appropriate percentage of total liability
22 not exceeding the aggregate liability per-
23 centages stated in (B)(ii), (C)(ii), (D)(ii),
24 respectively.

1 “(F) LIABILITY AT SUBTITLE D FACILI-
2 TIES.—With respect to a eodisposal landfill list-
3 ed on the National Priorities List that is owned
4 and operated by a small municipality, large mu-
5 nicipality, or person other than municipalities,
6 or a combination of thereof, and that is subject
7 to the criteria for solid waste landfills published
8 under subtitle D of the Solid Waste Disposal
9 Act (42 U.S.C. 6941 et seq.) at part 258 of
10 title 40, Code of Federal Regulations (or a suc-
11 cessor regulation), the aggregate liability of
12 such municipalities and persons shall be no
13 greater than the costs of compliance with the
14 requirements of subtitle D of the Solid Waste
15 Disposal Act (42 U.S.C. 6941 et seq.) for the
16 facility.

17 “(3) APPLICABILITY.—This subsection shall not
18 apply to—

19 “(A) a person that acted in violation of
20 subtitle C of the Solid Waste Disposal Act (42
21 U.S.C. Sec. 6921 et seq.);

22 “(B) a person that owned or operated a
23 eodisposal landfill in violation of the applicable
24 requirements for municipal solid waste landfill
25 units under subtitle D of the Solid Waste Dis-

1 posal Act (42 U.S.C. Sec. 6941 et seq.) after
2 October 9, 1991;

3 “~~(C)~~ a facility that was not operated pur-
4 suant to and in substantial compliance with any
5 other applicable permit, license, or other ap-
6 proval or authorization relating to municipal
7 solid waste or sewage sludge disposal issued by
8 an appropriate State, Indian tribe, or local gov-
9 ernment authority;

10 “~~(D)~~ a person described in section 136(t);
11 or

12 “~~(E)~~ a person that impedes the perform-
13 ance of a response action.”.

14 ~~(e) EFFECTIVE DATE AND TRANSITION RULES.—~~

15 ~~The amendments made by this section—~~

16 ~~(1) shall take effect with respect to an action~~
17 ~~under section 106, 107, or 113 of the Comprehen-~~
18 ~~sive Environmental Response, Compensation, and~~
19 ~~Liability Act of 1980 (42 U.S.C. 9606, 9607, and~~
20 ~~9613) that becomes final on or after the date of en-~~
21 ~~actment of this Act; but~~

22 ~~(2) shall not apply to an action brought by any~~
23 ~~person under section 107 or 113 of that Act (42~~
24 ~~U.S.C. 9607 and 9613) for costs or damages in-~~

1 curred by the person before the date of enactment
2 of this Act.

3 **SEC. 502. CONTRIBUTION FROM THE FUND.**

4 Section 112 of the Comprehensive Environmental Re-
5 sponse, Compensation, and Liability Act of 1980 (42
6 U.S.C. 9612) is amended by adding at the end the follow-
7 ing:

8 “(g) CONTRIBUTION FROM THE FUND.—

9 “(1) COMPLETION OF OBLIGATIONS.—A person
10 that is subject to an administrative order issued
11 under section 106 or has entered into a settlement
12 decree with the United States or a State as of the
13 date of enactment of this subsection shall complete
14 the person’s obligations under the order or settle-
15 ment decree.

16 “(2) CONTRIBUTION.—A person described in
17 paragraph (1) shall receive contribution from the
18 Fund for any portion of the costs (excluding attor-
19 neys’ fees) incurred for the performance of the re-
20 sponse action after the date of enactment of this
21 subsection if the person is not liable for such costs
22 by reason of a liability exemption or limitation under
23 this section.

24 “(3) APPLICATION FOR CONTRIBUTION.—

1 “(A) IN GENERAL.—Contribution under
2 this section shall be made upon receipt by the
3 Administrator of an application requesting con-
4 tribution.

5 “(B) PERIODIC APPLICATIONS.—Beginning
6 with the 7th month after the date of enactment
7 of this subsection, 1 application for each facility
8 shall be submitted every 6 months for all per-
9 sons with contribution rights (as determined
10 under subparagraph (2)).

11 “(4) REGULATIONS.—Contribution shall be
12 made in accordance with such regulations as the Ad-
13 ministrator shall issue within 180 days after the
14 date of enactment of this section.

15 “(5) DOCUMENTATION.—The regulations under
16 paragraph (4) shall, at a minimum, require that an
17 application for contribution contain such documenta-
18 tion of costs and expenditures as the Administrator
19 considers necessary to ensure compliance with this
20 subsection.

21 “(6) EXPEDITION.—The Administrator shall
22 develop and implement such procedures as may be
23 necessary to provide contribution to such persons in
24 an expeditious manner, but in no case shall a con-

1 process under this section, issued by an allo-
2 eator; and

3 “(B) with respect to a facility described in
4 subparagraph (4)(C), includes only parties that
5 are, by virtue of section 107(t)(3), not entitled
6 to the exemption under section 107(t)(1) or the
7 limitation under section 107(t)(2).

8 “(3) ALLOCATOR.—The term ‘allocator’ means
9 an allocator retained to conduct an allocation for a
10 facility.

11 “(4) MANDATORY ALLOCATION FACILITY.—The
12 term ‘mandatory allocation facility’ means—

13 “(A) a non-federally owned vessel or facil-
14 ity listed on the National Priorities List with
15 respect to which response costs are incurred
16 after the date of enactment of this section and
17 at which there are 2 or more potentially respon-
18 sive persons (including 1 or more persons that
19 are qualified for an exemption under section
20 107 (q), (r), or (s)), if at least 1 potentially re-
21 sponsible person is viable and not entitled to an
22 exemption under section 107 (q), (r), or (s);

23 “(B) a federally owned vessel or facility
24 listed on the National Priorities List with re-
25 spect to which response costs are incurred after

1 the date of enactment of this section, and with
 2 respect to which 1 or more potentially respon-
 3 sible parties (other than a department, agency,
 4 or instrumentality of the United States) are lia-
 5 ble or potentially liable if at least 1 potentially
 6 liable party is liable and not entitled to an ex-
 7 emption under section 107 (q), (r), or (s); and

8 “(C) a eodisposal landfill listed on the Na-
 9 tional Priorities List with respect to which—

10 “(i) costs are incurred after the date
 11 of enactment of this section; and

12 (ii) by virtue of section 107(t)(3), 1 or
 13 more persons are not entitled to the ex-
 14 emption under section 107(t)(1) or the
 15 limitation under section 107(t)(2).

16 “(5) ORPHAN SHARE.—The term ‘orphan
 17 share’ means the total of the allocated shares deter-
 18 mined by the allocator under subsection (h).

19 “(b) ALLOCATIONS OF LIABILITY.—

20 “(1) MANDATORY ALLOCATIONS.—For each
 21 mandatory allocation facility involving 2 or more po-
 22 tentially responsible parties (including 1 or more po-
 23 tentially responsible parties that are qualified for an
 24 exemption under section 107 (q), (r), or (s)), the

1 Administrator shall conduct the allocation process
2 under this section.

3 ~~“(2) REQUESTED ALLOCATIONS.—~~For a facility
4 (other than a mandatory allocation facility) involving
5 2 or more potentially responsible parties, the Admin-
6 istrator shall conduct the allocation process under
7 this section if the allocation is requested in writing
8 by a potentially responsible party that has—

9 ~~“(A) incurred response costs with respect~~
10 ~~to a response action; or~~

11 ~~“(B) resolved any liability to the United~~
12 ~~States with respect to a response action in~~
13 ~~order to assist in allocating shares among po-~~
14 ~~tentially responsible parties.~~

15 ~~“(3) PERMISSIVE ALLOCATIONS.—~~For any fa-
16 cility (other than a mandatory allocation facility or
17 a facility with respect to which a request is made
18 under paragraph (2)) involving 2 or more potentially
19 responsible parties, the Administrator may conduct
20 the allocation process under this section if the Ad-
21 ministrator considers it to be appropriate to do so.

22 ~~“(4) ORPHAN SHARE.—~~An allocation performed
23 at a vessel or facility identified under subsection (b)
24 (2) or (3) shall not require payment of an orphan

1 share under subsection (h) or contribution under
2 subsection (p).

3 ~~“(5) EXCLUDED FACILITIES.—~~

4 ~~“(A) IN GENERAL.—A codisposal landfill~~
5 ~~listed on the Natural Priorities List at which~~
6 ~~costs are incurred after January 1, 1997, and~~
7 ~~at which all potentially responsible persons are~~
8 ~~entitled to the liability exemption under section~~
9 ~~107(t)(1). This section does not apply to a re-~~
10 ~~sponse action at a mandatory allocation facility~~
11 ~~for which there was in effect as of the date of~~
12 ~~enactment of this section, a settlement, decree,~~
13 ~~or order that determines the liability and allo-~~
14 ~~cated shares of all potentially responsible par-~~
15 ~~ties with respect to the response action.~~

16 ~~“(B) AVAILABILITY OF ORPHAN SHARE.—~~

17 ~~For any mandatory allocation facility that is~~
18 ~~otherwise excluded by subparagraph (A) and for~~
19 ~~which there was not in effect as of the date of~~
20 ~~enactment of this section a final judicial order~~
21 ~~that determined the liability of all parties to the~~
22 ~~action for response costs incurred after the date~~
23 ~~of enactment of this section, an allocation shall~~
24 ~~be conducted for the sole purpose of determin-~~
25 ~~ing the availability of orphan share funding~~

1 pursuant to subsection (h)(2) for any response
2 costs incurred after the date of enactment of
3 this section.

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

6 “(A) response costs incurred after the date
7 of enactment of this section; with respect to a
8 mandatory allocation facility described in sub-
9 section (a)(4) (A), (B), or (C); and

10 “(B) response costs incurred at a facility
11 that is the subject of a requested or permissive
12 allocation under subsection (b) (2) or (3).

13 “(8) OTHER MATTERS.—This section shall not
14 limit or affect—

15 “(A) the obligation of the Administrator to
16 conduct the allocation process for a response
17 action at a facility that has been the subject of
18 a partial or expedited settlement with respect to
19 a response action that is not within the scope
20 of the allocation;

21 “(B) the ability of any person to resolve
22 any liability at a facility to any other person at
23 any time before initiation or completion of the
24 allocation process; subject to subsection (h)(3);

1 “(C) the validity, enforceability, finality, or
2 merits of any judicial or administrative order,
3 judgment, or decree, issued prior to the date of
4 enactment of this section with respect to liability
5 under this Act; or

6 “(D) the validity, enforceability, finality, or
7 merits of any preexisting contract or agreement
8 relating to any allocation of responsibility or
9 any indemnity for, or sharing of, any response
10 costs under this Act.

11 “(e) MORATORIUM ON LITIGATION AND ENFORCE-
12 MENT.—

13 “(1) IN GENERAL.—No person may assert a
14 claim for recovery of a response cost or contribution
15 toward a response cost (including a claim for insurance
16 proceeds) under this Act or any other Federal
17 or State law in connection with a response action—

18 “(A) for which an allocation is required to
19 be performed under subsection (b)(1); or

20 “(B) for which the Administrator has initi-
21 ated the allocation process under this section,
22 until the date that is 120 days after the date of
23 issuance of a report by the allocator under sub-
24 section (f)(4) or, if a second or subsequent report is

1 issued under subsection (m), the date of issuance of
2 the second or subsequent report.

3 “(2) PENDING ACTIONS OR CLAIMS.—If a claim
4 described in paragraph (1) is pending on the date of
5 enactment of this section or on initiation of an allo-
6 cation under this section, the portion of the claim
7 pertaining to response costs that are the subject of
8 the allocation shall be stayed until the date that is
9 120 days after the date of issuance of a report by
10 the allocator under subsection (f)(4) or, if a second
11 or subsequent report is issued under subsection (m),
12 the date of issuance of the second or subsequent re-
13 port, unless the court determines that a stay would
14 result in manifest injustice.

15 “(3) TOLLING OF PERIOD OF LIMITATION.—

16 “(A) BEGINNING OF TOLLING.—Any appli-
17 cable period of limitation with respect to a
18 claim subject to paragraph (1) shall be tolled
19 beginning on the earlier of—

20 “(i) the date of listing of the facility
21 on the National Priorities List if the list-
22 ing occurs after the date of enactment of
23 this section; or

24 “(ii) the date of initiation of the allo-
25 cation process under this section.

1 “(B) ~~END OF TOLLING.~~—A period of limi-
 2 tation shall be tolled under subparagraph (A)
 3 until the date that is 180 days after the date
 4 of issuance of a report by the allocator under
 5 subsection (f)(4), or of a second or subsequent
 6 report under subsection (m).

7 “(4) ~~RETAINED AUTHORITY.~~—Except as spe-
 8 cifically provided in this section, this section does
 9 not affect the authority of the Administrator to—

10 “(A) exercise the powers conferred by sec-
 11 tion 103, 104, 105, 106, or 122;

12 “(B) commence an action against a party
 13 if there is a contemporaneous filing of a judicial
 14 consent decree resolving the liability of the
 15 party;

16 “(C) file a proof of claim or take other ac-
 17 tion in a proceeding under title 11, United
 18 States Code; or

19 “(D) require implementation of a response
 20 action at an allocation facility during the con-
 21 duct of the allocation process.

22 “(d) ~~ALLOCATION PROCESS.~~—

23 “(1) ~~ESTABLISHMENT.~~—Not later than 180
 24 days after the date of enactment of this section, the
 25 Administrator shall establish by regulation a process

1 for conduct of mandatory, requested, and permissive
2 allocations.

3 “(2) REQUIREMENTS.—In developing the allo-
4 cation process under paragraph (1), the Adminis-
5 trator shall—

6 “(A) ensure that parties that are eligible
7 for an exemption from liability under section
8 107 (q), (r), (s), (t), (v), and (w)—

9 “(i) are identified by the Adminis-
10 trator (before selection of an allocator or
11 by an allocator);

12 “(ii) at the earliest practicable oppor-
13 tunity, are notified of their status; and

14 “(iii) are provided with appropriate
15 written assurances that they are not liable
16 for response costs under this Act;

17 “(B) establish an expedited process for the
18 selection, appointment, and retention by con-
19 tract of a impartial allocator, acceptable to both
20 potentially responsible parties and a representa-
21 tive of the Fund, to conduct the allocation proc-
22 ess in a fair, efficient, and impartial manner;

23 “(C) permit any person to propose to name
24 additional potentially responsible parties as allo-
25 cation parties, the costs of any such nominated

1 party's costs (including reasonable attorney's
2 fees) to be borne by the party that proposes the
3 addition of the party to the allocation process
4 if the allocator determines that there is no ade-
5 quate basis in law or fact to conclude that a
6 party is liable based on the information pre-
7 sented by the nominating party or otherwise
8 available to the allocator; and

9 “(D) require that the allocator adopt any
10 settlement that allocates 100 percent of the re-
11 coverable costs of a response action at a facility
12 to the signatories to the settlement, if the set-
13 tlement contains a waiver of—

14 “(i) a right of recovery from any other
15 party of any response cost that is the sub-
16 ject of the allocation; and

17 “(ii) a right to contribution under this
18 Act,

19 with respect to any response action that is with-
20 in the scope of allocation process.

21 “(3) TIME LIMIT.—The Administrator shall ini-
22 tiate the allocation process for a facility not later
23 than the earlier of—

1 “(A) the date of completion of the facility
2 evaluation or remedial investigation for the fa-
3 cility; or

4 “(B) the date that is 60 days after the
5 date of selection of a removal action.

6 “(4) NO JUDICIAL REVIEW.—There shall be no
7 judicial review of any action regarding selection of
8 an allocator under the regulation issued under this
9 subsection.

10 “(5) RECOVERY OF CONTRACT COSTS.—The
11 costs of the Administrator in retaining an allocator
12 shall be considered to be a response cost for all pur-
13 poses of this Act.

14 “(e) FEDERAL, STATE, AND LOCAL AGENCIES.—

15 “(1) IN GENERAL.—Other than as set forth in
16 this Act, any Federal, State, or local governmental
17 department, agency, or instrumentality that is
18 named as a potentially responsible party or an allo-
19 cation party shall be subject to, and be entitled to
20 the benefits of, the allocation process and allocation
21 determination under this section to the same extent
22 as any other party.

23 “(2) ORPHAN SHARE.—The Administrator or
24 the Attorney General shall participate in the alloca-

1 tion proceeding as the representative of the Fund
2 from which any orphan share shall be paid.

3 ~~“(f) ALLOCATION AUTHORITY.—~~

4 ~~“(1) INFORMATION-GATHERING AUTHORI-~~
5 ~~TIES.—~~

6 ~~“(A) IN GENERAL.—An allocator may re-~~
7 ~~quest information from any person in order to~~
8 ~~assist in the efficient completion of the alloca-~~
9 ~~tion process.~~

10 ~~“(B) REQUESTS.—Any person may request~~
11 ~~that an allocator request information under this~~
12 ~~paragraph.~~

13 ~~“(C) AUTHORITY.—An allocator may exer-~~
14 ~~cise the information-gathering authority of the~~
15 ~~Administrator under section 104(c), including~~
16 ~~issuing an administrative subpoena to compel~~
17 ~~the production of a document or the appearance~~
18 ~~of a witness.~~

19 ~~“(D) DISCLOSURE.—Notwithstanding any~~
20 ~~other law, any information submitted to the al-~~
21 ~~locator in response to a subpoena issued under~~
22 ~~subparagraph (C) shall be exempt from disclo-~~
23 ~~sure to any person under section 552 of title 5,~~
24 ~~United States Code.~~

1 “(E) ORDERS.—In a case of contumacy or
2 failure of a person to obey a subpoena issued
3 under subparagraph (C), an allocator may re-
4 quest the Attorney General to—

5 “(i) bring a civil action to enforce the
6 subpoena; or

7 “(ii) if the person moves to quash the
8 subpoena, to defend the motion.

9 “(F) FAILURE OF ATTORNEY GENERAL TO
10 RESPOND.—If the Attorney General fails to
11 provide any response to the allocator within 30
12 days of a request for enforcement of a subpoena
13 or information request, the allocator may retain
14 counsel to commence a civil action to enforce
15 the subpoena or information request.

16 “(2) ADDITIONAL AUTHORITY.—An allocator
17 may—

18 “(A) schedule a meeting or hearing and re-
19 quire the attendance of allocation parties at the
20 meeting or hearing;

21 “(B) sanction an allocation party for fail-
22 ing to cooperate with the orderly conduct of the
23 allocation process;

1 “(C) require that allocation parties wishing
2 to present similar legal or factual positions con-
3 solidate the presentation of the positions;

4 “(D) obtain or employ support services, in-
5 cluding secretarial, clerical, computer support,
6 legal, and investigative services; and

7 “(E) take any other action necessary to
8 conduct a fair, efficient, and impartial alloca-
9 tion process.

10 ~~“(3) CONDUCT OF ALLOCATION PROCESS.—~~

11 ~~“(A) IN GENERAL.—The allocator shall~~
12 ~~conduct the allocation process and render a de-~~
13 ~~cision based solely on the provisions of this sec-~~
14 ~~tion, including the allocation factors described~~
15 ~~in subsection (g).~~

16 ~~“(B) OPPORTUNITY TO BE HEARD.—Each~~
17 ~~allocation party shall be afforded an oppor-~~
18 ~~tunity to be heard (orally or in writing, at the~~
19 ~~option of an allocation party) and an oppor-~~
20 ~~tunity to comment on a draft allocation report.~~

21 ~~“(C) RESPONSES.—The allocator shall not~~
22 ~~be required to respond to comments.~~

23 ~~“(D) STREAMLINING.—The allocator shall~~
24 ~~make every effort to streamline the allocation~~

1 process and minimize the cost of conducting the
2 allocation.

3 ~~“(4) ALLOCATION REPORT.—The allocator shall~~
4 ~~provide a written allocation report to the Adminis-~~
5 ~~trator and the allocation parties that specifies the al-~~
6 ~~location share of each allocation party and any or-~~
7 ~~phan shares, as determined by the allocator.~~

8 ~~“(g) EQUITABLE FACTORS FOR ALLOCATION.—The~~
9 ~~allocator shall prepare a nonbinding allocation of percent-~~
10 ~~age shares of responsibility to each allocation party and~~
11 ~~to the orphan share, in accordance with this section and~~
12 ~~without regard to any theory of joint and several liability,~~
13 ~~based on—~~

14 ~~“(1) the amount of hazardous substances con-~~
15 ~~tributed by each allocation party;~~

16 ~~“(2) the degree of toxicity of hazardous sub-~~
17 ~~stances contributed by each allocation party;~~

18 ~~“(3) the mobility of hazardous substances con-~~
19 ~~tributed by each allocation party;~~

20 ~~“(4) the degree of involvement of each alloca-~~
21 ~~tion party in the generation, transportation, treat-~~
22 ~~ment, storage, or disposal of hazardous substances;~~

23 ~~“(5) the degree of care exercised by each alloca-~~
24 ~~tion party with respect to hazardous substances, tak-~~

1 ing into account the characteristics of the hazardous
2 substances;

3 “(6) the cooperation of each allocation party in
4 contributing to any response action and in providing
5 complete and timely information to the allocator;
6 and

7 “(7) such other equitable factors as the allo-
8 cator determines are appropriate.

9 “(h) ORPHAN SHARES.—

10 “(1) IN GENERAL.—The allocator shall deter-
11 mine whether any percentage of responsibility for
12 the response action shall be allocable to the orphan
13 share.

14 “(2) MAKEUP OF ORPHAN SHARE.—The orphan
15 share shall consist of—

16 “(A) any share that the allocator deter-
17 mines is attributable to an allocation party that
18 is insolvent or defunct and that is not affiliated
19 with any financially viable allocation party;

20 “(B) the difference between the aggregate
21 share that the allocator determines is attrib-
22 utable to a person and the aggregate share ac-
23 tually assumed by the person in a settlement
24 with the United States otherwise if—

1 “(i) the person is eligible for an expedited settlement with the United States under section 122 based on limited ability to pay response costs;

2 “(ii) the liability of the person is eliminated, limited, or reduced by any provision of this Act; or

3 “(iii) the person settled with the United States before the completion of the allocation; and

4 “(C) all response costs at a co-disposal landfill listed on the National Priorities incurred after the date of enactment of this section attributable to any person or group of persons entitled to an exemption or limitation under section 107 (q), (r), (s), or (t).

5 “(4) UNATTRIBUTABLE SHARES.—A share attributable to a hazardous substance that the allocator determines was disposed at the facility that cannot be attributed to any identifiable party shall be distributed among the allocation parties and the orphan share in accordance with the allocated share assigned to each.

6 “(i) INFORMATION REQUESTS.—

1 “(1) DUTY TO ANSWER.—Each person that re-
2 ceives an information request or subpoena from the
3 allocator shall provide a full and timely response to
4 the request.

5 “(2) CERTIFICATION.—An answer to an infor-
6 mation request by an allocator shall include a certifi-
7 cation by a representative that meets the criteria es-
8 tablished in section 270.11(a) of title 40, Code of
9 Federal Regulations (or any successor regulation);
10 that—

11 “(A) the answer is correct to the best of
12 the representative’s knowledge;

13 “(B) the answer is based on a diligent
14 good faith search of records in the possession or
15 control of the person to whom the request was
16 directed;

17 “(C) the answer is based on a reasonable
18 inquiry of the current (as of the date of the an-
19 swer) officers, directors, employees, and agents
20 of the person to whom the request was directed;

21 “(D) the answer accurately reflects infor-
22 mation obtained in the course of conducting the
23 search and the inquiry;

24 “(E) the person executing the certification
25 understands that there is a duty to supplement

1 any answer if, during the allocation process,
2 any significant additional, new, or different in-
3 formation becomes known or available to the
4 person; and

5 “(F) the person executing the certification
6 understands that there are significant penalties
7 for submitting false information, including the
8 possibility of a fine or imprisonment for a
9 knowing violation.

10 “(j) PENALTIES.—

11 “(1) CIVIL.—

12 “(A) IN GENERAL.—A person that fails to
13 submit a complete and timely answer to an in-
14 formation request, a request for the production
15 of a document, or a summons from an allo-
16 cator, submits a response that lacks the certifi-
17 cation required under subsection (i)(2), or
18 knowingly makes a false or misleading material
19 statement or representation in any statement,
20 submission, or testimony during the allocation
21 process (including a statement or representa-
22 tion in connection with the nomination of an-
23 other potentially responsible party) shall be sub-
24 ject to a civil penalty of not more than \$10,000
25 per day of violation.

1 “(B) ASSESSMENT OF PENALTY.—A pen-
2 alty may be assessed by the Administrator in
3 accordance with section 109 or by any alloca-
4 tion party in a citizen suit brought under sec-
5 tion 310.

6 “(2) CRIMINAL.—A person that knowingly and
7 willfully makes a false material statement or rep-
8 resentation in the response to an information re-
9 quest or subpoena issued by the allocator under sub-
10 section (i) shall be considered to have made a false
11 statement on a matter within the jurisdiction of the
12 United States within the meaning of section 1001 of
13 title 18, United States Code.

14 “(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

15 “(1) DOCUMENT REPOSITORY.—

16 “(A) IN GENERAL.—The allocator shall es-
17 tablish and maintain a document repository
18 containing copies of all documents and informa-
19 tion provided by the Administrator or any allo-
20 cation party under this section or generated by
21 the allocator during the allocation process.

22 “(B) AVAILABILITY.—Subject to para-
23 graph (2), the documents and information in
24 the document repository shall be available only

1 to an allocation party for review and copying at
2 the expense of the allocation party.

3 ~~“(2) CONFIDENTIALITY.—~~

4 ~~“(A) IN GENERAL.—Each document or~~
5 ~~material submitted to the allocator or placed in~~
6 ~~the document repository and the record of any~~
7 ~~information generated or obtained during the~~
8 ~~allocation process shall be confidential.~~

9 ~~“(B) MAINTENANCE.—The allocator, each~~
10 ~~allocation party, the Administrator, and the At-~~
11 ~~torney General—~~

12 ~~“(i) shall maintain the documents,~~
13 ~~materials, and records of any depositions~~
14 ~~or testimony adduced during the allocation~~
15 ~~as confidential; and~~

16 ~~“(ii) shall not use any such document~~
17 ~~or material or the record in any other mat-~~
18 ~~ter or proceeding or for any purpose other~~
19 ~~than the allocation process.~~

20 ~~“(C) DISCLOSURE.—Notwithstanding any~~
21 ~~other law, the documents and materials and the~~
22 ~~record shall not be subject to disclosure to any~~
23 ~~person under section 552 of title 5, United~~
24 ~~States Code.~~

25 ~~“(D) DISCOVERY AND ADMISSIBILITY.—~~

1 “(i) IN GENERAL.—Subject to clause
2 (ii), the documents and materials and the
3 record shall not be subject to discovery or
4 admissible in any other Federal, State, or
5 local judicial or administrative proceeding;
6 except—

7 “(I) a new allocation under sub-
8 section (m) or (r) for the same re-
9 sponse action; or

10 “(II) an initial allocation under
11 this section for a different response
12 action at the same facility.

13 “(ii) OTHERWISE DISCOVERABLE OR
14 ADMISSIBLE.—

15 “(I) DOCUMENT OR MATERIAL.—

16 If the original of any document or
17 material submitted to the allocator or
18 placed in the document repository was
19 otherwise discoverable or admissible
20 from a party, the original document,
21 if subsequently sought from the party,
22 shall remain discoverable or admissi-
23 ble.

24 “(II) FACTS.—If a fact gen-
25 erated or obtained during the alloca-

1 tion was otherwise discoverable or ad-
2 missible from a witness, testimony
3 concerning the fact, if subsequently
4 sought from the witness, shall remain
5 discoverable or admissible.

6 ~~“(3) NO WAIVER OF PRIVILEGE.—~~The submis-
7 sion of testimony, a document, or information under
8 the allocation process shall not constitute a waiver of
9 any privilege applicable to the testimony, document,
10 or information under any Federal or State law or
11 rule of discovery or evidence.

12 ~~“(4) PROCEDURE IF DISCLOSURE SOUGHT.—~~

13 ~~“(A) NOTICE.—~~A person that receives a
14 request for a statement, document, or material
15 submitted for the record of an allocation pro-
16 ceeding, shall—

17 ~~“(i) promptly notify the person that~~
18 originally submitted the item or testified in
19 the allocation proceeding; and

20 ~~“(ii) provide the person that originally~~
21 submitted the item or testified in the allo-
22 cation proceeding an opportunity to assert
23 and defend the confidentiality of the item
24 or testimony.

1 “(B) RELEASE.—No person may release or
2 provide a copy of a statement, document, or
3 material submitted, or the record of an alloca-
4 tion proceeding, to any person not a party to
5 the allocation except—

6 “(i) with the written consent of the
7 person that originally submitted the item
8 or testified in the allocation proceeding; or

9 “(ii) as may be required by court
10 order.

11 ~~“(5) CIVIL PENALTY.—~~

12 “(A) IN GENERAL.—A person that fails to
13 maintain the confidentiality of any statement,
14 document, or material or the record generated
15 or obtained during an allocation proceeding, or
16 that releases any information in violation of this
17 section, shall be subject to a civil penalty of not
18 more than \$25,000 per violation.

19 “(B) ASSESSMENT OF PENALTY.—A pen-
20 alty may be assessed by the Administrator in
21 accordance with section 109 or by any alloca-
22 tion party in a citizen suit brought under sec-
23 tion 310.

24 “(C) DEFENSES.—In any administrative
25 or judicial proceeding, it shall be a complete de-

1 fense that any statement, document, or material
 2 or the record at issue under subparagraph
 3 (A)—

4 “(i) was in, or subsequently became
 5 part of, the public domain, and did not be-
 6 come part of the public domain as a result
 7 of a violation of this subsection by the per-
 8 son charged with the violation;

9 “(ii) was already known by lawful
 10 means to the person receiving the informa-
 11 tion in connection with the allocation pro-
 12 cess; or

13 “(iii) became known to the person re-
 14 ceiving the information after disclosure in
 15 connection with the allocation process and
 16 did not become known as a result of any
 17 violation of this subsection by the person
 18 charged with the violation.

19 “(1) REJECTION OF ALLOCATION REPORT.—

20 “(1) REJECTION.—The Administrator and the
 21 Attorney General may jointly reject a report issued
 22 by an allocator only if the Administrator and the At-
 23 torney General jointly publish, not later than 180
 24 days after the Administrator receives the report, a
 25 written determination that—

1 “(A) no rational interpretation of the facts
2 before the allocator, in light of the factors re-
3 quired to be considered, would form a reason-
4 able basis for the shares assigned to the parties;
5 or

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

9 “(2) FINALITY.—A report issued by an allo-
10 cator may not be rejected after the date that is 180
11 days after the date on which the United States ac-
12 cepts a settlement offer (excluding an expedited set-
13 tlement under section 122) based on the allocation.

14 “(3) JUDICIAL REVIEW.—Any determination by
15 the Administrator or the Attorney General under
16 this subsection shall not be subject to judicial review
17 unless 2 successive allocation reports relating to the
18 same response action are rejected, in which case any
19 allocation party may obtain judicial review of the
20 second rejection in a United States district court
21 under subchapter H of chapter 5 of part I of title
22 5, United States Code.

23 “(4) DELEGATION.—The authority to make a
24 determination under this subsection may not be dele-
25 gated to any officer or employee below the level of

1 an Assistant Administrator or Acting Assistant Ad-
 2 ministrator or an Assistant Attorney General or Act-
 3 ing Assistant Attorney General with authority for
 4 implementing this Act.

5 “(m) SECOND AND SUBSEQUENT ALLOCATIONS.—

6 “(1) IN GENERAL.—If a report is rejected
 7 under subsection (l), the allocation parties shall se-
 8 lect an allocator to perform, on an expedited basis,
 9 a new allocation based on the same record available
 10 to the previous allocator.

11 “(2) MORATORIUM AND TOLLING.—The mora-
 12 torium and tolling provisions of subsection (e) shall
 13 be extended until the date that is 180 days after the
 14 date of the issuance of any second or subsequent al-
 15 location report under paragraph (1).

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

22 “(n) SETTLEMENTS BASED ON ALLOCATIONS.—

23 “(1) DEFINITION.—In this subsection, the term
 24 ‘all settlements’ includes any orphan share allocated
 25 under subsection (h).

1 “(2) IN GENERAL.—Unless an allocation report
2 is rejected under subsection (l), any allocation party
3 at a mandatory allocation facility (including an allo-
4 cation party whose allocated share is funded par-
5 tially or fully by orphan share funding under sub-
6 section (h)) shall be entitled to resolve the liability
7 of the party to the United States for response ac-
8 tions subject to allocation if, not later than 90 days
9 after the date of issuance of a report by the allo-
10 cator, the party—

11 “(A) offers to settle with the United States
12 based on the allocated share specified by the al-
13 locator; and

14 “(B) agrees to the other terms and condi-
15 tions stated in this subsection.

16 “(3) PROVISIONS OF SETTLEMENTS.—

17 “(A) IN GENERAL.—A settlement based on
18 an allocation under this section—

19 “(i) may consist of a cash-out settle-
20 ment or an agreement for the performance
21 of a response action; and

22 “(ii) shall include—

23 “(I) a waiver of contribution
24 rights against all persons that are po-
25 tentially responsible parties for any

1 response action addressed in the set-
2 tlement;

3 “(II) a covenant not to sue that
4 is consistent with section 122(f) and,
5 except in the case of a cash-out settle-
6 ment, provisions regarding perform-
7 ance or adequate assurance of per-
8 formance of the response action;

9 “(III) a premium, calculated on a
10 facility-specific basis and subject to
11 the limitations on premiums stated in
12 paragraph (5); that reflects the actual
13 risk to the United States of not col-
14 lecting unrecovered response costs for
15 the response action; despite the dili-
16 gent prosecution of litigation against
17 any viable allocation party that has
18 not resolved the liability of the party
19 to the United States; except that no
20 premium shall apply if all allocation
21 parties participate in the settlement
22 or if the settlement covers 100 per-
23 cent of the response costs subject to
24 the allocation;

1 “(IV) complete protection from
2 all claims for contribution regarding
3 the response action addressed in the
4 settlement; and

5 “(V) provisions through which a
6 settling party shall receive prompt
7 contribution from the Fund under
8 subsection (o) of any response costs
9 incurred by the party for any response
10 action that is the subject of the alloca-
11 tion in excess of the allocated share of
12 the party, including the allocated por-
13 tion of any orphan share.

14 “(B) RIGHT TO CONTRIBUTION.—A right
15 to contribution under subparagraph (A)(ii)(V)
16 shall not be contingent on recovery by the
17 United States of any response costs from any
18 person other than the settling party.

19 “(4) REPORT.—The Administrator shall report
20 annually to Congress on the administration of the
21 allocation process under this section, providing in
22 the report—

23 “(A) information comparing allocation re-
24 sults with actual settlements at multiparty fa-
25 cilities;

1 “(B) a cumulative analysis of response ac-
2 tion costs recovered through post-allocation liti-
3 gation or settlements of post-allocation litiga-
4 tion;

5 “(C) a description of any impediments to
6 achieving complete recovery; and

7 “(D) a complete accounting of the costs in-
8 curred in administering and participating in the
9 allocation process.

10 “(5) PREMIUM.—In each settlement under this
11 subsection, the premium authorized—

12 “(A) shall be determined on a case-by-case
13 basis to reflect the actual litigation risk faced
14 by the United States with respect to any re-
15 sponse action addressed in the settlement; but

16 “(B) shall not exceed—

17 “(i) 5 percent of the total costs as-
18 sumed by a settling party if all settlements
19 (including any orphan share) account for
20 more than 80 percent and less than 100
21 percent of responsibility for the response
22 action;

23 “(ii) 10 percent of the total costs as-
24 sumed by a settling party if all settlements
25 (including any orphan share) account for

1 more than 60 percent and not more than
2 80 percent of responsibility for the re-
3 sponse action;

4 “(iii) 15 percent of the total costs as-
5 sumed by a settling party if all settlements
6 (including any orphan share) account for
7 more than 40 percent and not more than
8 60 percent of responsibility for the re-
9 sponse action; or

10 “(iv) 20 percent of the total costs as-
11 sumed by a settling party if all settlements
12 (including any orphan share) account for
13 40 percent or less of responsibility for the
14 response; and

15 “(C) shall be reduced proportionally by the
16 percentage of the allocated share for that party
17 paid through orphan funding under subsection
18 (h).

19 “(o) FUNDING OF ORPHAN SHARES.—

20 “(1) CONTRIBUTION.—For each settlement
21 agreement entered into under subsection (n), the
22 Administrator shall promptly reimburse the alloca-
23 tion parties for any costs incurred that are attrib-
24 utable to the orphan share, as determined by the al-
25 locator.

1 “(2) ENTITLEMENT.—Paragraph (1) con-
2 stitutes an entitlement to any allocation party eligi-
3 ble to receive a reimbursement.

4 “(3) AMOUNTS OWED.—

5 “(A) DELAY IF FUNDS ARE UNAVAIL-
6 ABLE.—If funds are unavailable in any fiscal
7 year to reimburse all allocation parties pursuant
8 to paragraph (1), the Administrator may delay
9 payment until funds are available.

10 “(B) PRIORITY.—The priority for reim-
11 bursement shall be based on the length of time
12 that has passed since the settlement between
13 the United States and the allocation parties
14 pursuant to subsection (n).

15 “(C) PAYMENT FROM FUNDS MADE AVAIL-
16 ABLE IN SUBSEQUENT FISCAL YEARS.—Any
17 amount due and owing in excess of available ap-
18 propriations in any fiscal year shall be paid
19 from amounts made available in subsequent fis-
20 cal years, along with interest on the unpaid bal-
21 ances at the rate equal to that of the current
22 average market yield on outstanding marketable
23 obligations of the United States with a maturity
24 of 1 year.

1 “(4) DOCUMENTATION AND AUDITING.—The
2 Administrator—

3 “(A) shall require that any claim for con-
4 tribution be supported by documentation of ac-
5 tual costs incurred; and

6 “(B) may require an independent auditing
7 of any claim for contribution.

8 “(p) POST-ALLOCATION CONTRIBUTION.—

9 “(1) IN GENERAL.—An allocation party (includ-
10 ing a party that is subject to an order under section
11 106 or a settlement decree) that incurs costs after
12 the date of enactment of this section for implemen-
13 tation of a response action that is the subject of an
14 allocation under this section to an extent that ex-
15 ceeds the percentage share of the allocation party, as
16 determined by the allocator, shall be entitled to
17 prompt payment of contribution for the excess
18 amount, including any orphan share, from the Fund,
19 unless the allocation report is rejected under sub-
20 section (1).

21 “(2) NOT CONTINGENT.—The right to contribu-
22 tion under paragraph (1) shall not be contingent on
23 recovery by the United States of a response cost
24 from any other person.

25 “(3) TERMS AND CONDITIONS.—

1 “(A) RISK PREMIUM.—A contribution pay-
2 ment shall be reduced by the amount of the liti-
3 gation risk premium under subsection (n)(5)
4 that would apply to a settlement by the alloca-
5 tion party concerning the response action, based
6 on the total allocated shares of the parties that
7 have not reached a settlement with the United
8 States.

9 “(B) TIMING.—

10 “(i) IN GENERAL.—A contribution
11 payment shall be paid out during the
12 course of the response action that was the
13 subject of the allocation, using reasonable
14 progress payments at significant mile-
15 stones.

16 “(ii) CONSTRUCTION.—Contribution
17 for the construction portion of the work
18 shall be paid out not later than 120 days
19 after the date of completion of the con-
20 struction.

21 “(C) EQUITABLE OFFSET.—A contribution
22 payment is subject to equitable offset or
23 recoupment by the Administrator at any time if
24 the allocation party fails to perform the work in
25 a proper and timely manner.

1 “(D) INDEPENDENT AUDITING.—The Ad-
2 ministrator may require independent auditing
3 of any claim for contribution.

4 “(E) WAIVER.—An allocation party seek-
5 ing contribution waives the right to seek recov-
6 ery of response costs in connection with the re-
7 sponse action, or contribution toward the re-
8 sponse costs, from any other person.

9 “(F) BAR.—An administrative order shall
10 be in lieu of any action by the United States or
11 any other person against the allocation party
12 for recovery of response costs in connection
13 with the response action, or for contribution to-
14 ward the costs of the response action.

15 “(G) POST-SETTLEMENT LITIGATION.—

16 “(1) IN GENERAL.—Subject to subsections (m)
17 and (n), and on the expiration of the moratorium
18 period under subsection (e)(4), the Administrator
19 may commence an action under section 107 against
20 an allocation party that has not resolved the liability
21 of the party to the United States following allocation
22 and may seek to recover response costs not recov-
23 ered through settlements with other persons.

24 “(2) ORPHAN SHARE.—The recoverable costs
25 shall include any orphan share determined under

1 subsection (h), but shall not include any share allo-
2 cated to a Federal, State, or local governmental
3 agency, department, or instrumentality.

4 “(3) IMPLADER.—A defendant in an action
5 under paragraph (1) may implead an allocation
6 party only if the allocation party did not resolve li-
7 ability to the United States.

8 “(4) CERTIFICATION.—In commencing or main-
9 taining an action under section 107 against an allo-
10 cation party after the expiration of the moratorium
11 period under subsection (e)(4), the Attorney General
12 shall certify in the complaint that the defendant
13 failed to settle the matter based on the share that
14 the allocation report assigned to the party.

15 “(5) RESPONSE COSTS.—

16 “(A) ALLOCATION PROCEDURE.—The cost
17 of implementing the allocation procedure under
18 this section, including reasonable fees and ex-
19 penses of the allocator, shall be considered as a
20 necessary response cost.

21 “(B) FUNDING OF ORPHAN SHARES.—The
22 cost attributable to funding an orphan share
23 under this section—

24 “(i) shall be considered as a necessary
25 cost of response cost; and

1 “(ii) shall be recoverable in accord-
 2 ance with section 107 only from an alloca-
 3 tion party that does not reach a settlement
 4 and does not receive an administrative
 5 order under subsection (n) or (p).

6 “(r) NEW INFORMATION.—

7 “(1) IN GENERAL.—An allocation under this
 8 section shall be final, except that any settling party,
 9 including the United States, may seek a new alloca-
 10 tion with respect to the response action that was the
 11 subject of the settlement by presenting the Adminis-
 12 trator with clear and convincing evidence that—

13 “(A) the allocator did not have information
 14 concerning—

15 “(i) 35 percent or more of the mate-
 16 rials containing hazardous substances at
 17 the facility; or

18 “(ii) 1 or more persons not previously
 19 named as an allocation party that contrib-
 20 uted 15 percent or more of materials con-
 21 taining hazardous substances at the facil-
 22 ity; and

23 “(B) the information was discovered subse-
 24 quent to the issuance of the report by the allo-
 25 cator.

1 “(2) NEW ALLOCATION.—Any new allocation of
2 responsibility—

3 “(A) shall proceed in accordance with this
4 section;

5 “(B) shall be effective only after the date
6 of the new allocation report; and

7 “(C) shall not alter or affect the original
8 allocation with respect to any response costs
9 previously incurred.

10 “(s) DISCRETION OF ALLOCATOR.—A contract by
11 which the Administrator retain an allocator shall give the
12 allocator broad discretion to conduct the allocation process
13 in a fair, efficient, and impartial manner, and the Admin-
14 istrator shall not issue any rule or order that limits the
15 discretion of the allocator in the conduct of the allocation.

16 “(t) ILLEGAL ACTIVITIES.—Section 107 (o), (p), (q),
17 (r), (s), (t), (u), (v), and (w) and section 112(g) shall not
18 apply to any person whose liability for response costs
19 under section 107(a)(1) is otherwise based on any act,
20 omission, or status that is determined by a court or ad-
21 ministrative body of competent jurisdiction, within the ap-
22 plicable statute of limitation, to have been a violation of
23 any Federal or State law pertaining to the treatment, stor-
24 age, disposal, or handling of hazardous substances if the
25 violation pertains to a hazardous substance, the release

1 or threat of release of which caused the incurrence of re-
 2 sponse costs at the vessel or facility.”.

3 **SEC. 504. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

4 (a) LIABILITY OF CONTRACTORS.—Section 101(20)
 5 of the Comprehensive Environmental Response, Com-
 6 pensation, and Liability Act of 1980 (42 U.S.C. 9601(20))
 7 is amended by adding at the end the following:

8 “(H) LIABILITY OF CONTRACTORS.—

9 “(i) IN GENERAL.—The term ‘owner
 10 or operator’ does not include a response
 11 action contractor (as defined in section
 12 119(c)).

13 “(ii) LIABILITY LIMITATIONS.—A per-
 14 son described in clause (i) shall not, in the
 15 absence of negligence by the person, be
 16 considered to—

17 “(I) cause or contribute to any
 18 release or threatened release of a haz-
 19 ardous substance, pollutant, or con-
 20 taminant;

21 “(II) arrange for disposal or
 22 treatment of a hazardous substance,
 23 pollutant, or contaminant;

24 “(III) arrange with a transporter
 25 for transport or disposal or treatment

1 of a hazardous substance, pollutant,
2 or contaminant; or

3 “(IV) transport a hazardous sub-
4 stance, pollutant, or contaminant.

5 “(iii) EXCEPTION.—This subpara-
6 graph does not apply to a person poten-
7 tially responsible under section 106 or 107
8 other than a person associated solely with
9 the provision of a response action or a
10 service or equipment ancillary to a re-
11 sponse action.”.

12 (b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—
13 Section 119(a) of the Comprehensive Environmental Re-
14 sponse, Compensation, and Liability Act of 1980 (42
15 U.S.C. 9619(a)) is amended—

16 (1) in paragraph (1) by striking “title or under
17 any other Federal law” and inserting “title or under
18 any other Federal or State law”; and

19 (2) in paragraph (2)—

20 (A) by striking “(2) NEGLIGENCE, ETC.—
21 Paragraph (1)” and inserting the following:

22 “(2) NEGLIGENCE AND INTENTIONAL MIS-
23 CONDUCT; APPLICATION OF STATE LAW.—

24 “(A) NEGLIGENCE AND INTENTIONAL MIS-
25 CONDUCT.—

1 “(i) IN GENERAL.—Paragraph (1)”;

2 and

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

4 “(ii) STANDARD.—Conduct under
5 clause (i) shall be evaluated based on the
6 generally accepted standards and practices
7 in effect at the time and place at which the
8 conduct occurred.

9 “(iii) PLAN.—An activity performed
10 in accordance with a plan that was ap-
11 proved by the Administrator shall not be
12 considered to constitute negligence under
13 clause (i).

14 “(B) APPLICATION OF STATE LAW.—Para-
15 graph (1) shall not apply in determining the li-
16 ability of a response action contractor under the
17 law of a State if the State has adopted by stat-
18 ute a law determining the liability of a response
19 action contractor.”.

20 (e) EXTENSION OF INDEMNIFICATION AUTHORITY.—
21 Section 119(e)(1) of the Comprehensive Environmental
22 Response, Compensation, and Liability Act of 1980 (42
23 U.S.C. 9619(e)(1)) is amended by adding at the end the
24 following: “The agreement may apply to a claim for neg-
25 ligence arising under Federal or State law.”.

1 (d) INDEMNIFICATION DETERMINATIONS.—Section
2 119(e) of the Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980 (42 U.S.C.
4 9619(e)) is amended by striking paragraph (4) and insert-
5 ing the following:

6 “(4) DECISION TO INDEMNIFY.—

7 “(A) IN GENERAL.—For each response ac-
8 tion contract for a vessel or facility, the Admin-
9 istrator shall make a decision whether to enter
10 into an indemnification agreement with a re-
11 sponse action contractor.

12 “(B) STANDARD.—The Administrator shall
13 enter into an indemnification agreement to the
14 extent that the potential liability (including the
15 risk of harm to public health, safety, environ-
16 ment, and property) involved in a response ac-
17 tion exceed or are not covered by insurance
18 available to the contractor at the time at which
19 the response action contract is entered into that
20 is likely to provide adequate long-term protec-
21 tion to the public for the potential liability on
22 fair and reasonable terms (including consider-
23 ation of premium, policy terms, and
24 deductibles).

1 “(C) DILIGENT EFFORTS.—The Adminis-
2 trator shall enter into an indemnification agree-
3 ment only if the Administrator determines that
4 the response action contractor has made dili-
5 gent efforts to obtain insurance coverage from
6 non-Federal sources to cover potential liabil-
7 ities.

8 “(D) CONTINUED DILIGENT EFFORTS.—
9 An indemnification agreement shall require the
10 response action contractor to continue, not
11 more frequently than annually, to make diligent
12 efforts to obtain insurance coverage from non-
13 Federal sources to cover potential liabilities.

14 “(E) LIMITATIONS ON INDEMNIFICA-
15 TION.—An indemnification agreement provided
16 under this subsection shall include deductibles
17 and shall place limits on the amount of indem-
18 nification made available in amounts deter-
19 mined by the contracting agency to be appro-
20 priate in light of the unique risk factors associ-
21 ated with the cleanup activity.”.

22 (e) INDEMNIFICATION FOR THREATENED RE-
23 LEASES.—Section 119(e)(5)(A) of the Comprehensive En-
24 vironmental Response, Compensation, and Liability Act of
25 1980 (42 U.S.C. 9619(e)(5)(A)) is amended by inserting

1 “or threatened release” after “release” each place it ap-
2 pears.

3 (f) EXTENSION OF COVERAGE TO ALL RESPONSE
4 ACTIONS.—Section 119(e)(1) of the Comprehensive Envi-
5 ronmental Response, Compensation, and Liability Act of
6 1980 (42 U.S.C. 9619(e)(1)) is amended—

7 (1) in subparagraph (D) by striking “carrying
8 out an agreement under section 106 or 122”; and

9 (2) in the matter following subparagraph (D)—

10 (A) by striking “any remedial action under
11 this Act at a facility listed on the National Pri-
12 orities List, or any removal under this Act,”
13 and inserting “any response action,”; and

14 (B) by inserting before the period at the
15 end the following: “or to undertake appropriate
16 action necessary to protect and restore any nat-
17 ural resource damaged by the release or threat-
18 ened release”.

19 (g) DEFINITION OF RESPONSE ACTION CONTRAC-
20 TOR.—Section 119(e)(2)(A)(i) of the Comprehensive Envi-
21 ronmental Response, Compensation, and Liability Act of
22 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking
23 “and is carrying out such contract” and inserting “cov-
24 ered by this section and any person (including any sub-
25 contractor) hired by a response action contractor”.

1 (h) SURETY BONDS.—Section 119 of the Comprehen-
 2 sive Environmental Response, Compensation, and Liabil-
 3 ity Act of 1980 (42 U.S.C. 9619) is amended—

4 (1) in subsection (e)(2)(C) by striking “, and
 5 before January 1, 1996,”; and

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

8 (i) NATIONAL UNIFORM STATUTE OF REPOSE.—Sec-
 9 tion 119 of the Comprehensive Environmental Response,
 10 Compensation, and Liability Act of 1980 (42 U.S.C.
 11 9619) is amended by adding at the end the following:

12 “(h) LIMITATION ON ACTIONS AGAINST RESPONSE
 13 ACTION CONTRACTORS.—

14 “(1) IN GENERAL.—No action may be brought
 15 as a result of the performance of services under a
 16 response contract against a response action contrac-
 17 tor after the date that is 7 years after the date of
 18 completion of work at any facility under the contract
 19 to recover—

20 “(A) injury to property, real or personal;

21 “(B) personal injury or wrongful death;

22 “(C) other expenses or costs arising out of
 23 the performance of services under the contract;

24 or

1 “(D) contribution or indemnity for dam-
2 ages sustained as a result of an injury de-
3 scribed in subparagraphs (A) through (C).

4 “(2) EXCEPTION.—Paragraph (1) does not bar
5 recovery for a claim caused by the conduct of the re-
6 sponse action contractor that is grossly negligent or
7 that constitutes intentional misconduct.

8 “(3) INDEMNIFICATION.—This subsection does
9 not affect any right of indemnification that a re-
10 sponse action contractor may have under this section
11 or may acquire by contract with any person.

12 “(i) STATE STANDARDS OF REPOSE.—Subsections
13 (a)(1) and (h) shall not apply in determining the liability
14 of a response action contractor if the State has enacted
15 a statute of repose determining the liability of a response
16 action contractor.”.

17 **SEC. 505. RELEASE OF EVIDENCE.**

18 (a) TIMELY ACCESS TO INFORMATION FURNISHED
19 UNDER SECTION 104(c).—Section 104(c)(7)(A) of the
20 Comprehensive Environmental Response, Compensation,
21 and Liability Act of 1980 (42 U.S.C. 9604(c)(7)(A)) is
22 amended by inserting after “shall be available to the pub-
23 lic” the following: “not later than 14 days after the
24 records, reports, or information is obtained”.

1 (b) REQUIREMENT TO PROVIDE POTENTIALLY RE-
2 RESPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

3 (1) ABATEMENT ACTIONS.—Section 106(a) of
4 the Comprehensive Environmental Response, Com-
5 pensation, and Liability Act of 1980 (42 U.S.C.
6 9606(a)) is amended—

7 (A) by striking “(a) In addition” and in-
8 serting the following: “(a) ORDER.—”

9 “(1) IN GENERAL.—In addition”; and

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

11 “(2) CONTENTS OF ORDER.—An order under
12 paragraph (1) shall provide information concerning
13 the evidence that indicates that each element of li-
14 ability described in section 107(a)(1) (A), (B), (C),
15 and (D), as applicable, is present.”.

16 (2) SETTLEMENTS.—Section 122(e)(1) of the
17 Comprehensive Environmental Response, Compensa-
18 tion, and Liability Act of 1980 (42 U.S.C.
19 9622(e)(1)) is amended by inserting after subpara-
20 graph (C) the following:

21 “(D) For each potentially responsible
22 party, the evidence that indicates that each ele-
23 ment of liability contained in section 107(a)(1)
24 (A), (B), (C), and (D), as applicable, is
25 present.”.

1 **SEC. 506. CONTRIBUTION PROTECTION.**

2 Section 113(f)(2) of the Comprehensive Environ-
3 mental Response, Compensation, and Liability Act of
4 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sen-
5 tence by inserting “or cost recovery” after “contribution”.

6 **SEC. 507. TREATMENT OF RELIGIOUS, CHARITABLE, SCI-**
7 **ENTIFIC, AND EDUCATIONAL ORGANIZA-**
8 **TIONS AS OWNERS OR OPERATORS.**

9 (a) **DEFINITION.**—Section 101(20) of the Com-
10 prehensive Environmental Response, Compensation, and
11 Liability Act of 1980 (42 U.S.C. 9601(20)) (as amended
12 by section 502(a)) is amended by adding at the end the
13 following:

14 “(I) **RELIGIOUS, CHARITABLE, SCIENTIFIC,**
15 **AND EDUCATIONAL ORGANIZATIONS.**—The term
16 ‘owner or operator’ includes an organization de-
17 scribed in section 501(c)(3) of the Internal Rev-
18 enue Code of 1986 that is organized and oper-
19 ated exclusively for religious, charitable, sci-
20 entific, or educational purposes and that holds
21 legal or equitable title to a vessel or facility.”

22 (b) **LIMITATION ON LIABILITY.**—Section 107 of the
23 Comprehensive Environmental Response, Compensation,
24 and Liability Act of 1980 (42 U.S.C. 9607) (as amended
25 by section 501(b)) is amended by adding at the end the
26 following:

1 “(a) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND
2 EDUCATIONAL ORGANIZATIONS.—

3 “(1) LIMITATION ON LIABILITY.—Subject to
4 paragraph (2), if an organization described in sec-
5 tion 101(20)(I) holds legal or equitable title to a ves-
6 sel or facility as a result of a charitable gift that is
7 allowable as a deduction under section 170, 2055, or
8 2522 of the Internal Revenue Code of 1986 (deter-
9 mined without regard to dollar limitations), the li-
10 ability of the organization shall be limited to the
11 lesser of the fair market value of the vessel or facil-
12 ity or the actual proceeds of the sale of the vessel
13 or facility received by the organization.

14 “(2) CONDITIONS.—In order for an organiza-
15 tion described in section 101(20)(I) to be eligible for
16 the limited liability described in paragraph (1), the
17 organization shall—

18 “(A) provide full cooperation, assistance,
19 and vessel or facility access to persons author-
20 ized to conduct response actions at the vessel or
21 facility, including the cooperation and access
22 necessary for the installation, preservation of
23 integrity, operation, and maintenance of any
24 complete or partial response action at the vessel
25 or facility;

1 “(B) provide full cooperation and assist-
2 ance to the United States in identifying and lo-
3 cating persons who recently owned, operated, or
4 otherwise controlled activities at the vessel or
5 facility;

6 “(C) establish by a preponderance of the
7 evidence that all active disposal of hazardous
8 substances at the vessel or facility occurred be-
9 fore the organization acquired the vessel or fa-
10 cility; and

11 “(D) establish by a preponderance of the
12 evidence that the organization did not cause or
13 contribute to a release or threatened release of
14 hazardous substances at the vessel or facility.

15 “(3) LIMITATION.—Nothing in this subsection
16 affects the liability of a person other than a person
17 described in section 101(20)(I) that meets the condi-
18 tions specified in paragraph (2).”.

19 **SEC. 508. COMMON CARRIERS.**

20 Section 107(b)(3) of the Comprehensive Environ-
21 mental Response, Compensation, and Liability Act of
22 1980 (42 U.S.C. 9607(b)(3)) is amended by striking “a
23 published tariff and acceptance” and inserting “a con-
24 tract”.

1 **SEC. 509. LIMITATION ON LIABILITY OF RAILROAD OWN-**
 2 **ERS.**

3 Section 107 of the Comprehensive Environmental Re-
 4 sponse, Compensation, and Liability Act of 1980 (42
 5 U.S.C. 9607) (as amended by section 507(b)) is amended
 6 by adding at the end the following:

7 “(v) **LIMITATION ON LIABILITY OF RAILROAD OWN-**
 8 **ERS.**—Notwithstanding subsection (a)(1), a person that
 9 does not impede the performance of a response action or
 10 natural resource restoration shall not be liable under this
 11 Act to the extent that liability is based solely on the status
 12 of the person as a railroad owner or operator of a spur
 13 track, including a spur track over land subject to an ease-
 14 ment, to a facility that is owned or operated by a person
 15 that is not affiliated with the railroad owner or operator,
 16 if—

17 “(1) the spur track provides access to a main
 18 line or branch line track that is owned or operated
 19 by the railroad;

20 “(2) the spur track is 10 miles long or less; and

21 “(3) the railroad owner or operator does not
 22 cause or contribute to a release or threatened release
 23 at the spur track.”.

24 **SEC. 510. LIABILITY OF RECYCLERS.**

25 (a) **DEFINITIONS.**—Section 101 of the Comprehen-
 26 sive Environmental Response, Compensation, and Liabil-

1 ity Act of 1980 (42 U.S.C. 9601) (as amended by section
2 501(a)) is amended by adding at the end the following:

3 “(47) RECYCLABLE MATERIAL.—The term ‘re-
4 cyclable material’—

5 “(A) means—

6 “(i) scrap glass, paper, plastic, rub-
7 ber, or textile;

8 “(ii) scrap metal; and

9 “(iii) a spent battery; and

10 “(B) includes small amounts of any type of
11 material that is incident to or adherent to ma-
12 terial described in subparagraph (A) as a result
13 of the normal and customary use of the mate-
14 rial prior to the exhaustion of the useful life of
15 the material.

16 “(48) SCRAP METAL.—The term ‘scrap
17 metal’—

18 “(A) means—

19 “(i) scrap metal (as that term is de-
20 fined by the Administrator for purposes of
21 the Solid Waste Disposal Act (42 U.S.C.
22 6901 et seq.) in section 261.1(c)(6) of title
23 40, Code of Federal Regulations, or any
24 successor regulation); and

1 “(ii) a metal byproduct (such as slag,
2 skimming, or dross) that is not 1 of the
3 primary products of, and is not solely or
4 separately produced by, a production pro-
5 cess; but

6 “(B) does not include—

7 “(i) any steel shipping container
8 that—

9 “(I) has (or, when intact, had) a
10 capacity of not less than 30 and not
11 more than 3,000 liters; and

12 “(II) has any hazardous sub-
13 stance contained in or adherent to it
14 (not including any small pieces of
15 metal that may remain after a haz-
16 ardous substance has been removed
17 from the container or any alloy or
18 other material that may be chemically
19 or metallurgically bonded in the steel
20 itself); or

21 “(ii) any material described in sub-
22 paragraph (A) that the Administrator may
23 by regulation exclude from the meaning of
24 the term based on a finding that inclusion
25 of the material within the meaning of the

1 term would result in a threat to human
2 health or the environment.”.

3 (b) LIABILITY OF RECYCLERS.—Section 107 of the
4 Comprehensive Environmental Response, Compensation,
5 and Liability Act of 1980 (42 U.S.C. 9607) (as amended
6 by section 509) is amended by adding at the end the fol-
7 lowing:

8 “(w) LIABILITY OF RECYCLERS.—

9 “(1) APPLICABILITY OF SUBSECTION.—Subject
10 to paragraph (10), this subsection shall be applied to
11 determine the liability of any person with respect to
12 a transaction engaged in before, on, or after the
13 date of enactment of this subsection.

14 “(2) RELIEF FROM LIABILITY.—Except as pro-
15 vided in paragraph (6), a person that arranges for
16 the recycling of recyclable material shall not be liable
17 under subsection (a)(1) (C) or (D).

18 “(3) SCRAP GLASS, PAPER, PLASTIC, RUBBER,
19 OR TEXTILE.—For the purposes of paragraph (2), a
20 person shall be considered to arrange for the recy-
21 cling of scrap glass, paper, plastic, rubber, or textile
22 if the person sells or otherwise arranges for the recy-
23 cling of the recyclable material in a transaction in
24 which, at the time of the transaction—

1 “(A) the recyclable material meets a com-
2 mercial specification;

3 “(B) a market exists for the recyclable ma-
4 terial;

5 “(C) a substantial portion of the recyclable
6 material is made available for use as a feed-
7 stock for the manufacture of a new saleable
8 product; and

9 “(D)(i) the recyclable material is a replace-
10 ment or substitute for a virgin raw material; or

11 “(ii) the product to be made from the recy-
12 clable material is a replacement or substitute
13 for a product made, in whole or in part, from
14 a virgin raw material.

15 “(4) SCRAP METAL.—For the purposes of para-
16 graph (2), a person shall be considered to arrange
17 for the recycling of scrap metal if the person sells
18 or otherwise arranges for the recycling of the scrap
19 metal in a transaction in which, at the time of the
20 transaction—

21 “(A) the conditions stated in subpara-
22 graphs (A) through (D) of paragraph (3) are
23 met; and

24 “(B) in the case of a transaction that oc-
25 curs after the effective date of a standard, es-

1 tablISHED by the Administrator by regulation
2 under the Solid Waste Disposal Act (42 U.S.C.
3 6901 et seq.); regarding the storage, transport,
4 management, or other activity associated with
5 the recycling of scrap metal, the person is in
6 compliance with the standard.

7 “(5) SPENT BATTERIES.—

8 “(A) IN GENERAL.—For the purposes of
9 paragraph (1), a person shall be considered to
10 arrange for the recycling of a spent lead-acid
11 battery, nickel-cadmium battery, or other bat-
12 tery if the person sells or otherwise arranges for
13 the recycling of the battery in a transaction in
14 which, at the time of the transaction—

15 “(i) the conditions stated in subpara-
16 graphs (A) through (D) of paragraph (3)
17 are met;

18 “(ii) the person does not reclaim the
19 valuable components of the battery; and

20 “(iii) in the case of a transaction that
21 occurs after the effective date of a stand-
22 ard, established by the Administrator by
23 regulation under authority of the Solid
24 Waste Disposal Act (42 U.S.C. 6901 et
25 seq.) or the Mercury-Containing and Re-

1 chargeable Battery Management Act), re-
 2 garding the storage, transport, manage-
 3 ment, or other activity associated with the
 4 recycling of batteries, the person is in com-
 5 pliance with the standard.

6 “(B) TOLLING ARRANGEMENTS.—A person
 7 that, by contract, arranges for reclamation and
 8 smelting of a battery by a third party not a
 9 party to a transaction under subparagraph (A)
 10 and receives from the third party material re-
 11 claimed from the battery shall not, by reason of
 12 the receipt of the reclaimed material, be consid-
 13 ered to reclaim the valuable components of the
 14 battery for purposes of subparagraph (A)(ii).

15 “(6) GROUNDS FOR ESTABLISHING LIABIL-
 16 ITY.—

17 “(A) IN GENERAL.—A person that ar-
 18 ranges for the recycling of recyclable material
 19 that would be liable under subsection (a)(1) (C)
 20 or (D) but for paragraph (2) shall be liable not-
 21 withstanding that paragraph if—

22 “(i) the person has an objectively rea-
 23 sonable basis to believe at the time of the
 24 recycling transaction that—

1 “(I) the recyclable material will
2 not be recycled;

3 “(II) the recyclable material will
4 be burned as fuel, for energy recovery
5 or incineration;

6 “(III) the consuming facility is
7 not in compliance with a substantive
8 provision (including a requirement to
9 obtain a permit for handling, process-
10 ing, reclamation, or other manage-
11 ment activity associated with recycla-
12 ble material) of any Federal, State, or
13 local environmental law (including a
14 regulation), or a compliance order or
15 decree issued under such a law, appli-
16 cable to the handling, processing, rec-
17 lamation, or other management activ-
18 ity associated with the recyclable ma-
19 terial; or

20 “(IV) a hazardous substance has
21 been added to the recyclable material
22 for purposes other than processing for
23 recycling;

24 “(ii) the person fails to exercise rea-
25 sonable care with respect to the manage-

1 ment or handling of the recyclable material
2 (for which purpose a failure to adhere to
3 customary industry practices current at
4 the time of the recycling transaction de-
5 signed to minimize, through source control,
6 contamination of the recyclable material by
7 hazardous substances shall be considered
8 to be a failure to exercise reasonable care);
9 or

10 “(iii) any item of the recyclable mate-
11 rial contains—

12 “(I) polychlorinated biphenyls at
13 a concentration in excess of 50 parts
14 per million (or any different con-
15 centration specified in any applicable
16 standard that may be issued under
17 other Federal law after the date of en-
18 actment of this subsection); or

19 “(II) in the case of a transaction
20 involving scrap paper, any concentra-
21 tion of a hazardous substance that the
22 Administrator determines by regula-
23 tion, issued after the date of enact-
24 ment of this subsection and before the
25 date of the transaction, to be likely to

1 cause significant risk to human health
2 or the environment as a result of its
3 inclusion in the paper recycling pro-
4 cess.

5 “(B) OBJECTIVELY REASONABLE BASIS
6 FOR BELIEF.—Whether a person has an objec-
7 tively reasonable basis for belief described in
8 subparagraph (A)(i) shall be determined using
9 criteria that include—

10 “(i) the size of the person’s business;

11 “(ii) customary industry practices (in-
12 cluding practices designed to minimize,
13 through source control, contamination of
14 recyclable material by hazardous sub-
15 stances);

16 “(iii) the price paid or received in the
17 recycling transaction; and

18 “(iv) the ability of the person to de-
19 tect the nature of the consuming facility’s
20 operations concerning handling, processing,
21 or reclamation of the recyclable material or
22 other management activities associated
23 with the recyclable material.

24 “(7) REGULATIONS.—The Administrator may
25 issue a regulation that clarifies the meaning of any

1 term used in this subsection or by any other means
2 makes clear the application of this subsection to any
3 person.

4 “(8) LIABILITY FOR ATTORNEY’S FEES FOR
5 CERTAIN ACTIONS.—A person that, after the date of
6 enactment of this subsection, commences a civil ac-
7 tion in contribution against a person that is not lia-
8 ble by operation of this subsection shall be liable to
9 that person for all reasonable costs of defending the
10 action, including all reasonable attorney’s fees and
11 expert witness fees.

12 “(9) RELATIONSHIP TO LIABILITY UNDER
13 OTHER LAWS.—Nothing in this subsection shall af-
14 fect—

15 “(A) liability under any other Federal,
16 State, or local law (including a regulation); or

17 “(B) the authority of the Administrator to
18 issue regulations under the Solid Waste Dis-
19 posal Act (42 U.S.C. 6901 et seq.) or any other
20 law.

21 “(10) TRANSITION RULES.—

22 “(A) DECREE OR ORDER ENTERED PRIOR
23 TO JANUARY 1, 1997.—This subsection shall not
24 affect any judicial decree or order that was en-
25 tered or any administrative order that became

1 effective prior to January 1, 1997, unless, as of
2 the date of enactment of this subsection, the ju-
3 dicial decree or order remained subject to ap-
4 peal or the administrative order remained sub-
5 ject to judicial review.

6 “(B) DECREE OR ORDER ENTERED ON OR
7 AFTER JANUARY 1, 1997.—Any consent decree
8 with the United States, administrative order, or
9 judgment in favor of the United States that
10 was entered, or in the case of an administrative
11 order, became effective, on or after January 1,
12 1997, and before the date of enactment of this
13 subsection shall be reopened at the request of
14 any party to the recycling transaction for a de-
15 termination of the party’s liability to the United
16 States based on this subsection.

17 “(C) EFFECT ON NONRECYCLERS.—

18 “(i) COSTS BORNE BY THE UNITED
19 STATES.—All costs attributable to a recy-
20 cling transaction that, absent this sub-
21 section, would be borne by a person that is
22 relieved of liability (in whole or in part) by
23 this subsection shall be borne by the
24 United States, to the extent that the per-
25 son is relieved of liability.

1 “(ii) NO RECOVERY FROM THE
2 UNITED STATES.—Notwithstanding clause
3 (i); no person shall be entitled to recover
4 any sums paid to the United States prior
5 to the date of enactment of this subsection
6 in satisfaction of any liability attributable
7 to a recycling transaction.

8 “(D) CONTRIBUTION AMONG PARTIES TO
9 RECYCLING TRANSACTIONS.—Notwithstanding
10 the other provisions of this subsection, a person
11 that is relieved of liability by this subsection,
12 but incurred response costs for a response ac-
13 tion taken prior to the date of enactment of this
14 subsection, may bring a civil action for con-
15 tribution for the costs against—

16 “(i) any person that is liable under
17 section 107(a)(1) (A) or (B); or

18 “(ii) any person that, before the date
19 of enactment of this subsection—

20 “(I) received and failed to comply
21 with an administrative order issued
22 under section 104 or 106; or

23 “(II) received and did not accept
24 a written offer from the United States

1 to enter into a consent decree or ad-
 2 ministrative order.”.

3 **TITLE VI—FEDERAL FACILITIES**

4 **SEC. 601. TRANSFER OF AUTHORITIES.**

5 Section 120 of the Comprehensive Environmental Re-
 6 sponse, Compensation, and Liability Act of 1980 (42
 7 U.S.C. 9620) is amended by striking subsection (g) and
 8 inserting the following:

9 “(g) **TRANSFER OF AUTHORITIES.**—

10 “(1) **DEFINITIONS.**—In this section:

11 “(A) **INTERAGENCY AGREEMENT.**—The
 12 term ‘interagency agreement’ means an inter-
 13 agency agreement under this section.

14 “(B) **TRANSFER AGREEMENT.**—The term
 15 ‘transfer agreement’ means a transfer agree-
 16 ment under paragraph (3).

17 “(C) **TRANSFeree STATE.**—The term
 18 ‘transferee State’ means a State to which au-
 19 thorities have been transferred under a transfer
 20 agreement.

21 “(2) **STATE APPLICATION FOR TRANSFER OF**
 22 **AUTHORITIES.**—A State may apply to the Adminis-
 23 trator to exercise the authorities vested in the Ad-
 24 ministrator under this Act at any facility located in
 25 the State that is—

1 “(A) owned or operated by any depart-
2 ment, agency, or instrumentality of the United
3 States (including the executive, legislative, and
4 judicial branches of government); and

5 “(B) listed on the National Priorities List.

6 ~~“(3) TRANSFER OF AUTHORITIES.—~~

7 ~~“(A) DETERMINATIONS.—~~The Adminis-
8 trator shall enter into a transfer agreement to
9 transfer to a State the authorities described in
10 paragraph (2) if the Administrator determines
11 that—

12 ~~“(i) the State has the ability to exer-~~
13 ~~cise such authorities in accordance with~~
14 ~~this Act, including adequate legal author-~~
15 ~~ity, financial and personnel resources, or-~~
16 ~~ganization, and expertise;~~

17 ~~“(ii) the State has demonstrated expe-~~
18 ~~rience in exercising similar authorities;~~

19 ~~“(iii) the State has agreed to be~~
20 ~~bound by all Federal requirements and~~
21 ~~standards under section 133 governing the~~
22 ~~design and implementation of the facility~~
23 ~~evaluation, remedial action plan, and reme-~~
24 ~~dial design; and~~

1 “(iv) the State has agreed to abide by
2 the terms of any interagency agreement or
3 agreements covering the Federal facility or
4 facilities with respect to which authorities
5 are being transferred in effect at the time
6 of the transfer of authorities.

7 “(B) CONTENTS OF TRANSFER AGREE-
8 MENT.—A transfer agreement—

9 “(i) shall incorporate the determina-
10 tions of the Administrator under subpara-
11 graph (A); and

12 “(ii) in the case of a transfer agree-
13 ment covering a facility with respect to
14 which there is no interagency agreement
15 that specifies a dispute resolution process,
16 shall require that within 120 days after the
17 effective date of the transfer agreement,
18 the State shall agree with the head of the
19 Federal department, agency, or instrumen-
20 tality that owns or operates the facility on
21 a process for resolution of any disputes be-
22 tween the State and the Federal depart-
23 ment, agency, or instrumentality regarding
24 the selection of a remedial action for the
25 facility; and

1 “(iii) shall not impose on the trans-
2 feree State any term or condition other
3 than that the State meet the requirements
4 of subparagraph (A).

5 “(4) EFFECT OF TRANSFER.—

6 “(A) STATE AUTHORITIES.—A transferee
7 State—

8 “(i) shall not be deemed to be an
9 agent of the Administrator but shall exer-
10 cise the authorities transferred under a
11 transfer agreement in the name of the
12 State; and

13 “(ii) shall have exclusive authority to
14 exercise authorities that have been trans-
15 ferred.

16 “(B) EFFECT ON INTERAGENCY AGREE-
17 MENTS.—Nothing in this subsection shall re-
18 quire, authorize, or permit the modification or
19 revision of an interagency agreement covering a
20 facility with respect to which authorities have
21 been transferred to a State under a transfer
22 agreement (except for the substitution of the
23 transferee State for the Administrator in the
24 terms of the interagency agreement, including
25 terms stating obligations intended to preserve

1 the confidentiality of information) without the
2 written consent of the Governor of the State
3 and the head of the department, agency, or in-
4 strumentality.

5 ~~“(5) SELECTED REMEDIAL ACTION.—~~The reme-
6 dial action selected for a facility under section 133
7 by a transferee State shall constitute the only reme-
8 dial action required to be conducted at the facility,
9 and the transferee State shall be precluded from en-
10 forcing any other remedial action requirement under
11 Federal or State law, except for—

12 ~~“(A) any corrective action under the Solid~~
13 ~~Waste Disposal Act (42 U.S.C. 6901 et seq.)~~
14 ~~that was initiated prior to the date of enact-~~
15 ~~ment of this subsection; and~~

16 ~~“(B) any remedial action in excess of re-~~
17 ~~medial action under section 133 that the State~~
18 ~~selects in accordance with paragraph (10).~~

19 ~~“(6) DEADLINE.—~~

20 ~~“(A) IN GENERAL.—~~The Administrator
21 shall make a determination on an application by
22 a State under paragraph (2) not later than 120
23 days after the date on which the Administrator
24 receives the application.

1 “(B) FAILURE TO ACT.—If the Adminis-
2 trator does not issue a notice of approval or no-
3 tice of disapproval of an application within the
4 time period stated in subparagraph (A), the ap-
5 plication shall be deemed to have been granted.

6 “(7) RESUBMISSION OF APPLICATION.—

7 “(A) IN GENERAL.—If the Administrator
8 disapproves an application under paragraph (1),
9 the State may resubmit the application at any
10 time after receiving the notice of disapproval.

11 “(B) FAILURE TO ACT.—If the Adminis-
12 trator does not issue a notice of approval or no-
13 tice of disapproval of a resubmitted application
14 within the time period stated in paragraph
15 (6)(A), the resubmitted application shall be
16 deemed to have been granted.

17 “(8) JUDICIAL REVIEW.—The State (but no
18 other person) shall be entitled to judicial review
19 under section 113(b) of a disapproval of a resubmit-
20 ted application.

21 “(9) WITHDRAWAL OF AUTHORITIES.—The Ad-
22 ministrator may withdraw the authorities trans-
23 ferred under a transfer agreement in whole or in
24 part if the Administrator determines that the
25 State—

1 “(A) is exercising the authorities, in whole
2 or in part, in a manner that is inconsistent with
3 the requirements of this Act;

4 “(B) has violated the transfer agreement,
5 in whole or in part; or

6 “(C) no longer meets one of the require-
7 ments of paragraph (3).

8 “(10) STATE COST RESPONSIBILITY.—The
9 State may require a remedial action that exceeds the
10 remedial action selection requirements of section 121
11 if the State pays the incremental cost of implement-
12 ing that remedial action over the most cost-effective
13 remedial action that would result from the applica-
14 tion of section 133.

15 “(11) DISPUTE RESOLUTION AND ENFORCE-
16 MENT.—

17 “(A) DISPUTE RESOLUTION.—

18 “(i) FACILITIES COVERED BY BOTH A
19 TRANSFER AGREEMENT AND AN INTER-
20 AGENCY AGREEMENTS.—In the case of a
21 facility with respect to which there is both
22 a transfer agreement and an interagency
23 agreement, if the State does not concur in
24 the remedial action proposed for selection
25 by the Federal department, agency, or in-

1 strumentality, the Federal department,
2 agency, or instrumentality and the State
3 shall engage in the dispute resolution pro-
4 cess provided for in the interagency agree-
5 ment, except that the final level for resolu-
6 tion of the dispute shall be the head of the
7 Federal department, agency, or instrumen-
8 tality and the Governor of the State.

9 “(ii) FACILITIES COVERED BY A
10 TRANSFER AGREEMENT BUT NOT AN
11 INTERAGENCY AGREEMENT.—In the case
12 of a facility with respect to which there is
13 a transfer agreement but no interagency
14 agreement, if the State does not concur in
15 the remedial action proposed for selection
16 by the Federal department, agency, or in-
17 strumentality, the Federal department,
18 agency, or instrumentality and the State
19 shall engage in dispute resolution as pro-
20 vided in paragraph (3)(B)(ii) under which
21 the final level for resolution of the dispute
22 shall be the head of the Federal depart-
23 ment, agency, or instrumentality and the
24 Governor of the State.

1 “(iii) FAILURE TO RESOLVE.—If no
2 agreement is reached between the head of
3 the Federal department, agency, or instru-
4 mentality and the Governor in a dispute
5 resolution process under clause (i) or
6 (ii), the Governor of the State shall make
7 the final determination regarding selection
8 of a remedial action. To compel implemen-
9 tation of the State’s selected remedy, the
10 State must bring a civil action in United
11 States district court.

12 “(B) ENFORCEMENT.—

13 “(i) AUTHORITY; JURISDICTION.—An
14 interagency agreement with respect to
15 which there is a transfer agreement or an
16 order issued by a transferee State shall be
17 enforceable by a transferee State or by the
18 Federal department, agency, or instrumen-
19 tality that is a party to the interagency
20 agreement only in the United States dis-
21 trict court for the district in which the fa-
22 cility is located.

23 “(ii) REMEDIES.—The district court
24 shall—

1 “(I) enforce compliance with any
2 provision, standard, regulation, condi-
3 tion, requirement, order, or final de-
4 termination that has become effective
5 under the interagency agreement;

6 “(II) impose any appropriate civil
7 penalty provided for any violation of
8 an interagency agreement, not to ex-
9 ceed \$25,000 per day;

10 “(III) compel implementation of
11 the selected remedial action; and

12 “(IV) review a challenge by the
13 Federal department, agency, or in-
14 strumentality to the remedial action
15 selected by the State under this sec-
16 tion, in accordance with section
17 113(j).

18 “(12) COMMUNITY PARTICIPATION.—If, prior to
19 the date of enactment of this section, a Federal de-
20 partment, agency, or instrumentality had established
21 for a facility covered by a transfer agreement a facil-
22 ity-specific advisory board or other community-based
23 advisory group (designated as a ‘site-specific advi-
24 sory board’, a ‘restoration advisory board’, or other-
25 wise), and the Administrator determines that the

1 board or group is willing and able to perform the re-
 2 sponsibilities of a community response organization
 3 under section 117(e)(2), the board or group—

4 “(A) shall be considered to be a commu-
 5 nity response organization for the purposes of
 6 section 117 (e) (2), (3), (4), and (9), and (g)
 7 and sections 131 and 133; but

8 “(B) shall not be required to comply with,
 9 and shall not be considered to be a community
 10 response organization for the purposes of, sec-
 11 tion 117 (e) (1), (5), (6), (7), or (8) or (f).”.

12 **SEC. 602. LIMITATION ON CRIMINAL LIABILITY OF FED-**
 13 **ERAL OFFICERS, EMPLOYEES, AND AGENTS.**

14 Section 120 of the Comprehensive Environmental Re-
 15 sponse, Compensation, and Liability Act of 1980 (42
 16 U.S.C. 9620) is amended by adding at the end the follow-
 17 ing:

18 “(k) **CRIMINAL LIABILITY.**—Notwithstanding any
 19 other provision of this Act or any other law, an officer,
 20 employee, or agent of the United States shall not be held
 21 criminally liable for a failure to comply, in any fiscal year,
 22 with a requirement to take a response action at a facility
 23 that is owned or operated by a department, agency, or in-
 24 strumentality of the United States, under this Act, the

1 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any
 2 other Federal or State law unless—

3 “(1) the officer, employee, or agent has not
 4 fully performed any direct responsibility or delegated
 5 responsibility that the officer, employee, or agent
 6 had under Executive Order 12088 (42 U.S.C. 4321
 7 note) or any other delegation of authority to ensure
 8 that a request for funds sufficient to take the re-
 9 sponse action was included in the President’s budget
 10 request under section 1105 of title 31, United States
 11 Code, for that fiscal year; or

12 “(2) appropriated funds were available to pay
 13 for the response action.”.

14 **SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**
 15 **TION AT FEDERAL FACILITIES.**

16 (a) IN GENERAL.—Section 311 of the Comprehensive
 17 Environmental Response, Compensation, and Liability Act
 18 of 1980 (42 U.S.C. 9660) is amended by adding at the
 19 end the following:

20 “(h) FEDERAL FACILITIES.—

21 “(1) DESIGNATION.—The President may des-
 22 ignate a facility that is owned or operated by any de-
 23 partment, agency, or instrumentality of the United
 24 States, and that is listed or proposed for listing on
 25 the National Priorities List, to facilitate the re-

1 search, development, and application of innovative
2 technologies for remedial action at the facility.

3 “(2) USE OF FACILITIES.—

4 “(A) IN GENERAL.—A facility designated
5 under paragraph (1) shall be made available to
6 Federal departments and agencies, State de-
7 partments and agencies, and public and private
8 instrumentalities, to carry out activities de-
9 scribed in paragraph (1).

10 “(B) COORDINATION.—The Adminis-
11 trator—

12 “(i) shall coordinate the use of the fa-
13 cilities with the departments, agencies, and
14 instrumentalities of the United States; and

15 “(ii) may approve or deny the use of
16 a particular innovative technology for re-
17 medial action at any such facility.

18 “(3) CONSIDERATIONS.—

19 “(A) EVALUATION OF SCHEDULES AND
20 PENALTIES.—In considering whether to permit
21 the application of a particular innovative tech-
22 nology for remedial action at a facility des-
23 ignated under paragraph (1), the Administrator
24 shall evaluate the schedules and penalties appli-

1 eable to the facility under any agreement or
2 order entered into under section 120.

3 “(B) AMENDMENT OF AGREEMENT OR
4 ORDER.—If, after an evaluation under subpara-
5 graph (A), the Administrator determines that
6 there is a need to amend any agreement or
7 order entered into pursuant to section 120, the
8 Administrator shall comply with all provisions
9 of the agreement or order, respectively, relating
10 to the amendment of the agreement or order.”.

11 (b) REPORT TO CONGRESS.—Section 311(e) of Com-
12 prehensive Environmental Response, Compensation, and
13 Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

14 (1) by striking “At the time” and inserting the
15 following:

16 “(1) IN GENERAL.—At the time”; and

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

18 “(2) ADDITIONAL INFORMATION.—A report
19 under paragraph (1) shall include information on the
20 use of facilities described in subsection (h)(1) for the
21 research, development, and application of innovative
22 technologies for remedial activity, as authorized
23 under subsection (h).”.

1 **TITLE VII—NATURAL RESOURCE**
 2 **DAMAGES**

3 **SEC. 701. RESTORATION OF NATURAL RESOURCES.**

4 Section 107(f) of the Comprehensive Environmental
 5 Response, Compensation, and Liability Act of 1980 (42
 6 U.S.C. 9607(f)) is amended—

7 (1) by inserting “NATURAL RESOURCE DAM-
 8 AGES.—” after “(f)”;

9 (2) by striking “(1) NATURAL RESOURCES LI-
 10 ABILITY.—In the case” and inserting the following:

11 “(1) LIABILITY.—

12 “(A) IN GENERAL.—In the case”; and

13 (3) in paragraph (1)(A), as designated by para-
 14 graph (2)—

15 (A) by inserting after the fourth sentence
 16 the following: “Sums recovered by an Indian
 17 tribe as trustee under this subsection shall be
 18 available for use only for restoration, replace-
 19 ment, or acquisition of the equivalent of such
 20 natural resources by the Indian tribe. A res-
 21 toration, replacement, or acquisition conducted
 22 by the United States, a State, or an Indian
 23 tribe shall proceed only if it is technologically
 24 feasible from an engineering perspective at a
 25 reasonable cost and consistent with all known

1 or anticipated response actions at or near the
2 facility.”; and

3 (B) by striking “The measure of damages
4 in any action” and all that follows through the
5 end of the paragraph and inserting the follow-
6 ing:

7 “(B) LIMITATIONS ON LIABILITY.—

8 “(i) MEASURE OF DAMAGES.—The
9 measure of damages in any action for dam-
10 ages for injury to, destruction of, or loss of
11 natural resources shall be limited to—

12 “(I) the reasonable costs of res-
13 toration, replacement, or acquisition
14 of the equivalent of natural resources
15 that suffer injury, destruction, or loss
16 caused by a release; and

17 “(II) the reasonable costs of as-
18 sessing damages.

19 “(ii) NONUSE VALUES.—There shall
20 be no recovery under this Act for any im-
21 pairment of nonuse values.

22 “(iii) NO DOUBLE RECOVERY.—A per-
23 son that obtains a recovery of damages, re-
24 sponse costs, assessment costs, or any
25 other costs under this Act for the costs of

1 restoring an injury to or destruction or
2 loss of a natural resource (including injury
3 assessment costs) shall not be entitled to
4 recovery under this Act or any other Fed-
5 eral or State law for the same injury to or
6 destruction or loss of the natural resource.

7 ~~“(iv) RESTRICTIONS ON RECOVERY.—~~

8 ~~“(I) LIMITATION ON LOST USE~~
9 ~~DAMAGES.—There shall be no recov-~~
10 ~~ery from any person under this sec-~~
11 ~~tion for the costs of a loss of use of~~
12 ~~a natural resource for a natural re-~~
13 ~~source injury, destruction, or loss that~~
14 ~~occurred before December 11, 1980.~~

15 ~~“(II) RESTORATION, REPLACE-~~
16 ~~MENT, OR ACQUISITION.—There shall~~
17 ~~be no recovery from any person under~~
18 ~~this section for the costs of restora-~~
19 ~~tion, replacement, or acquisition of~~
20 ~~the equivalent of a natural resource if~~
21 ~~the natural resource injury, destruc-~~
22 ~~tion, or loss for which the restoration,~~
23 ~~replacement, or acquisition is sought~~
24 ~~and the release of the hazardous sub-~~
25 ~~stance from which the injury resulted~~

1 occurred wholly before December 11,
2 1980.”.

3 **SEC. 702. ASSESSMENT OF INJURY TO AND RESTORATION**
4 **OF NATURAL RESOURCES.**

5 (a) **NATURAL RESOURCE INJURY AND RESTORATION**
6 **ASSESSMENTS.**—Section 107(f)(2) of the Comprehensive
7 Environmental Response, Compensation, and Liability Act
8 of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking
9 subparagraph (C) and inserting the following:

10 “(C) **NATURAL RESOURCE INJURY AND**
11 **RESTORATION ASSESSMENT.**—

12 “(i) **REGULATION.**—A natural re-
13 source injury and restoration assessment
14 conducted for the purposes of this Act
15 made by a Federal, State, or tribal trustee
16 shall be performed, to the extent prac-
17 ticable, in accordance with—

18 “(I) the regulation issued under
19 section 301(e); and

20 “(II) generally accepted scientific
21 and technical standards and meth-
22 odologies to ensure the validity and
23 reliability of assessment results.

24 “(ii) **FACILITY-SPECIFIC CONDI-**
25 **TIONS.**—Injury assessment, restoration

1 planning, and quantification of restoration
2 costs shall, to the extent practicable, be
3 based on facility-specific information.

4 “(iii) RECOVERABLE COSTS.—A trust-
5 ee’s claim for assessment costs—

6 “(I) may include only—

7 “(aa) costs that arise from
8 work performed for the purpose
9 of assessing injury to a natural
10 resource to support a claim for
11 restoration of the natural re-
12 source; and

13 “(bb) costs that arise from
14 developing and evaluating a rea-
15 sonable range of alternative res-
16 toration measures; but

17 “(II) may not include the costs of
18 conducting any type of study relying
19 on the use of contingent valuation
20 methodology.

21 “(iv) PAYMENT PERIOD.—In a case in
22 which injury to or destruction or loss of a
23 natural resource was caused by a release
24 that occurred over a period of years, pay-
25 ment of damages shall be permitted to be

1 made over a period of years that is appro-
 2 priate in view of the period of time over
 3 which the damages occurred, the amount
 4 of the damages, the financial ability of the
 5 responsible party to pay the damages, and
 6 the time period over which and the pace at
 7 which expenditures are expected to be
 8 made for restoration, replacement, and ac-
 9 quisition activities.

10 “(v) TRUSTEE RESTORATION
 11 PLANS.—

12 “(I) ADMINISTRATIVE RECORD.—

13 Participating natural resource trust-
 14 ees may designate a lead administra-
 15 tive trustee or trustees. The lead ad-
 16 ministrative trustee may establish an
 17 administrative record on which the
 18 trustees will base the selection of a
 19 plan for restoration of a natural re-
 20 source. The restoration plan shall in-
 21 clude a determination of the nature
 22 and extent of the natural resource in-
 23 jury. The administrative record shall
 24 be made available to the public at or

1 near the facility at which the release
2 occurred.

3 “(H) PUBLIC PARTICIPATION.—

4 The Administrator shall issue a regula-
5 tion for the participation of inter-
6 ested persons, including potentially re-
7 sponsible parties, in the development
8 of the administrative record on which
9 the trustees will base selection of a
10 restoration plan and on which judicial
11 review of restoration plans will be
12 based. The procedures for participa-
13 tion shall include, at a minimum, each
14 of the requirements stated in section
15 113(k)(2)(B).”.

16 (b) REGULATIONS.—Section 301 of the Comprehen-
17 sive Environmental Response, Compensation, and Liabil-
18 ity Act of 1980 (42 U.S.C. 9651) is amended by striking
19 subsection (c) and inserting the following:

20 “(c) REGULATIONS FOR INJURY AND RESTORATION
21 ASSESSMENTS.—

22 “(1) IN GENERAL.—The President, acting
23 through Federal officials designated by the National
24 Contingency Plan under section 107(f)(2), shall
25 issue a regulation for the assessment of injury to

1 natural resources and the costs of restoration of nat-
2 ural resources (including the costs of assessment)
3 for the purposes of this Act and for determination
4 of the time periods in which payment of damages
5 will be required.

6 “(2) CONTENTS.—The regulation under para-
7 graph (1) shall—

8 “(A) specify protocols for conducting as-
9 sessments in individual cases to determine the
10 injury, destruction, or loss of natural resources;

11 “(B) identify the best available procedures
12 to determine the reasonable costs of restoration
13 and assessment;

14 “(C) take into consideration the ability of
15 a natural resource to recover naturally and the
16 availability of replacement or alternative re-
17 sources;

18 “(D) provide for the designation of a single
19 lead Federal decisionmaking trustee for each
20 facility at which an injury to natural resources
21 has occurred within 180 days after the date of
22 first notice to the responsible parties that an
23 assessment of injury and restoration alter-
24 natives will be made; and

25 “(E) set forth procedures under which—

1 “(i) all pending and potential trustees
2 identify the injured natural resources with-
3 in their respective trust responsibilities,
4 and the authority under which such re-
5 sponsibilities are established, as soon as
6 practicable after the date on which a re-
7 lease occurs;

8 “(ii) assessment of injury and restora-
9 tion alternatives will be coordinated to the
10 greatest extent practicable between the
11 lead Federal decisionmaking trustee and
12 any present or potential State or tribal
13 trustees, as applicable; and

14 “(iii) time periods for payment of
15 damages in accordance with section
16 107(f)(2)(C)(iv) shall be determined.

17 “(3) DEADLINE FOR ISSUANCE OF REGULA-
18 TION; PERIODIC REVIEW.—The regulation under
19 paragraph (1) shall be issued not later than 1 year
20 after the date of enactment of the Superfund Clean-
21 up Acceleration Act of 1997 and shall be reviewed
22 and revised as appropriate every 5 years.”.

1 **SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS**
2 **AND RESOURCE RESTORATION STANDARDS.**

3 (a) **RESTORATION STANDARDS AND ALTER-**
4 **NATIVES.**—Section 107(f) of the Comprehensive Environ-
5 mental Response, Compensation, and Liability Act of
6 1980 (42 U.S.C. 9607(f)) is amended by adding at the
7 end the following:

8 “(3) **COMPATIBILITY WITH REMEDIAL AC-**
9 **TION.**—Both response actions and restoration meas-
10 ures may be implemented at the same facility, or to
11 address releases from the same facility. Such re-
12 sponse actions and restoration measures shall not be
13 inconsistent with one another and shall be imple-
14 mented, to the extent practicable, in a coordinated
15 and integrated manner.”

16 (b) **CONSIDERATION OF NATURAL RESOURCES IN**
17 **RESPONSE ACTIONS.**—Section 121(a) of the Comprehen-
18 sive Environmental Response, Compensation, and Liabil-
19 ity Act of 1980 (42 U.S.C. 9621(a)) (as amended by sec-
20 tion 402(1)) is amended by adding at the end the follow-
21 ing:

22 “(6) **COORDINATION.**—In evaluating and select-
23 ing remedial actions, the Administrator shall take
24 into account the potential for injury to a natural re-
25 source resulting from such actions.”

1 **SEC. 704. CONTRIBUTION.**

2 Subparagraph (A) of section 113(f)(1) of the Com-
3 prehensive Environmental Response, Compensation, and
4 Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended
5 in the third sentence by inserting “and natural resource
6 damages” after “costs”.

7 **TITLE VIII—MISCELLANEOUS**

8 **SEC. 801. RESULT-ORIENTED CLEANUPS.**

9 (a) **AMENDMENT.**—Section 105(a) of the Com-
10 prehensive Environmental Response, Compensation, and
11 Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

12 (1) by striking “and” at the end of paragraph
13 (9);

14 (2) by striking the period at the end of para-
15 graph (10) and inserting “; and”; and

16 (3) by inserting after paragraph (10) the fol-
17 lowing:

18 “(11) procedures for conducting response ac-
19 tions, including facility evaluations, remedial inves-
20 tigations, feasibility studies, remedial action plans,
21 remedial designs, and remedial actions, which proce-
22 dures shall—

23 “(A) use a results-oriented approach to
24 minimize the time required to conduct response
25 measures and reduce the potential for exposure
26 to the hazardous substances, pollutants, and

1 contaminants in an efficient, timely, and cost-
2 effective manner;

3 “(B) require, at a minimum, expedited fa-
4 cility evaluations and risk assessments; timely
5 negotiation of response action goals; a single
6 engineering study; streamlined oversight of re-
7 sponse actions; and consultation with interested
8 parties throughout the response action process;

9 “(C) be subject to the requirements of sec-
10 tions 117, 120, 121, and 133 in the same man-
11 ner and to the same degree as those sections
12 apply to response actions; and

13 “(D) be required to be used for each reme-
14 dial action conducted under this Act unless the
15 Administrator determines that their use would
16 not be cost-effective or result in the selection of
17 a response action that achieves the goals of pro-
18 tecting human health and the environment stat-
19 ed in section 121(a)(1)(B).”

20 (b) AMENDMENT OF NATIONAL HAZARDOUS SUB-
21 STANCE RESPONSE PLAN.—Not later than 180 days after
22 the date of enactment of this Act, the Administrator, after
23 notice and opportunity for public comment, shall amend
24 the National Hazardous Substance Response Plan under
25 section 105(a) of the Comprehensive Environmental Re-

1 sponse, Compensation, and Liability Act of 1980 (42
 2 U.S.C. 9605(a)) to include the procedures required by the
 3 amendment made by subsection (a).

4 **SEC. 802. NATIONAL PRIORITIES LIST.**

5 Section 105 of the Comprehensive Environmental Re-
 6 sponse, Compensation, and Liability Act of 1980 (42
 7 U.S.C. 9605) (as amended by section 407(a)(2)) is
 8 amended by adding at the end the following:

9 “(i) NATIONAL PRIORITIES LIST.—

10 “(1) LIMITATION.—

11 “(A) IN GENERAL.—After the date of the
 12 enactment of this subsection, the President may
 13 add vessels and facilities to the National Prior-
 14 ities List only in accordance with the following
 15 schedule:

16 “(i) Not more than 30 vessels and fa-
 17 cilities in 1997.

18 “(ii) Not more than 25 vessels and fa-
 19 cilities in 1998.

20 “(iii) Not more than 20 vessels and
 21 facilities in 1999.

22 “(iv) Not more than 15 vessels and
 23 facilities in 2000.

24 “(v) Not more than 10 vessels and fa-
 25 cilities in any year after 2000.

1 “(B) RELISTING.—The relisting of a vessel
2 or facility under section 130(d)(5)(C)(ii) shall
3 not be considered to be an addition to the Na-
4 tional Priorities List for purposes of this sub-
5 section.

6 “(2) PRIORITIZATION.—The Administrator
7 shall prioritize the vessels and facilities added under
8 paragraph (1) on a national basis in accordance with
9 the threat to human health and the environment
10 presented by each of the vessels and facilities, re-
11 spectively.

12 “(3) STATE CONCURRENCE.—A vessel or facil-
13 ity may be added to the National Priorities List
14 under paragraph (1) only with the concurrence of
15 the Governor of the State in which the vessel or fa-
16 cility is located.”.

17 **SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE**
18 **ACTIONS.**

19 Section 104(e)(1) of the Comprehensive Environ-
20 mental Response, Compensation, and Liability Act of
21 1980 (42 U.S.C. 9604(e)(1)) is amended—

22 (1) in subparagraph (C) by striking “consistent
23 with the remedial action to be taken” and inserting
24 “not inconsistent with any remedial action that has

1 been selected or is anticipated at the time of any re-
2 moval action at a facility.”;

3 (2) by striking “\$2,000,000” and inserting
4 “\$4,000,000”; and

5 (3) by striking “12 months” and inserting “2
6 years”.

7 **TITLE IX—FUNDING**

8 **Subtitle A—General Provisions**

9 **SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE** 10 **FUND.**

11 Section 111(a) of the Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980 (42
13 U.S.C. 9611(a)) is amended in the first sentence by strik-
14 ing “not more than \$8,500,000,000 for the 5-year period
15 beginning on the date of enactment of the Superfund
16 Amendments and Reauthorization Act of 1986, and not
17 more than \$5,100,000,000 for the period commencing Oc-
18 tober 1, 1991, and ending September 30, 1994” and in-
19 serting “a total of \$8,500,000,000 for fiscal years 1998,
20 1999, 2000, 2001, and 2002”.

21 **SEC. 902. ORPHAN SHARE FUNDING.**

22 Section 111(a) of the Comprehensive Environmental
23 Response, Compensation, and Liability Act of 1980 (42
24 U.S.C. 9611(a)), as amended by section 301(e), is amend-
25 ed by inserting after paragraph (8) the following:

1 “(9) ORPHAN SHARE FUNDING.—Payment of
2 orphan shares under section 136.”.

3 **SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERV-**
4 **ICES.**

5 Section 111 of the Comprehensive Environmental Re-
6 sponse, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9611) is amended by striking subsection (m) and
8 inserting the following:

9 “(m) HEALTH AUTHORITIES.—There are authorized
10 to be appropriated from the Fund to the Secretary of
11 Health and Human Services to be used for the purposes
12 of carrying out the activities described in subsection (e)(4)
13 and the activities described in section 104(i), \$50,000,000
14 for each of fiscal years 1998, 1999, 2000, 2001, and 2002.
15 Funds appropriated under this subsection for a fiscal year,
16 but not obligated by the end of the fiscal year, shall be
17 returned to the Fund.”.

18 **SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT,**
19 **AND DEMONSTRATION PROGRAMS.**

20 Section 111 of the Comprehensive Environmental Re-
21 sponse, Compensation, and Liability Act of 1980 (42
22 U.S.C. 9611) is amended by striking subsection (n) and
23 inserting the following:

24 “(n) LIMITATIONS ON RESEARCH, DEVELOPMENT,
25 AND DEMONSTRATION PROGRAMS.—

1 “(1) ALTERNATIVE OR INNOVATIVE TECH-
2 NOLOGIES RESEARCH, DEVELOPMENT, AND DEM-
3 ONSTRATION PROGRAMS.—

4 “(A) LIMITATION.—For each of fiscal
5 years 1998, 1999, 2000, 2001, and 2002, not
6 more than \$30,000,000 of the amounts avail-
7 able in the Fund may be used for the purposes
8 of carrying out the applied research, develop-
9 ment, and demonstration program for alter-
10 native or innovative technologies and training
11 program authorized under section 311(b) other
12 than basic research.

13 “(B) CONTINUING AVAILABILITY.—Such
14 amounts shall remain available until expended.

15 “(2) HAZARDOUS SUBSTANCE RESEARCH, DEM-
16 ONSTRATION, AND TRAINING.—

17 “(A) LIMITATION.—From the amounts
18 available in the Fund, not more than the follow-
19 ing amounts may be used for the purposes of
20 section 311(a):

21 “(i) For fiscal year 1998,
22 \$37,000,000.

23 “(ii) For fiscal year 1999,
24 \$39,000,000.

1 ~~“(iii) For fiscal year 2000,~~
2 ~~\$41,000,000.~~

3 ~~“(iv) For each of fiscal years 2001~~
4 ~~and 2002, \$43,000,000.~~

5 ~~“(B) FURTHER LIMITATION.—No more~~
6 ~~than 15 percent of such amounts shall be used~~
7 ~~for training under section 311(a) for any fiscal~~
8 ~~year.~~

9 ~~“(3) UNIVERSITY HAZARDOUS SUBSTANCE RE-~~
10 ~~SEARCH CENTERS.—For each of fiscal years 1998,~~
11 ~~1999, 2000, 2001, and 2002, not more than~~
12 ~~\$5,000,000 of the amounts available in the Fund~~
13 ~~may be used for the purposes of section 311(d).”.~~

14 **SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM**
15 **GENERAL REVENUES.**

16 Section 111(p) of the Comprehensive Environmental
17 Response, Compensation, and Liability Act of 1980 (42
18 U.S.C. 9611(p)) is amended by striking paragraph (1) and
19 inserting the following:

20 ~~“(1) AUTHORIZATION OF APPROPRIATIONS.—~~

21 ~~“(A) IN GENERAL.—There are authorized~~
22 ~~to be appropriated, out of any money in the~~
23 ~~Treasury not otherwise appropriated, to the~~
24 ~~Hazardous Substance Superfund—~~

1 “(i) for fiscal year 1998,
2 \$250,000,000;

3 “(ii) for fiscal year 1999,
4 \$250,000,000;

5 “(iii) for fiscal year 2000,
6 \$250,000,000;

7 “(iv) for fiscal year 2001,
8 \$250,000,000; and

9 “(v) for fiscal year 2002,
10 \$250,000,000.

11 “(B) **ADDITIONAL AMOUNTS.**—There is
12 authorized to be appropriated to the Hazardous
13 Substance Superfund for each such fiscal year
14 an amount, in addition to the amount author-
15 ized by subparagraph (A), equal to so much of
16 the aggregate amount authorized to be appro-
17 priated under this subsection and section
18 9507(b) of the Internal Revenue Code of 1986
19 as has not been appropriated before the begin-
20 ning of the fiscal year.”.

21 **SEC. 906. ADDITIONAL LIMITATIONS.**

22 Section 111 of the Comprehensive Environmental Re-
23 sponse, Compensation, and Liability Act of 1980 (42
24 U.S.C. 9611) (as amended by section 102(e)) is amended
25 by adding at the end the following:

1 “(t) COMMUNITY RESPONSE ORGANIZATION.—For
 2 the period commencing January 1, 1997, and ending Sep-
 3 tember 30, 2002, not more than \$15,000,000 of the
 4 amounts available in the Fund may be used to make
 5 grants under section 117(f) (relating to Community Re-
 6 sponse Organizations).

7 “(u) RECOVERIES.—Effective beginning January 1,
 8 1997, any response cost recoveries collected by the United
 9 States under this Act shall be credited as offsetting collec-
 10 tions to the Superfund appropriations account.”.

11 **SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPON-**
 12 **SIBLE PARTIES.**

13 Section 111(a) of the Comprehensive Environmental
 14 Response, Compensation, and Liability Act of 1980 (42
 15 U.S.C. 9611(a)) (as amended by section 902) is amended
 16 by inserting after paragraph (9) the following:

17 “(10) REIMBURSEMENT OF POTENTIALLY RE-
 18 SPONSIBLE PARTIES.—If—

19 “(A) a potentially responsible party and
 20 the Administrator enter into a settlement under
 21 this Act under which the Administrator is reim-
 22 bursed for the response costs of the Adminis-
 23 trator; and

24 “(B) the Administrator determines,
 25 through a Federal audit of response costs, that

1 the costs for which the Administrator is reim-
 2 bursed—

3 “(i) are unallowable due to contractor
 4 fraud;

5 “(ii) are unallowable under the Fed-
 6 eral Acquisition Regulation; or

7 “(iii) should be adjusted due to rou-
 8 tine contract and Environmental Protec-
 9 tion Agency response cost audit proce-
 10 dures;

11 a potentially responsible party may be reimbursed
 12 for those costs.”.

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

14 (a) *SHORT TITLE.*—This Act may be cited as the
 15 “Superfund Cleanup Acceleration Act of 1998”.

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

TITLE I—BROWNFIELDS REVITALIZATION

- Sec. 101. Brownfields.*
- Sec. 102. Assistance for qualifying State voluntary response programs.*
- Sec. 103. Enforcement in cases of a release subject to a State plan.*
- Sec. 104. Contiguous properties.*
- Sec. 105. Prospective purchasers and windfall liens.*
- Sec. 106. Safe harbor innocent landholders.*

TITLE II—STATE ROLE

- Sec. 201. Transfer to the States of responsibility at non-Federal National Priorities List facilities.*

TITLE III—LOCAL COMMUNITY PARTICIPATION

- Sec. 301. Definitions.*
- Sec. 302. Public participation generally.*

- Sec. 303. Improvement of public participation in the superfund decisionmaking process; local community advisory groups; technical assistance grants.*
- Sec. 304. Technical outreach services for communities.*
- Sec. 305. Agency for Toxic Substances and Disease Registry.*
- Sec. 306. Understandable presentation of materials.*
- Sec. 307. No impediment to response actions.*

TITLE IV—SELECTION OF REMEDIAL ACTIONS

- Sec. 401. Definitions.*
- Sec. 402. Selection and implementation of remedial actions.*
- Sec. 403. Remedy selection methodology.*
- Sec. 404. Remedy selection procedures.*
- Sec. 405. Completion of physical construction and delisting.*
- Sec. 406. Transition rules for facilities currently involved in remedy selection.*
- Sec. 407. National Priorities List.*

TITLE V—LIABILITY

- Sec. 501. Liability exceptions and limitations.*
- Sec. 502. Contribution from the fund.*
- Sec. 503. Expedited settlement for certain parties.*
- Sec. 504. Allocation of liability for certain facilities.*
- Sec. 505. Certain facilities owned by local governments.*
- Sec. 506. Liability of response action contractors.*
- Sec. 507. Release of evidence.*
- Sec. 508. Contribution protection.*
- Sec. 509. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.*
- Sec. 510. Common carriers.*
- Sec. 511. Limitation on liability of railroad owners.*
- Sec. 512. Liability of recyclers.*
- Sec. 513. Requirement that cooperation, assistance, and access be provided.*

TITLE VI—FEDERAL FACILITIES

- Sec. 601. Transfer of authorities.*
- Sec. 602. Innovative technologies for remedial action at Federal facilities.*
- Sec. 603. Full compliance by Federal entities and facilities.*

TITLE VII—NATURAL RESOURCE DAMAGES

- Sec. 701. Restoration of natural resources.*
- Sec. 702. Consistency between response actions and resource restoration standards.*
- Sec. 703. Contribution.*
- Sec. 704. Mediation.*
- Sec. 705. Coeur d'Alene basin.*
- Sec. 706. Effective date.*

TITLE VIII—MISCELLANEOUS

- Sec. 801. Result-oriented cleanups.*
- Sec. 802. Obligations from the fund for response actions.*
- Sec. 803. Recycled oil.*
- Sec. 804. Law enforcement agencies not included as owner or operator.*

Sec. 805. *Lead in soil.*

Sec. 806. *Pesticides applied in compliance with law.*

Sec. 807. *Technical corrections.*

TITLE IX—FUNDING

Sec. 901. *Authorization of appropriations from the fund.*

Sec. 902. *Orphan share funding.*

Sec. 903. *Department of health and human services.*

Sec. 904. *Limitations on research, development, and demonstration programs.*

Sec. 905. *Authorization of appropriations from general revenues.*

Sec. 906. *Additional limitations.*

Sec. 907. *Reimbursement of potentially responsible parties.*

1 **TITLE I—BROWNFIELDS**
 2 **REVITALIZATION**

3 **SEC. 101. BROWNFIELDS.**

4 (a) *IN GENERAL.*—*Title I of the Comprehensive Envi-*
 5 *ronmental Response, Compensation, and Liability Act of*
 6 *1980 (42 U.S.C. 9601 et seq.) is amended by adding at the*
 7 *end the following:*

8 **“SEC. 127. BROWNFIELDS.**

9 “(a) *DEFINITIONS.*—*In this section:*

10 “(1) *BROWNFIELD FACILITY.*—

11 “(A) *IN GENERAL.*—*The term ‘brownfield*
 12 *facility’ means real property, the expansion or*
 13 *redevelopment of which is complicated by the*
 14 *presence or potential presence of a hazardous*
 15 *substance.*

16 “(B) *EXCLUSIONS.*—*The term ‘brownfield*
 17 *facility’ does not include—*

18 “(i) *any portion of real property that,*
 19 *as of the date of submission of an applica-*

1 tion for assistance under this section, is the
2 subject of an ongoing removal under title I;

3 “(ii) any portion of real property that
4 has been listed on the National Priorities
5 List or is proposed for listing as of the date
6 of the submission of an application for as-
7 sistance under this section;

8 “(iii) any portion of real property
9 with respect to which cleanup work is pro-
10 ceeding in substantial compliance with the
11 requirements of an administrative order on
12 consent, or judicial consent decree that has
13 been entered into, or a permit issued by, the
14 United States or a duly authorized State
15 under this Act, the Solid Waste Disposal
16 Act (42 U.S.C. 6901 et seq.), section 311 of
17 the Federal Water Pollution Control Act (33
18 U.S.C. 1321), the Toxic Substances Control
19 Act (15 U.S.C. 2601 et seq.), or the Safe
20 Drinking Water Act (42 U.S.C. 300f et
21 seq.);

22 “(iv) a land disposal unit with respect
23 to which—

24 “(I) a closure notification under
25 subtitle C of the Solid Waste Disposal

1 *Act (42 U.S.C. 6921 et seq.) has been*
2 *submitted; and*

3 “*(II) closure requirements have*
4 *been specified in a closure plan or per-*
5 *mit;*

6 “*(v) a facility that is owned or oper-*
7 *ated by a department, agency, or instru-*
8 *mentality of the United States; or*

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

16 “*(C) FACILITIES OTHER THAN BROWNFIELD*
17 *FACILITIES.—That a facility may not be a*
18 *brownfield facility within the meaning of sub-*
19 *paragraph (A) has no effect on the eligibility of*
20 *the facility for assistance under any provision of*
21 *Federal law other than this section.*

22 “*(2) ELIGIBLE ENTITY.—*

23 “*(A) IN GENERAL.—The term ‘eligible en-*
24 *tity’ means—*

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

3 “(ii) a land clearance authority or
4 other quasi-governmental entity that oper-
5 ates under the supervision and control of or
6 as an agent of a general purpose unit of
7 local government;

8 “(iii) a government entity created by a
9 State legislature;

10 “(iv) a regional council or group of
11 general purpose units of local government;

12 “(v) a redevelopment agency that is
13 chartered or otherwise sanctioned by a
14 State;

15 “(vi) a State; and

16 “(vii) an Indian Tribe.

17 “(B) *EXCLUSION.*—The term ‘eligible entity’
18 does not include any entity that is not in sub-
19 stantial compliance with the requirements of an
20 administrative order on consent, judicial consent
21 decree that has been entered into, or a permit
22 issued by, the United States or a duly authorized
23 State under this Act, the Solid Waste Disposal
24 Act (42 U.S.C. 6901 et seq.), the Federal Water
25 Pollution Control Act (33 U.S.C. 1251 et seq.),

1 *the Toxic Substances Control Act (15 U.S.C.*
2 *2601 et seq.), or the Safe Drinking Water Act*
3 *(42 U.S.C. 300f et seq.) with respect to any por-*
4 *tion of real property that is the subject of the ad-*
5 *ministrative order on consent, judicial consent*
6 *decree, or permit.*

7 “(3) *FACILITY SUBJECT TO STATE CLEANUP.—*
8 *The term ‘facility subject to State cleanup’ means a*
9 *facility that—*

10 “(A) *is not listed or proposed for listing on*
11 *the National Priorities List; and*

12 “(i) *has been archived from the Com-*
13 *prehensive Environmental Response, Com-*
14 *ensation, and Liability Information Sys-*
15 *tem;*

16 “(ii) *was included on the Comprehen-*
17 *sive Environmental Response, Compensa-*
18 *tion, and Liability Information System be-*
19 *fore the date of enactment of this section*
20 *and is not listed or proposed for listing on*
21 *the National Priorities List within 2 years*
22 *after the date of enactment of this section;*
23 *or*

24 “(iii) *is included on the Comprehensive*
25 *Environmental Response, Compensation,*

1 *and Liability Information System after the*
 2 *date of enactment of this section, if at least*
 3 *2 years have elapsed since the earlier of—*

4 *“(I) inclusion of the facility on*
 5 *the Comprehensive Environmental Re-*
 6 *sponse, Compensation, and Liability*
 7 *Information System; or*

8 *“(II) issuance at the facility of an*
 9 *order under section 106(a).*

10 *“(b) BROWNFIELD GRANT PROGRAM.—*

11 *“(1) ESTABLISHMENT OF PROGRAM.—The Ad-*
 12 *ministrator shall establish a program to provide*
 13 *grants for the site characterization and assessment of*
 14 *brownfield facilities and performance of response ac-*
 15 *tions at brownfield facilities.*

16 *“(2) ASSISTANCE FOR SITE CHARACTERIZATION*
 17 *AND ASSESSMENT AND RESPONSE ACTIONS.—*

18 *“(A) IN GENERAL.—On approval of an ap-*
 19 *plication made by an eligible entity, the Admin-*
 20 *istrator may make grants out of the Fund to the*
 21 *eligible entity to be used for the site characteriza-*
 22 *tion and assessment of and response actions at*
 23 *1 or more brownfield facilities or to capitalize a*
 24 *revolving loan fund.*

1 “(B) *SITE CHARACTERIZATION AND ASSESS-*
2 *MENT.—A site characterization and assessment*
3 *carried out with the use of a grant under sub-*
4 *paragraph (A)—*

5 “(i) *shall be performed in accordance*
6 *with section 101(35)(B); and*

7 “(ii) *may include a process to identify*
8 *and inventory potential brownfield facili-*
9 *ties.*

10 “(3) *MAXIMUM GRANT AMOUNT.—*

11 “(A) *IN GENERAL.—A grant under sub-*
12 *paragraph (A) shall not exceed, with respect to*
13 *any individual brownfield facility covered by the*
14 *grant, \$350,000 in total.*

15 “(B) *WAIVER.—The Administrator may*
16 *waive the \$350,000 limitation under subpara-*
17 *graph (A) based on the anticipated level of con-*
18 *tamination, size, or status of ownership of the fa-*
19 *cility.*

20 “(4) *GENERAL PROVISIONS.—*

21 “(A) *PROHIBITION.—*

22 “(i) *IN GENERAL.—No part of a grant*
23 *under this section may be used for payment*
24 *of penalties, fines, or administrative costs.*

1 “(i) *EXCLUSIONS.*—*For the purposes*
2 *of clause (i), the term ‘administrative cost’*
3 *does not include the cost of—*

4 “(I) *investigation and identifica-*
5 *tion of the extent of contamination;*

6 “(II) *design and performance of a*
7 *response action; or*

8 “(III) *monitoring of natural re-*
9 *sources.*

10 “(B) *AUDITS.*—*The Inspector General of the*
11 *Environmental Protection Agency shall conduct*
12 *such reviews or audits of loans under subsection*
13 *(c) or grants under this subsection as the Inspec-*
14 *tor General considers necessary to carry out the*
15 *objectives of this section. Audits shall be con-*
16 *ducted in accordance with the auditing proce-*
17 *dures of the General Accounting Office, including*
18 *chapter 75 of title 31, United States Code.*

19 “(C) *LEVERAGING.*—*An eligible entity that*
20 *receives a grant under this section may use the*
21 *funds for part of a project at a brownfield facil-*
22 *ity for which funding is received from other*
23 *sources, but the grant shall be used only for the*
24 *purposes described in subsection (b)(2) or (c)(2).*

25 “(c) *STATE LOAN FUNDS.*—

1 “(1) *GRANTS TO STATES TO ESTABLISH STATE*
2 *LOAN FUNDS.—*

3 “(A) *IN GENERAL.—The Administrator*
4 *shall offer to enter into agreements with eligible*
5 *States to make capitalization grants, including*
6 *letters of credit, to the States to further objectives*
7 *of this Act, promote the efficient use of fund re-*
8 *sources, and for other purposes as are specified*
9 *in this Act. The Administrator may enter into*
10 *an agreement with a city, county, or regional as-*
11 *sociation of governments, provided that the area*
12 *covered by the agreement has a population great-*
13 *er than 1 million persons, in a State that has*
14 *elected not to enter into an agreement with the*
15 *Administrator. Eligible entities in a State, city,*
16 *county or region covered by an agreement shall*
17 *be eligible to receive assistance from the State*
18 *loan fund in lieu of assistance from the Adminis-*
19 *trator under subsection (b).*

20 “(B) *ESTABLISHMENT OF FUND.—To be eli-*
21 *gible to receive a capitalization grant under this*
22 *subsection, a State, city, county or regional asso-*
23 *ciation of governments shall establish a*
24 *brownfields revolving loan fund (referred to in*
25 *this subsection as a ‘State loan fund’) and com-*

1 *ply with the other requirements of this sub-*
2 *section. Each grant to a State, city, county or*
3 *regional association of governments under this*
4 *subsection shall be deposited in the State loan*
5 *fund.*

6 *“(C) EXTENDED PERIOD.—The grant to a*
7 *State loan fund shall be available to the State*
8 *loan fund for obligation during the fiscal year*
9 *for which the funds are authorized and during*
10 *the following fiscal year.*

11 *“(D) ALLOTMENT FORMULA.—Except as*
12 *otherwise provided in this subsection, funds*
13 *made available to carry out this subsection shall*
14 *be allotted to State loan funds that are estab-*
15 *lished by agreements pursuant to this section in*
16 *accordance with a formula developed by the Ad-*
17 *ministrator through a regulatory negotiation*
18 *and reflecting the number of potential*
19 *brownfields facilities in areas covered by agree-*
20 *ments and the level of effort made by each State,*
21 *city, county or regional association of govern-*
22 *ments to return brownfields to beneficial uses.*
23 *The formula shall reserve sufficient funds to pro-*
24 *vide assistance to eligible entities in areas not*
25 *covered by agreements. The Administrator shall*

1 *update the formula not less often than bienni-*
2 *ally.*

3 “(E) *REALLOTMENT.*—*The grants not obli-*
4 *gated by the last day of the period for which the*
5 *grants are available shall be reallocated according*
6 *to the formula established under subparagraph*
7 *(D).*

8 “(2) *USE OF FUNDS.*—*Amounts deposited in a*
9 *State loan fund, including loan repayments and in-*
10 *terest earned on such amounts, shall be used only for*
11 *providing loans or loan guarantees, or as a source of*
12 *reserve and security for leveraged loans, the proceeds*
13 *of which are deposited in a State loan fund estab-*
14 *lished under paragraph (1), or other financial assist-*
15 *ance authorized under this subsection to eligible enti-*
16 *ties. Funds from capitalization grants shall not be*
17 *used for the acquisition of real property or interests*
18 *therein. Nothing in this subsection shall be interpreted*
19 *to preclude the use of other funds deposited in a State*
20 *loan fund to acquire real property or to preclude an*
21 *eligible entity from acquiring real property.*

22 “(3) *INTENDED USE PLANS.*—

23 “(A) *IN GENERAL.*—*After providing for*
24 *public review and comment, each State, city,*
25 *county or regional association of governments*

1 *that has entered into a capitalization agreement*
2 *pursuant to this subsection shall annually pre-*
3 *pare a plan that identifies the intended uses of*
4 *the amounts available to the State loan fund.*

5 “(B) *CONTENTS.*—*An intended use plan*
6 *shall include—*

7 “(i) *a list of the projects to be assisted*
8 *in the first fiscal year that begins after the*
9 *date of the plan, including a description of*
10 *the projects and the expected terms of finan-*
11 *cial assistance;*

12 “(ii) *the criteria and methods estab-*
13 *lished for the distribution of funds; and*

14 “(iii) *a description of the financial*
15 *status of the State loan fund and the short-*
16 *term and long-term goals of the State loan*
17 *fund.*

18 “(4) *FUND MANAGEMENT.*—*Each State loan fund*
19 *under this subsection shall be established, maintained,*
20 *and credited with repayments and interest. The fund*
21 *corpus shall be available in perpetuity for providing*
22 *financial assistance under this subsection. To the ex-*
23 *tent amounts in the fund are not required for current*
24 *obligation or expenditure, such amounts shall be in-*
25 *vested in interest bearing obligations.*

1 “(5) *ADDITIONAL ASSISTANCE.*—

2 “(A) *SUBSIDY.*—*Notwithstanding any other*
3 *provision of this subsection, a State loan fund*
4 *may—*

5 “(i) *provide additional subsidization*
6 *(including forgiveness of principal) to an el-*
7 *igible entity; and*

8 “(ii) *provide assistance to the State for*
9 *the purpose of conducting response actions*
10 *at facilities the ownership of which or con-*
11 *trol over which was acquired by a law en-*
12 *forcement agency through seizure or other-*
13 *wise in connection with law enforcement ac-*
14 *tivity.*

15 “(B) *TOTAL AMOUNT OF SUBSIDIES.*—*For*
16 *each fiscal year, the total amount of subsidies*
17 *made from the corpus or capitalization grant of*
18 *a State loan fund pursuant to subparagraph (A)*
19 *may not exceed 30 percent of the amount of the*
20 *capitalization grant received by the State loan*
21 *fund for that year.*

22 “(6) *NON-FEDERAL CONTRIBUTION.*—

23 “(A) *IN GENERAL.*—*Each agreement under*
24 *paragraph (1) shall require that the State, city,*
25 *county or regional association of governments de-*

1 *posit in the State loan fund from non-Federal*
2 *moneys an amount equal to at least 20 percent*
3 *of the total amount of the capitalization grant to*
4 *be made to the State loan fund on or before the*
5 *date on which the grant payment is made to the*
6 *State loan fund.*

7 “(B) *SOURCE.—Resources used to satisfy*
8 *the requirement of subparagraph (A) may be*
9 *drawn from any non-Federal source.*

10 “(C) *IN-KIND CONTRIBUTIONS.—A contribu-*
11 *tion of labor, materials, or services may be used*
12 *to satisfy the requirement of subparagraph (A).*

13 “(7) *TYPES OF ASSISTANCE.—Except as other-*
14 *wise limited by State law, the amounts deposited into*
15 *a State loan fund under this subsection may be used*
16 *only—*

17 “(A) *to make loans, on the condition that—*

18 “(i) *the interest rate for each loan is*
19 *less than or equal to the market interest*
20 *rate, including an interest free loan;*

21 “(ii) *principal and interest payments*
22 *on each loan will commence not later than*
23 *1 year after completion of the project for*
24 *which the loan was made, and each loan*
25 *will be fully amortized not later than 10*

1 *years after the completion of the project;*
2 *and*

3 *“(iii) the State loan fund will be cred-*
4 *ited with all payments of principal and in-*
5 *terest on each loan;*

6 *“(B) to guarantee, or purchase insurance*
7 *for, a local obligation (all of the proceeds of*
8 *which finance a project eligible for assistance*
9 *under this subsection) if the guarantee or pur-*
10 *chase would improve credit market access or re-*
11 *duce the interest rate applicable to the obliga-*
12 *tion;*

13 *“(C) as a source of revenue or security for*
14 *the payment of principal and interest on revenue*
15 *or general obligation bonds issued by the State,*
16 *city, county or regional association of govern-*
17 *ments if the proceeds of the sale of the bonds will*
18 *be deposited into the State loan fund; and*

19 *“(D) to earn interest on the amounts depos-*
20 *ited into the State loan fund.*

21 *“(8) COST OF ADMINISTERING FUND.—The cost*
22 *of administering the State loan fund shall be borne*
23 *from funds provided by the State, city, county or re-*
24 *gional association of governments entering into the*

1 *agreement and shall be in addition to the matching*
2 *amounts required by paragraph (6).*

3 “(9) *GUIDANCE AND REGULATIONS.—The Ad-*
4 *ministrator shall publish guidance and promulgate*
5 *regulations as may be necessary to carry out this sub-*
6 *section, including—*

7 “(A) *provisions to ensure that each State*
8 *loan fund commits and expends funds allotted to*
9 *the State loan fund under this subsection as effi-*
10 *ciently as possible in accordance with this Act*
11 *and applicable State laws;*

12 “(B) *guidance to prevent waste, fraud, and*
13 *abuse; and*

14 “(C) *provisions to ensure that the State*
15 *loan funds, and eligible entities receiving assist-*
16 *ance under this subsection, use accounting,*
17 *audit, and fiscal procedures that conform to gen-*
18 *erally accepted accounting standards.*

19 “(10) *STATE REPORT.—Each State, city, county,*
20 *or regional association of governments administering*
21 *a loan fund and assistance program under this sub-*
22 *section shall publish and submit to the Administrator*
23 *a report every 2 years on its activities under this sub-*
24 *section, including the findings of the most recent*
25 *audit of the fund. The Administrator shall periodi-*

1 *cally audit all State loan funds established by, and*
2 *all other amounts allotted to, the State loan funds*
3 *pursuant to this subsection in accordance with proce-*
4 *dures established by the Comptroller General.*

5 *“(11) EVALUATION.—The Administrator shall*
6 *conduct an evaluation of the effectiveness of the State*
7 *loan funds through fiscal year 2003. The evaluation*
8 *shall be submitted to the Congress at the same time*
9 *as the President submits to the Congress, pursuant to*
10 *section 1108 of title 31, United States Code, an ap-*
11 *propriations request for fiscal year 2005 relating to*
12 *the budget of the Environmental Protection Agency.”.*

13 *“(d) GRANT APPLICATIONS.—*

14 *“(1) SUBMISSION.—*

15 *“(A) IN GENERAL.—Any eligible entity may*
16 *submit an application to the Administrator,*
17 *through a regional office of the Environmental*
18 *Protection Agency and in such form as the Ad-*
19 *ministrator may require, for a grant under this*
20 *section for 1 or more brownfield facilities.*

21 *“(B) COORDINATION.—The Administrator*
22 *in developing such application requirements is*
23 *instructed to coordinate with other Federal agen-*
24 *cies and departments, such that eligible entities*

1 *under this section are made aware of other avail-*
2 *able Federal resources.*

3 “(C) *GUIDANCE.*—*The Administrator shall*
4 *publish guidance to assist eligible entities in ob-*
5 *taining grants under this section.*

6 “(2) *APPROVAL.*—

7 “(A) *INITIAL GRANT.*—*On or about March*
8 *30 and September 30 of the first fiscal year fol-*
9 *lowing the date of enactment of this section, the*
10 *Administrator shall make grants under this sec-*
11 *tion to eligible entities that submit applications*
12 *before those dates and that the Administrator de-*
13 *termines have the highest rankings under rank-*
14 *ing criteria established under paragraph (3).*

15 “(B) *SUBSEQUENT GRANTS.*—*Beginning*
16 *with the second fiscal year following the date of*
17 *enactment of this section, the Administrator*
18 *shall make an annual evaluation of each appli-*
19 *cation received during the prior fiscal year and*
20 *make grants under this section to eligible entities*
21 *that submit applications during the prior year*
22 *and that the Administrator determines have the*
23 *highest rankings under the ranking criteria es-*
24 *tablished under paragraph (3).*

1 “(3) *RANKING CRITERIA.*—*The Administrator*
2 *shall establish a system for ranking grant applica-*
3 *tions that includes the following criteria:*

4 “(A) *The extent to which a grant will stim-*
5 *ulate the availability of other funds for environ-*
6 *mental remediation and subsequent redevelop-*
7 *ment of the area in which the brownfield facili-*
8 *ties are located.*

9 “(B) *The potential of the development plan*
10 *for the area in which the brownfield facilities are*
11 *located to stimulate economic development of the*
12 *area on completion of the cleanup, such as the*
13 *following:*

14 “(i) *The relative increase in the esti-*
15 *mated fair market value of the area as a re-*
16 *sult of any necessary response action.*

17 “(ii) *The demonstration by applicants*
18 *of the intent and ability to create new or*
19 *expand existing business, employment,*
20 *recreation, or conservation opportunities on*
21 *completion of any necessary response ac-*
22 *tion.*

23 “(iii) *If commercial redevelopment is*
24 *planned, the estimated additional full-time*
25 *employment opportunities and tax revenues*

1 *expected to be generated by economic rede-*
2 *velopment in the area in which a brownfield*
3 *facility is located.*

4 “(iv) *The estimated extent to which a*
5 *grant would facilitate the identification of*
6 *or facilitate a reduction of health and envi-*
7 *ronmental risks.*

8 “(v) *The financial involvement of the*
9 *State and local government in any response*
10 *action planned for a brownfield facility and*
11 *the extent to which the response action and*
12 *the proposed redevelopment is consistent*
13 *with any applicable State or local commu-*
14 *nity economic development plan.*

15 “(vi) *The extent to which the site char-*
16 *acterization and assessment or response ac-*
17 *tion and subsequent development of a*
18 *brownfield facility involves the active par-*
19 *ticipation and support of the local commu-*
20 *nity.*

21 “(vii) *Such other factors as the Admin-*
22 *istrator considers appropriate to carry out*
23 *the purposes of this section.*

1 “(4) Oversight and enforcement authorities or
2 other mechanisms that are adequate to ensure that—

3 “(A) voluntary response actions will protect
4 human health and the environment and be con-
5 ducted in accordance with applicable Federal
6 and State law; and

7 “(B) if the person conducting the voluntary
8 response action fails to complete the necessary re-
9 sponse activities, including operation and main-
10 tenance or long-term monitoring activities, the
11 necessary response activities are completed.

12 “(5) Mechanisms for approval of a voluntary re-
13 sponse action plan, or a requirement for certification
14 or similar documentation from the State or parties
15 authorized and licensed by State law to the person
16 conducting the voluntary response action indicating
17 that the response is complete.”.

18 (c) *FUNDING.*—Section 111 of the Comprehensive En-
19 vironmental Response, Compensation, and Liability Act of
20 1980 (42 U.S.C. 9611) (as amended by section 101(b)) is
21 amended by adding at the end the following:

22 “(r) *QUALIFYING STATE VOLUNTARY RESPONSE PRO-*
23 *GRAM.*—For each of fiscal years 1999 through 2003, not
24 more than \$25,000,000 of the amounts available in the
25 Fund may be used for assistance to States to maintain, es-

1 *tablish, and administer qualifying State voluntary response*
 2 *programs, during the first 5 full fiscal years following the*
 3 *date of enactment of this subparagraph, distributed among*
 4 *each of the States that notifies the Administrator of the*
 5 *State’s intent to establish a qualifying State voluntary re-*
 6 *sponse program and each of the States with a qualifying*
 7 *State voluntary response program. For each fiscal year*
 8 *there shall be available to each qualifying State voluntary*
 9 *response program a grant in the amount of at least*
 10 *\$250,000.”.*

11 **SEC. 103. ENFORCEMENT IN CASES OF A RELEASE SUBJECT**
 12 **TO A STATE PLAN.**

13 *Title I of the Comprehensive Environmental Response,*
 14 *Compensation, and Liability Act of 1980 (42 U.S.C. 9601*
 15 *et seq.) (as amended by section 102(b)) is amended by add-*
 16 *ing at the end the following:*

17 **“SEC. 129. ENFORCEMENT IN CASES OF A RELEASE SUB-**
 18 **JECT TO A STATE PLAN.**

19 *“(a) ENFORCEMENT.—*

20 *“(1) IN GENERAL.—Except as provided in para-*
 21 *graph (2), in the case of a release or threatened re-*
 22 *lease of a hazardous substance at a facility subject to*
 23 *State cleanup (as defined in section 127(a)), neither*
 24 *the President nor any other person may use any au-*
 25 *thority under this Act to take an enforcement action*

1 *against any person regarding any matter that is*
2 *within the scope of a response action that is being*
3 *conducted or has been completed under State law.*

4 “(2) *EXCEPTIONS.*—*The President may bring en-*
5 *forcement action under this Act with respect to a fa-*
6 *ility described in paragraph (1) if—*

7 “(A) *the State requests that the President*
8 *provide assistance in the performance of a re-*
9 *sponse action and that the enforcement bar in*
10 *paragraph (1) be lifted;*

11 “(B) *at a facility at which response activi-*
12 *ties are ongoing the Administrator—*

13 “(i) *makes a written determination*
14 *that the State is unwilling or unable to take*
15 *appropriate action, after the Administrator*
16 *has provided the Governor or other chief ex-*
17 *ecutive of the State notice and an oppor-*
18 *tunity to cure; and*

19 “(ii) *the Administrator determines that*
20 *the release or threat of release constitutes a*
21 *public health or environmental emergency*
22 *under section 104(a)(4);*

23 “(C) *the Administrator determines that con-*
24 *tamination has migrated across a State line, re-*

1 *sulting in the need for further response action to*
2 *protect human health or the environment; or*

3 “(D) *in the case of a facility at which all*
4 *response actions have been completed, the Ad-*
5 *ministrator—*

6 “(i) *makes a written determination*
7 *that the State is unwilling or unable to take*
8 *appropriate action, after the Administrator*
9 *has provided the Governor or other chief ex-*
10 *ecutive of the State notice and an oppor-*
11 *tunity to cure; and*

12 “(ii) *makes a written determination*
13 *that the facility presents a substantial risk*
14 *that requires further remediation to protect*
15 *human health or the environment, as evi-*
16 *denced by—*

17 “(I) *newly discovered information*
18 *regarding contamination at the facil-*
19 *ity;*

20 “(II) *the discovery that fraud was*
21 *committed in demonstrating attain-*
22 *ment of standards at the facility; or*

23 “(III) *a failure of the remedy*
24 *under the State remedial action plan*

1 *or a change in land use giving rise to*
2 *a clear threat of exposure.*

3 “(3) *EPA NOTIFICATION.*—

4 “(A) *IN GENERAL.*—*In the case of a facility*
5 *at which there is a release or threatened release*
6 *of a hazardous substance, pollutant, or contami-*
7 *nant and for which the Administrator intends to*
8 *undertake an administrative or enforcement ac-*
9 *tion, the Administrator, prior to taking the ad-*
10 *ministrative or enforcement action, shall notify*
11 *the State of the action the Administrator intends*
12 *to take and wait for an acknowledgment from*
13 *the State pursuant to subparagraph (B).*

14 “(B) *STATE RESPONSE.*—*Not later than 48*
15 *hours after receiving a notice from the Adminis-*
16 *trator under subparagraph (A), the State shall*
17 *notify the Administrator if the facility is cur-*
18 *rently or has been subject to a State remedial ac-*
19 *tion plan.*

20 “(C) *PUBLIC HEALTH OR ENVIRONMENTAL*
21 *EMERGENCY.*—*If the Administrator finds that a*
22 *release or threatened release constitutes a public*
23 *health or environmental emergency under section*
24 *104(a)(4), the Administrator may take appro-*
25 *priate action immediately after giving notifica-*

1 *tion under subparagraph (A) without waiting*
2 *for State acknowledgment.*

3 “(b) *FACILITIES NOT SUBJECT TO STATE CLEANUP.*—

4 *In the case of a release or threatened release of a hazardous*
5 *substance at a facility not subject to State cleanup (as de-*
6 *fin ed in section 127(a)), the President shall provide notice*
7 *to the State not later than 48 hours after issuing an order*
8 *under section 106(a) addressing the release or threatened*
9 *release.*

10 “(c) *COST OR DAMAGE RECOVERY ACTIONS.*—Sub-

11 *section (a) shall not apply to an action brought by any*
12 *person (including an Indian Tribe) for the recovery of costs*
13 *or damages under this Act incurred before the date of enact-*
14 *ment of this section.*

15 “(d) *SAVINGS PROVISION.*—

16 “(1) *EXISTING AGREEMENTS.*—A memorandum
17 *of agreement, memorandum of understanding, or*
18 *similar agreement between the President and a State*
19 *or Indian Tribe defining Federal and State or tribal*
20 *response action responsibilities that was in effect as*
21 *of the date of enactment of this section with respect*
22 *to a facility to which subsection (a)(3) does not apply*
23 *shall remain effective until the agreement expires in*
24 *accordance with the terms of the agreement.*

1 “(2) *NEW AGREEMENTS.*—*Nothing in this sec-*
 2 *tion precludes the President from entering into an*
 3 *agreement with a State or Indian Tribe regarding re-*
 4 *sponsibility at a facility to which subsection (a)(3)*
 5 *does not apply.”.*

6 **SEC. 104. CONTIGUOUS PROPERTIES.**

7 *(a) IN GENERAL.*—*Section 107 of the Comprehensive*
 8 *Environmental Response, Compensation, and Liability Act*
 9 *of 1980 (42 U.S.C. 9607(a)) is amended by adding at the*
 10 *end the following:*

11 “(o) *CONTIGUOUS PROPERTIES.*—

12 “(1) *NOT CONSIDERED TO BE AN OWNER OR OP-*
 13 *ERATOR.*—*A person that owns or operates real prop-*
 14 *erty that is contiguous to or otherwise similarly situ-*
 15 *ated with respect to real property on which there has*
 16 *been a release or threatened release of a hazardous*
 17 *substance and that is or may be contaminated by the*
 18 *release shall not be considered to be an owner or oper-*
 19 *ator of a vessel or facility under subparagraph (C) or*
 20 *(D) of subsection (a)(1) solely by reason of the con-*
 21 *tamination if—*

22 “(A) *the person did not cause, contribute, or*
 23 *consent to the release or threatened release;*

24 “(B) *the person is not affiliated through*
 25 *any familial or corporate relationship with any*

1 *person that is or was a party potentially respon-*
2 *sible for response costs at the facility; and*

3 “(C) *the person exercised appropriate care*
4 *with respect to each hazardous substance found*
5 *at the facility by taking reasonable steps to stop*
6 *any continuing release, prevent any threatened*
7 *future release and prevent or limit human or*
8 *natural resource exposure to any previously re-*
9 *leased hazardous substance.*

10 “(2) *COOPERATION, ASSISTANCE, AND ACCESS.—*
11 *Notwithstanding paragraph (1), the President may*
12 *decline to offer a settlement to a potentially respon-*
13 *sible party under this paragraph if the President de-*
14 *termines that the potentially responsible party has*
15 *failed to substantially comply with the requirement*
16 *stated in subsection (y) with respect to the facility.*

17 “(3) *ASSURANCES.—The Administrator may—*
18 “(A) *issue an assurance that no enforcement*
19 *action under this Act will be initiated against a*
20 *person described in paragraph (1); and*

21 “(B) *grant a person described in paragraph*
22 *(1) protection against a cost recovery or con-*
23 *tribution action under section 113(f).”.*

24 “(b) *CONFORMING AMENDMENT.—Section 107(a) of the*
25 *Comprehensive Environmental Response, Compensation,*

1 *and Liability Act of 1980 (42 U.S.C. 9607) is amended by*
 2 *striking “of this section” and inserting “and the exemptions*
 3 *and limitations stated in this section”.*

4 **SEC. 105. PROSPECTIVE PURCHASERS AND WINDFALL**
 5 **LIENS.**

6 (a) *DEFINITION.*—*Section 101 of the Comprehensive*
 7 *Environmental Response, Compensation, and Liability Act*
 8 *of 1980 (42 U.S.C. 9601) (as amended by section 102(a))*
 9 *is amended by adding at the end the following:*

10 “(40) *BONA FIDE PROSPECTIVE PURCHASER.*—

11 *The term ‘bona fide prospective purchaser’ means a*
 12 *person that acquires ownership of a facility after the*
 13 *date of enactment of this paragraph, or a tenant of*
 14 *such a person, that establishes each of the following by*
 15 *a preponderance of the evidence:*

16 “(A) *DISPOSAL PRIOR TO ACQUISITION.*—

17 *All deposition of hazardous substances at the fa-*
 18 *cility occurred before the person acquired the fa-*
 19 *cility.*

20 “(B) *INQUIRIES.*—

21 “(i) *IN GENERAL.*—*The person made*
 22 *all appropriate inquiries into the previous*
 23 *ownership and uses of the facility and the*
 24 *facility’s real property in accordance with*

1 *generally accepted good commercial and*
2 *customary standards and practices.*

3 “(ii) *STANDARDS AND PRACTICES.*—

4 *The standards and practices referred to in*
5 *paragraph (35)(B)(ii) or those issued or*
6 *adopted by the Administrator under that*
7 *paragraph shall be considered to satisfy the*
8 *requirements of this subparagraph.*

9 “(iii) *RESIDENTIAL USE.*—*In the case*

10 *of property for residential or other similar*
11 *use purchased by a nongovernmental or*
12 *noncommercial entity, a facility inspection*
13 *and title search that reveal no basis for fur-*
14 *ther investigation shall be considered to sat-*
15 *isfy the requirements of this subparagraph.*

16 “(C) *NOTICES.*—*The person provided all le-*
17 *gally required notices with respect to the discov-*
18 *ery or release of any hazardous substances at the*
19 *facility.*

20 “(D) *CARE.*—*The person exercised appro-*
21 *priate care with respect to each hazardous sub-*
22 *stance found at the facility by taking reasonable*
23 *steps to stop any continuing release, prevent any*
24 *threatened future release and prevent or limit*

1 *human or natural resource exposure to any pre-*
2 *viously released hazardous substance.*

3 “(E) *COOPERATION, ASSISTANCE, AND AC-*
4 *CESS.—The person has not failed to substan-*
5 *tially comply with the requirement stated in sub-*
6 *section (y) with respect to the facility.*”

7 “(F) *NO AFFILIATION.—The person is not*
8 *affiliated through any familial or corporate rela-*
9 *tionship with any person that is or was a party*
10 *potentially responsible for response costs at the*
11 *facility.*”

12 (b) *AMENDMENT.—Section 107 of the Comprehensive*
13 *Environmental Response, Compensation, and Liability Act*
14 *of 1980 (42 U.S.C. 9607) (as amended by section 105) is*
15 *amended by adding at the end the following:*

16 “(p) *PROSPECTIVE PURCHASER AND WINDFALL*
17 *LIEN.—*

18 “(1) *LIMITATION ON LIABILITY.—Notwithstand-*
19 *ing subsection (a), a bona fide prospective purchaser*
20 *whose potential liability for a release or threatened*
21 *release is based solely on the purchaser’s being consid-*
22 *ered to be an owner or operator of a facility shall not*
23 *be liable as long as the bona fide prospective pur-*
24 *chaser does not impede the performance of a response*
25 *action or natural resource restoration.*”

1 “(2) *LIEN.*—If there are unrecovered response
2 costs at a facility for which an owner of the facility
3 is not liable by reason of subsection (n)(1) and each
4 of the conditions described in paragraph (3) is met,
5 the United States shall have a lien on the facility, or
6 may obtain from appropriate responsible party a lien
7 on any other property or other assurances of payment
8 satisfactory to the Administrator, for such unre-
9 covered costs.

10 “(3) *CONDITIONS.*—The conditions referred to in
11 paragraph (1) are the following:

12 “(A) *RESPONSE ACTION.*—A response action
13 for which there are unrecovered costs is carried
14 out at the facility.

15 “(B) *FAIR MARKET VALUE.*—The response
16 action increases the fair market value of the fa-
17 cility above the fair market value of the facility
18 that existed 180 days before the response action
19 was initiated.

20 “(C) *SALE.*—A sale or other disposition of
21 all or a portion of the facility has occurred.

22 “(4) *AMOUNT.*—A lien under paragraph (2)—

23 “(A) shall not exceed the increase in fair
24 market value of the property attributable to the

1 *response action at the time of a subsequent sale*
 2 *or other disposition of the property;*

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

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

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

11 **SEC. 106. SAFE HARBOR INNOCENT LANDHOLDERS.**

12 (a) *AMENDMENT.*—Section 101(35) of the Comprehen-
 13 sive Environmental Response, Compensation, and Liability
 14 Act of 1980 (42 U.S.C. 9601(35)) is amended—

15 (1) *in subparagraph (A)—*

16 (A) *in the matter that precedes clause (i),*
 17 *by striking “deeds or” and inserting “deeds,*
 18 *easements, leases, or”;* and

19 (B) *in the matter that follows clause (iii)—*

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

22 (ii) *by striking the period at the end*
 23 *and inserting “, has provided full coopera-*
 24 *tion, assistance, and facility access to the*
 25 *persons that are responsible for response ac-*

1 *tions at the facility, including the coopera-*
2 *tion and access necessary for the installa-*
3 *tion, integrity, operation, and maintenance*
4 *of any complete or partial response action*
5 *at the facility, and has taken no action that*
6 *impeded the effectiveness or integrity of any*
7 *institutional control employed under section*
8 *121 at the facility.”; and*

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

11 *“(B) REASON TO KNOW.—*

12 *“(i) ALL APPROPRIATE INQUIRIES.—*
13 *To establish that the defendant had no rea-*
14 *son to know of the matter described in sub-*
15 *paragraph (A)(i), the defendant must show*
16 *that—*

17 *“(I) at or prior to the date on*
18 *which the defendant acquired the facil-*
19 *ity, the defendant undertook all appro-*
20 *priate inquiries into the previous own-*
21 *ership and uses of the facility in ac-*
22 *cordance with generally accepted good*
23 *commercial and customary standards*
24 *and practices; and*

1 “(II) *the defendant exercised ap-*
2 *propriate care with respect to each*
3 *hazardous substance found at the facil-*
4 *ity by taking reasonable steps to stop*
5 *any continuing release, prevent any*
6 *threatened future release and prevent*
7 *or limit human or natural resource ex-*
8 *posure to any previously released haz-*
9 *ardous substance.*

10 “(ii) *STANDARDS AND PRACTICES.—*
11 *The Administrator shall by regulation es-*
12 *tablish as standards and practices for the*
13 *purpose of clause (i)—*

14 “(I) *the American Society for*
15 *Testing and Materials (ASTM) Stand-*
16 *ard E1527–94, entitled ‘Standard*
17 *Practice for Environmental Site As-*
18 *sessments: Phase I Environmental Site*
19 *Assessment Process’; or*

20 “(II) *alternative standards and*
21 *practices under clause (iii).*

22 “(iii) *ALTERNATIVE STANDARDS AND*
23 *PRACTICES.—*

24 “(I) *IN GENERAL.—The Adminis-*
25 *trator may by regulation issue alter-*

1 *native standards and practices or des-*
2 *ignate standards developed by other or-*
3 *ganizations than the American Society*
4 *for Testing and Materials after con-*
5 *ducting a study of commercial and in-*
6 *dustrial practices concerning the trans-*
7 *fer of real property in the United*
8 *States.*

9 “(II) CONSIDERATIONS.—*In*
10 *issuing or designating alternative*
11 *standards and practices under sub-*
12 *clause (I), the Administrator shall con-*
13 *sider including each of the following:*

14 “(aa) *The results of an in-*
15 *quiry by an environmental profes-*
16 *sional.*

17 “(bb) *Interviews with past*
18 *and present owners, operators,*
19 *and occupants of the facility and*
20 *the facility’s real property for the*
21 *purpose of gathering information*
22 *regarding the potential for con-*
23 *tamination at the facility and the*
24 *facility’s real property.*

1 “(cc) *Reviews of historical*
2 *sources, such as chain of title doc-*
3 *uments, aerial photographs, build-*
4 *ing department records, and land*
5 *use records to determine previous*
6 *uses and occupancies of the real*
7 *property since the property was*
8 *first developed.*

9 “(dd) *Searches for recorded*
10 *environmental cleanup liens, filed*
11 *under Federal, State, or local law,*
12 *against the facility or the facili-*
13 *ty’s real property.*

14 “(ee) *Reviews of Federal,*
15 *State, and local government*
16 *records (such as waste disposal*
17 *records), underground storage*
18 *tank records, and hazardous waste*
19 *handling, generation, treatment,*
20 *disposal, and spill records, con-*
21 *cerning contamination at or near*
22 *the facility or the facility’s real*
23 *property.*

1 “(ff) *Visual inspections of the*
2 *facility and facility’s real prop-*
3 *erty and of adjoining properties.*

4 “(gg) *Specialized knowledge*
5 *or experience on the part of the*
6 *defendant.*

7 “(hh) *The relationship of the*
8 *purchase price to the value of the*
9 *property if the property was*
10 *uncontaminated.*

11 “(ii) *Commonly known or*
12 *reasonably ascertainable informa-*
13 *tion about the property.*

14 “(jj) *The degree of obvious-*
15 *ness of the presence or likely pres-*
16 *ence of contamination at the*
17 *property, and the ability to detect*
18 *such contamination by appro-*
19 *priate investigation.*

20 “(iv) *SITE INSPECTION AND TITLE*
21 *SEARCH.—In the case of property for resi-*
22 *dential use or other similar use purchased*
23 *by a nongovernmental or noncommercial*
24 *entity, a facility inspection and title search*
25 *that reveal no basis for further investigation*

1 *shall be considered to satisfy the require-*
2 *ments of this subparagraph.”.*

3 **(b) STANDARDS AND PRACTICES.—**

4 **(1) ESTABLISHMENT BY REGULATION.—***The Ad-*
5 *ministrator of the Environmental Protection Agency*
6 *shall issue the regulation required by section*
7 *101(35)(B)(ii) of the Comprehensive Environmental*
8 *Response, Compensation, and Liability Act of 1980*
9 *(as added by subsection (a)) not later than 1 year*
10 *after the date of enactment of this Act.*

11 **(2) INTERIM STANDARDS AND PRACTICES.—***Until*
12 *the Administrator issues the regulation described in*
13 *paragraph (1), in making a determination under sec-*
14 *tion 101(35)(B)(i) of the Comprehensive Environ-*
15 *mental Response, Compensation, and Liability Act of*
16 *1980 (as added by subsection (a)), there shall be taken*
17 *into account—*

18 **(A)** *any specialized knowledge or experience*
19 *on the part of the defendant;*

20 **(B)** *the relationship of the purchase price to*
21 *the value of the property if the property was*
22 *uncontaminated;*

23 **(C)** *commonly known or reasonably ascer-*
24 *tainable information about the property;*

1 (D) the degree of obviousness of the presence
2 or likely presence of contamination at the prop-
3 erty; and

4 (E) the ability to detect the contamination
5 by appropriate investigation.

6 **TITLE II—STATE ROLE**

7 **SEC. 201. TRANSFER TO THE STATES OF RESPONSIBILITY**

8 **AT NON-FEDERAL NATIONAL PRIORITIES LIST**

9 **FACILITIES.**

10 (a) *IN GENERAL.*—Title I of the Comprehensive Envi-
11 ronmental Response, Compensation, and Liability Act of
12 1980 (42 U.S.C. 9601 et seq.) (as amended by section 103)
13 is amended by adding at the end the following:

14 **“SEC. 130. TRANSFER TO THE STATES OF RESPONSIBILITY**

15 **AT NON-FEDERAL NATIONAL PRIORITIES LIST**

16 **FACILITIES.**

17 “(a) *DEFINITIONS.*—In this section:

18 “(1) *AUTHORIZED STATE.*—The term ‘authorized
19 State’ means a State that is authorized under sub-
20 section (c) to apply State cleanup program require-
21 ments, in lieu of the requirements of this Act, to the
22 cleanup of a non-Federal listed facility.

23 “(2) *DELEGABLE AUTHORITY.*—The term ‘dele-
24 gable authority’ means authority to perform all of the

1 *authorities included in any 1 or more of the following*
2 *categories of authority:*

3 “(A) *All authorities necessary to perform*
4 *technical investigations, evaluations, and risk*
5 *analyses.*

6 “(B) *All authorities necessary to perform*
7 *alternatives development and remedy selection.*

8 “(C) *All authorities necessary to perform re-*
9 *medial design and remedial action.*

10 “(D) *All authorities necessary to perform*
11 *and operation maintenance.*

12 “(E) *All authorities necessary to perform*
13 *information collection and allocation of liability.*

14 “(3) *DELEGATED STATE.—The term ‘delegated*
15 *State’ means a State to which delegable authority has*
16 *been delegated under subsection (D).*

17 “(4) *DELEGATED AUTHORITY.—The term ‘dele-*
18 *gated authority’ means a delegable authority that has*
19 *been delegated to a delegated State under subsection*
20 *(d).*

21 “(5) *DELEGATED FACILITY.—The term ‘delegated*
22 *facility’ means a non-Federal listed facility with re-*
23 *spect to which a delegable authority has been dele-*
24 *gated to a State under subsection (d).*

1 “(6) *ENFORCEMENT AUTHORITY*.—The term ‘en-
2 forcement authority’ means all authorities necessary
3 to recover response costs, require potentially respon-
4 sible parties to perform response actions, and other-
5 wise compel implementation of a response action, in-
6 cluding—

7 “(A) issuance of an order under section
8 106(a);

9 “(B) a response action cost recovery under
10 section 107;

11 “(C) imposition of a civil penalty or award
12 under subsection (a)(1)(D) or (b)(4) of section
13 109;

14 “(D) settlement under section 122;

15 “(E) gathering of information under section
16 104(e); and

17 “(F) any other authority identified by the
18 Administrator under subsection (b).

19 “(7) *NONDELEGABLE AUTHORITY*.—The term
20 ‘nondelegable authority’ means authority to—

21 “(A) make grants to community advisory
22 groups under section 117; and

23 “(B) conduct research and development ac-
24 tivities under any provision of this Act.

1 “(8) *NON-FEDERAL LISTED FACILITY*.—*The term*
2 ‘*non-Federal listed facility*’ means a facility that—

3 “(A) *is not owned or operated by a depart-*
4 *ment, agency, or instrumentality of the United*
5 *States in any branch of the Government; and*

6 “(B) *is listed on the National Priorities*
7 *List.*

8 “(b) *METHODS FOR TRANSFER OF RESPONSIBILITY TO*
9 *THE STATES*.—

10 “(1) *IN GENERAL*.—*The Administrator shall*
11 *seek, to the extent consistent with the requirement to*
12 *protect human health and the environment, to trans-*
13 *fer to the States the responsibility to perform response*
14 *actions at non-Federal listed facilities.*

15 “(2) *METHODS TO ACCOMPLISH TRANSFER*.—*Re-*
16 *sponsibility may be transferred to a State by use of*
17 *1 or more of the following methods:*

18 “(A) *Authorization under subsection (c).*

19 “(B) *Delegation under subsection (d).*

20 “(3) *FACILITIES WITHIN TRIBAL JURISDIC-*
21 *TION*.—

22 “(A) *IN GENERAL*.—*With respect to a facil-*
23 *ity that is located on Indian lands, the Adminis-*
24 *trator may grant authorization or delegation—*

25 “(i) *to the Indian Tribe; or*

1 “(ii) to the State, with the consent of
2 the Indian Tribe.

3 “(B) DEFINITION OF INDIAN LANDS.—For
4 the purposes of this subsection, the term ‘Indian
5 lands’ means all land within the limits of any
6 Indian reservation under the jurisdiction of the
7 United States Government, notwithstanding the
8 issuance of any patent, and including rights-of-
9 way running through the reservation.

10 “(c) AUTHORIZATION.—

11 “(1) IN GENERAL.—The Administrator may
12 grant to a State authority to apply any or all of the
13 requirements of the State cleanup program in lieu of
14 any or all of the requirements of this Act to the clean-
15 up of one or more non-Federal listed facilities.

16 “(2) APPLICATION.—A State seeking authoriza-
17 tion shall submit to the Administrator an application
18 identifying each non-Federal listed facility for which
19 authorization is requested, including such informa-
20 tion and documentation as the Administrator may re-
21 quire to enable the Administrator to determine wheth-
22 er and to what extent—

23 “(A) the State has adequate legal authority,
24 financial and personnel resources, organization,

1 *and expertise to implement, administer, and en-*
2 *force a hazardous substance response program;*

3 “(B) *the State cleanup program will be im-*
4 *plemented in a manner that is protective of*
5 *human health and the environment;*

6 “(C) *the State has procedures to ensure pub-*
7 *lic notice and, as appropriate, opportunity for*
8 *comment on remedial action plans, consistent*
9 *with section 117; and*

10 “(D) *the State agrees to exercise its enforce-*
11 *ment authorities to require that persons that are*
12 *potentially liable under section 107(a), to the ex-*
13 *tent practicable, perform and pay for the re-*
14 *sponse actions.*

15 “(3) *ACTION BY THE ADMINISTRATOR.—*

16 “(A) *IN GENERAL.—Not later than 180*
17 *days after receipt from a State of an application*
18 *under paragraph (2) (unless the State agrees to*
19 *a greater length of time), the Administrator*
20 *shall—*

21 “(i) *approve or disapprove the applica-*
22 *tion; and*

23 “(ii) *if the Administrator disapproves*
24 *the application, include in the notice of dis-*
25 *approval an identification of each criterion*

1 *under paragraph (2) that the Administrator*
2 *determined was not met and an explanation*
3 *of the basis for the determination.*

4 *“(B) FAILURE TO ACT.—*

5 *“(i) IN GENERAL.—If the Adminis-*
6 *trator does not make a determination under*
7 *subparagraph (A) with respect to an appli-*
8 *cation on or before the last day of the 180-*
9 *day period specified in that subparagraph,*
10 *any person may bring an action, without*
11 *regard to the notice requirement of section*
12 *310(d)(1), to compel the Administrator to*
13 *make a determination.*

14 *“(ii) RELIEF.—In an action under*
15 *clause (i)(I)—*

16 *“(I) the court shall order the Ad-*
17 *ministrator to approve or disapprove*
18 *the application within 30 days after*
19 *the date of the order; or*

20 *“(II) if the Administrator or any*
21 *other person interested in the applica-*
22 *tion contends that action on the appli-*
23 *cation should be delayed pending con-*
24 *sideration of additional information*
25 *not contained in the application itself*

1 or in comments submitted regarding
2 the application—

3 “(aa) remand the applica-
4 tion to the Administrator only if
5 the court finds good cause for the
6 failure of the Administrator or
7 other person to present or request
8 the information; and

9 “(bb) extend the period for
10 consideration of the application to
11 a date not later than 90 days
12 after the date of the order.

13 “(iii) *NO PREJUDICE.*—The failure of
14 the Administrator to make a determination
15 under subparagraph (A) shall not be consid-
16 ered to be a disapproval of the application.

17 “(C) *PUBLIC COMMENT.*—The Adminis-
18 trator shall provide for public notice and an op-
19 portunity to comment on a decision to approve
20 an application under this subsection.

21 “(D) *RESUBMISSION OF APPLICATION.*—If
22 the Administrator disapproves an application
23 under paragraph (2), the State may resubmit the
24 application at any time after receiving the no-
25 tice of disapproval.

1 “(E) *NO ADDITIONAL TERMS OR CONDI-*
2 *TIONS.—The Administrator shall not impose any*
3 *term or condition on the approval of an applica-*
4 *tion that meets the requirements stated in para-*
5 *graph (2) (except a requirement that any tech-*
6 *nical deficiencies in the application be cor-*
7 *rected).*

8 “(F) *JUDICIAL REVIEW.—Approval or dis-*
9 *approval of an application or resubmitted appli-*
10 *cation shall be considered final agency action*
11 *subject to judicial review under section 113(b).*

12 “(4) *EXPEDITED AUTHORIZATION.—*

13 “(A) *PILOT PROGRAM.—*

14 “(i) *IN GENERAL.—Notwithstanding*
15 *paragraph (1), the Administrator shall pro-*
16 *vide an expedited process for the evaluation*
17 *of the applications of not fewer than 6*
18 *States qualified for authorization under this*
19 *section.*

20 “(ii) *CRITERIA FOR APPROVAL.—Not*
21 *later than 180 days after the date of enact-*
22 *ment of this section, the Administrator shall*
23 *publish criteria, in accordance with para-*
24 *graph (2), for approval of an application*
25 *for expedited authorization.*

1 “(iii) *APPROVAL AND DISAPPROVAL.*—
2 *An application submitted by a State identi-*
3 *fied under subparagraph (B) on or before*
4 *the last day of the 12-month period begin-*
5 *ning on the date of enactment of this section*
6 *shall be deemed to be approved on the last*
7 *day of the 180-day period beginning on the*
8 *date on which the application is submitted*
9 *unless, on or before that day, the Adminis-*
10 *trator publishes in the Federal Register an*
11 *explanation why the State does not meet the*
12 *criteria for authorization established under*
13 *this section.*

14 “(iv) *REPORT TO CONGRESS.*—*Not*
15 *later than 3 years after the date of enact-*
16 *ment of this section, the Administrator shall*
17 *submit to Congress a report on the status of*
18 *any facilities for which a State has received*
19 *authorization under this subparagraph.*

20 “(B) *PERMANENT PROGRAM.*—

21 “(i) *IN GENERAL.*—*Not later than 3*
22 *years after the date of the enactment of this*
23 *section, based on experience gained in the*
24 *pilot program under subparagraph (A), the*
25 *Administrator shall promulgate a regula-*

1 *tion providing criteria for expedited author-*
2 *ization of States under this section.*

3 *“(ii) REQUIREMENTS.—The regulation*
4 *under clause (i) shall provide for notice and*
5 *opportunity for public comment and a*
6 *strict schedule for consideration and ap-*
7 *proval or disapproval of an application.*

8 *“(d) DELEGATION OF AUTHORITY.—*

9 *“(1) IN GENERAL.—Pursuant to an approved*
10 *State application, the Administrator shall delegate*
11 *authority to perform 1 or more delegable authorities*
12 *with respect to 1 or more non-Federal listed facilities*
13 *in the State.*

14 *“(2) IDENTIFICATION OF DELEGABLE AUTHORI-*
15 *TIES.—*

16 *“(A) IN GENERAL.—Not later than 1 year*
17 *after the date of enactment of this section, the*
18 *President shall by regulation identify all of the*
19 *authorities of the Administrator that shall be in-*
20 *cluded in a delegation of any category of dele-*
21 *gable authority described in subsection (a)(2).*

22 *“(B) LIMITATION.—The Administrator shall*
23 *not identify a nondelegable authority for inclu-*
24 *sion in a delegation of any category of delegable*
25 *authority.*

1 “(C) *ENFORCEMENT AUTHORITIES.*—A
2 *State seeking a delegation under this sub-*
3 *section—*

4 “(i) *in addition to meeting the require-*
5 *ments of paragraph (3), shall demonstrate*
6 *that the State’s enforcement authorities are*
7 *substantially equivalent to the enforcement*
8 *authorities under this Act; and*

9 “(ii) *shall use the State’s enforcement*
10 *authorities in carrying out delegable au-*
11 *thorities.*

12 “(3) *APPLICATION.*—*An application under para-*
13 *graph (1) shall—*

14 “(A) *identify each non-Federal listed facil-*
15 *ity for which delegation is requested;*

16 “(B) *identify each delegable authority that*
17 *is requested to be delegated for each non-Federal*
18 *listed facility for which delegation is requested;*
19 *and*

20 “(C) *include such information and docu-*
21 *mentation as the Administrator may require to*
22 *enable the Administrator to determine whether*
23 *and to what extent—*

24 “(i) *the State has adequate financial*
25 *and personnel resources, organization, and*

1 *expertise to implement, administer, and en-*
2 *force a hazardous substance response pro-*
3 *gram;*

4 “(ii) *the State will implement the dele-*
5 *gated authorities in a manner that is pro-*
6 *ductive of human health and the environ-*
7 *ment; and*

8 “(iii) *the State agrees to exercise its*
9 *delegated authorities to require that persons*
10 *that are potentially liable under section*
11 *107(a), to the extent practicable, perform*
12 *and pay for the response actions.*

13 “(4) *ACTION BY THE ADMINISTRATOR.—*

14 “(A) *IN GENERAL.—Not later than 120*
15 *days after receiving an application from a State*
16 *(unless the State agrees to a greater length of*
17 *time for the Administrator to make a determina-*
18 *tion), the Administrator shall—*

19 “(i) *issue a notice of approval of the*
20 *application (including approval or dis-*
21 *approval regarding any or all of the facili-*
22 *ties with respect to which a delegation of*
23 *authority is requested or with respect to any*
24 *or all of the authorities that are requested*
25 *to be delegated); or*

1 “(ii) if the Administrator determines
2 that the State does not meet 1 or more of
3 the criteria under paragraph (3), issue a
4 notice of disapproval, including an expla-
5 nation of the basis for the determination.

6 “(B) FAILURE TO ACT.—

7 “(i) IN GENERAL.—If the Adminis-
8 trator does not make a determination under
9 subparagraph (A) with respect to an appli-
10 cation on or before the last day of the 120-
11 day period specified in that subparagraph,
12 any person may bring an action, without
13 regard to the notice requirement of section
14 310(d)(1), to compel the Administrator to
15 make a determination.

16 “(ii) RELIEF.—In an action under
17 clause (i)(I)—

18 “(I) the court shall order the Ad-
19 ministratoꝛ to approve or disapprove
20 the application within 30 days after
21 the date of the order; or

22 “(II) if the Administrator or any
23 other person interested in the applica-
24 tion contends that action on the appli-
25 cation should be delayed pending con-

1 *sideration of additional information*
2 *not contained in the application itself*
3 *or in comments submitted regarding*
4 *the application—*

5 *“(aa) remand the applica-*
6 *tion to the Administrator only if*
7 *the court finds good cause for the*
8 *failure of the Administrator or*
9 *other person to present or request*
10 *the information; and*

11 *“(bb) extend the period for*
12 *consideration of the application to*
13 *a date not later than 90 days*
14 *after the date of the order.*

15 *“(iii) NO PREJUDICE.—The failure of*
16 *the Administrator to make a determination*
17 *under subparagraph (A) shall not be consid-*
18 *ered to be a disapproval of the application.*

19 *“(C) PUBLIC COMMENT.—The Adminis-*
20 *trator shall provide public notice and an oppor-*
21 *tunity for comment on an application under this*
22 *subsection.*

23 *“(D) RESUBMISSION OF APPLICATION.—If*
24 *the Administrator disapproves an application*
25 *under paragraph (1), the State may resubmit the*

1 *application at any time after receiving the no-*
2 *tice of disapproval.*

3 “(E) *NO ADDITIONAL TERMS OR CONDI-*
4 *TIONS.—The Administrator shall not impose any*
5 *term or condition on the approval of an applica-*
6 *tion that meets the requirements stated in para-*
7 *graph (2) (except a requirement that any tech-*
8 *nical deficiencies in the application be cor-*
9 *rected).*

10 “(F) *JUDICIAL REVIEW.—Approval or dis-*
11 *approval of an application or resubmitted applica-*
12 *tion shall be considered final agency action*
13 *subject to judicial review under section 113(b).*

14 “(5) *DELEGATION AGREEMENT.—On approval of*
15 *a delegation of authority under this section, the Ad-*
16 *ministrator and the delegated State shall enter into a*
17 *delegation agreement that identifies each category of*
18 *delegable authority that is delegated with respect to*
19 *each delegated facility.*

20 “(e) *PERFORMANCE OF TRANSFERRED RESPONSIBIL-*
21 *ITIES.—*

22 “(1) *IN GENERAL.—A State to which responsibil-*
23 *ity is transferred under subsection (c) or (d) shall*
24 *have sole authority (except as provided in subsection*
25 *(f)) to perform the transferred responsibility.*

1 “(2) *COMPLIANCE WITH ACT.*—A delegated State
2 shall implement each applicable provision of this Act
3 (including regulations and guidance issued by the Ad-
4 ministrator) so as to perform each delegated authority
5 with respect to a delegated facility in the same man-
6 ner as would the Administrator with respect to a fa-
7 cility that is not a delegated facility.

8 “(f) *RETAINED FEDERAL AUTHORITIES.*—

9 “(1) *WITHDRAWAL OF TRANSFER OF RESPON-*
10 *SIBILITY.*—

11 “(A) *IN GENERAL.*—If at any time the Ad-
12 ministrator finds that contrary to the terms of
13 an approved application under subsection (c) or
14 (d), a State to which responsibility at a non-
15 Federal listed facility has been transferred under
16 this section—

17 “(i) lacks the required financial and
18 personnel resources, organization, or exper-
19 tise to administer and enforce the trans-
20 ferred responsibilities;

21 “(ii) does not have adequate legal au-
22 thority to perform the transferred respon-
23 sibilities;

24 “(iii) is failing to materially carry out
25 the State’s transferred responsibilities; or

1 “(iv) is failing to operate its State
2 cleanup program or exercise transferred re-
3 sponsibility in such a manner as to be pro-
4 tective of human health and the environ-
5 ment as required under section 121;

6 the Administrator may withdraw the transfer of
7 responsibility after providing notice and oppor-
8 tunity to correct deficiencies under subparagraph
9 (B).

10 “(B) NOTICE AND OPPORTUNITY TO COR-
11 RECT.—If the Administrator proposes to with-
12 draw a transfer of responsibility for any or all
13 non-Federal listed facilities, the Administrator
14 shall give the State written notice and allow the
15 State at least 90 days after the date of receipt
16 of the notice to correct the deficiencies cited in
17 the notice.

18 “(C) FAILURE TO CORRECT.—If the Admin-
19 istrator finds that the deficiencies have not been
20 corrected within the time specified in a notice
21 under subparagraph (B), the Administrator may
22 withdraw the transfer of responsibility after pro-
23 viding public notice and opportunity for com-
24 ment.

1 “(D) *JUDICIAL REVIEW.*—*A decision of the*
2 *Administrator to withdraw a transfer of respon-*
3 *sibility shall be subject to judicial review under*
4 *section 113(b).*

5 “(2) *NO EFFECT ON CERTAIN AUTHORITIES.*—
6 *Nothing in this section affects the authority of the Ad-*
7 *ministrator under this Act to—*

8 “(A) *perform a response action at a facility*
9 *listed on the National Priorities List in a State*
10 *to which a transfer of responsibility has not been*
11 *made under this section or at a facility not in-*
12 *cluded in a transfer of responsibility; or*

13 “(B) *perform any element of a response ac-*
14 *tion with respect to a non-Federal listed facility*
15 *that is not included among the responsibilities*
16 *transferred to a State with respect to the facility.*

17 “(3) *FEDERAL REMOVAL AUTHORITY.*—

18 “(A) *NOTICE.*—*Before performing an emer-*
19 *gency removal action under section 104 at a*
20 *non-Federal listed facility at which responsibil-*
21 *ity has been transferred to a State, the Adminis-*
22 *trator shall notify the State of the Administra-*
23 *tor’s intention to perform the removal.*

24 “(B) *STATE ACTION.*—*If, within 48 hours*
25 *after receiving a notification under subpara-*

1 *graph (A), the State notifies the Administrator*
2 *that the State intends to take action to perform*
3 *an emergency removal at the non-Federal listed*
4 *facility, the Administrator shall not perform the*
5 *emergency removal action unless the Adminis-*
6 *trator determines that the State has failed to act*
7 *within a reasonable period of time to perform*
8 *the emergency removal.*

9 “(C) *PUBLIC HEALTH OR ENVIRONMENTAL*
10 *EMERGENCY.—If the Administrator finds that*
11 *any release or threat of release constitutes a pub-*
12 *lic health or environmental emergency under sec-*
13 *tion 104(a)(4) the Administrator may act imme-*
14 *diately notwithstanding subparagraph (B).*

15 “(4) *FEDERAL ENFORCEMENT AUTHORITY.—*

16 “(A) *IN GENERAL.—In the case of a non-*
17 *Federal listed facility at which—*

18 “(i) *there has been a transfer of re-*
19 *sponsibility under this section; and*

20 “(ii) *there is a release or threatened re-*
21 *lease of a hazardous substance, pollutant, or*
22 *contaminant;*

23 *neither the President nor any other person may*
24 *use any authority under this Act to take an ad-*
25 *ministrative or judicial enforcement action or to*

1 bring a private civil action against any person
2 regarding any matter that is within the scope of
3 the transfer of responsibility, except as provided
4 in subparagraph (B).

5 “(B) *EXCEPTIONS.*—*The President may*
6 *bring an administrative or judicial enforcement*
7 *action with respect to a non-Federal listed facil-*
8 *ity under this Act if—*

9 “(i) *the State requests that the Presi-*
10 *dent provide assistance in the performance*
11 *of a response action and that the enforce-*
12 *ment bar in subparagraph (A) be lifted; or*

13 “(ii) *after providing the Governor of*
14 *the State notice and a reasonable oppor-*
15 *tunity to cure, the Administrator—*

16 “(I) *makes a determination that*
17 *the State is unwilling or unable to take*
18 *appropriate action at a facility to re-*
19 *spond to a release that constitutes a*
20 *public health or environmental emer-*
21 *gency; and*

22 “(II) *obtains a declaratory judg-*
23 *ment in United States district court*
24 *that the State has failed to make rea-*

1 *sonable progress in performance of a*
2 *remedial action at the facility.*

3 “(C) *ACTION FOR CONTRIBUTION.*—Sub-
4 *paragraph (A) does not preclude an action for*
5 *contribution for response costs incurred by any*
6 *person.*

7 “(5) *COST RECOVERY.*—

8 “(A) *RECOVERY BY A TRANSFEREE*
9 *STATE.*—*Of the amount of any response costs re-*
10 *covered from a responsible party by a State that*
11 *is transferred responsibility at a non-federal list-*
12 *ed facility under section 107—*

13 “(i) *25 percent of the amount of any*
14 *Federal response cost recovered with respect*
15 *to a facility, plus an amount equal to the*
16 *amount of response costs incurred by the*
17 *State with respect to the facility, may be re-*
18 *tained by the State; and*

19 “(ii) *the remainder shall be deposited*
20 *in the Hazardous Substances Superfund es-*
21 *tablished under subchapter A of chapter 98*
22 *of the Internal Revenue Code of 1986.*

23 “(B) *RECOVERY BY THE ADMINISTRATOR.*—

24 “(i) *IN GENERAL.*—*The Administrator*
25 *may take action under section 107 to re-*

1 *cover response costs from a potentially re-*
2 *sponsible party for a non-federal listed fa-*
3 *ility for which responsibility is transferred*
4 *to a State if—*

5 *“(I) the State notifies the Admin-*
6 *istrator in writing that the State does*
7 *not intend to pursue action for recov-*
8 *ery of response costs under section 107*
9 *against the potentially responsible*
10 *party; or*

11 *“(II) the State fails to take action*
12 *to recover response costs within a rea-*
13 *sonable time in light of applicable stat-*
14 *utes of limitation.*

15 *“(ii) NOTICE.—If the Administrator*
16 *proposes to commence an action for recovery*
17 *of response costs under section 107, the Ad-*
18 *ministrator shall give the State written no-*
19 *tice and allow the State at least 90 days*
20 *after receipt of the notice to commence the*
21 *action.*

22 *“(iii) NO FURTHER ACTION.—If the*
23 *Administrator takes action against a poten-*
24 *tially responsible party under section 107*
25 *relating to a release from a non-Federal*

1 *listed facility after providing a State notice*
2 *under clause (ii), the State may not take*
3 *any other action for recovery of response*
4 *costs relating to that release under this Act*
5 *or any other Federal or State law.*

6 “(6) *DELISTING OF NATIONAL PRIORITY LIST FA-*
7 *CILITIES.—*

8 “(A) *DELISTING REQUEST.—A State may*
9 *request that the Administrator remove from the*
10 *National Priorities List all or part of a facility*
11 *to which responsibility has been transferred to*
12 *the State under this section.*

13 “(B) *ACTION BY THE ADMINISTRATOR.—*
14 *The Administrator shall—*

15 “(i) *promptly consider a request under*
16 *subparagraph (A); and*

17 “(ii) *remove the facility or part of the*
18 *facility from the National Priorities List*
19 *unless the delisting would be inconsistent*
20 *with a requirement of this Act.*

21 “(C) *DENIAL OF REQUEST.—If the Admin-*
22 *istrator decides to deny a request for delisting*
23 *under subparagraph (A), the Administrator shall*
24 *publish the decision in the Federal Register with*
25 *an explanation of the reasons for the denial.*

1 “(D) *REPORT.*—*At the end of each calendar*
2 *year, the Administrator shall submit to Congress*
3 *a report describing actions taken under this*
4 *paragraph during the year.*

5 “(g) *FUNDING.*—

6 “(1) *IN GENERAL.*—*The Administrator shall pro-*
7 *vide grants to or enter into contracts or cooperative*
8 *agreements with States to which responsibility has*
9 *been transferred under this section.*

10 “(2) *NO CLAIM AGAINST FUND.*—*Notwithstand-*
11 *ing any other law, funds to be granted under this sub-*
12 *section shall not constitute a claim against the Fund*
13 *or the United States.*

14 “(3) *INSUFFICIENT FUNDS AVAILABLE.*—*If funds*
15 *are unavailable in any fiscal year to satisfy all com-*
16 *mitments made under this section by the Adminis-*
17 *trator, the Administrator shall have sole authority*
18 *and discretion to establish priorities and to delay*
19 *payments until funds are available.*

20 “(4) *AMOUNTS OF FUNDING.*—

21 “(A) *IN GENERAL.*—*Once every 3 years*
22 *with respect to subparagraphs (B) and (C), and*
23 *once each year with respect to subparagraph (D),*
24 *the Administrator and the State shall determine*
25 *the amount of Federal funding that will be re-*

1 *quired for the State to undertake the responsibil-*
2 *ities under this section.*

3 “(B) *ADMINISTRATIVE COSTS.*—

4 “(i) *IN GENERAL.*—*The Administrator*
5 *shall provide funding for administration of*
6 *the State response program in place of the*
7 *Federal program under an authorization*
8 *under subsection (c) or a delegation under*
9 *subsection (d), based on the number of fa-*
10 *ilities and the activities at the facilities for*
11 *which the State has received delegation or*
12 *authorization.*

13 “(ii) *AMOUNT OF FUNDING.*—

14 “(I) *CALCULATION BASED ON*
15 *FIXED COSTS.*—*The amount of funding*
16 *under clause (i) shall be based on a*
17 *calculation of the fixed costs of pro-*
18 *gram administration.*

19 “(II) *MINIMUM AMOUNT.*—*In the*
20 *case of no State shall the amount of*
21 *funding be less than the funding levels*
22 *necessary for Federal administration of*
23 *the same activities.*

24 “(C) *PRECONSTRUCTION COSTS.*—

1 “(i) *IN GENERAL.*—*The Administrator*
2 *and a State shall agree on the amount of*
3 *Federal funding for all preconstruction ac-*
4 *tivities for which the State has received an*
5 *authorization under subsection (c) or dele-*
6 *gation under subsection (d).*

7 “(ii) *AMOUNT OF FUNDING.*—*The*
8 *amount of funding under clause (i) may be*
9 *based on anticipated outputs and standard*
10 *pricing factors.*

11 “(D) *REMEDY CONSTRUCTION COSTS.*—*The*
12 *Administrator shall provide funding for remedy*
13 *construction at a site for which the State has an*
14 *authorization under subsection (c) or delegation*
15 *under subsection (d) if—*

16 “(i) *the remedial design for the facility*
17 *is complete; and*

18 “(ii) *the State certifies that—*

19 “(I) *there are no financially via-*
20 *ble potentially responsible parties ca-*
21 *pable of performing the response ac-*
22 *tion; or*

23 “(II) *enforcement measures have*
24 *been attempted and the remedial action*

1 *would be delayed without Federal*
2 *funding.*

3 “(5) *PRIORITIZATION PROCESS.*—

4 “(A) *IN GENERAL.*—*In a process for allocat-*
5 *ing funds among facilities, the Administrator*
6 *shall include all facilities that are the subject of*
7 *a State response program under an authoriza-*
8 *tion under subsection (c) or delegation under*
9 *subsection (d).*

10 “(B) *CONSIDERATION.*—*In allocating fund-*
11 *ing among facilities, the Administrator—*

12 “(i) *shall not take into consideration*
13 *whether a listed facility is the subject of a*
14 *State response program under an author-*
15 *ization under subsection (c) or a delegation*
16 *under subsection (d); and*

17 “(ii) *shall apply the same decision-*
18 *making criteria and factors (including the*
19 *need to maintain activity at facilities at*
20 *which construction has been commenced) in*
21 *the same manner to all facilities.*

22 “(C) *PUBLICATION OF LIST.*—*The Adminis-*
23 *trator shall publish annually a list of facilities*
24 *at which response actions are proposed to be*

1 *taken and the funding amounts for each such re-*
2 *sponse action.*

3 “(6) *USE OF FUNDS.—*

4 “(A) *PRE-REMEDIAL FUNDS.—A State may*
5 *use funds provided under this subsection to take*
6 *any actions or perform any duties necessary to*
7 *implement any authorization or delegation that*
8 *the State has received under subsection (c) or*
9 *(d).*

10 “(B) *REMEDY CONSTRUCTION FUNDS.—A*
11 *State shall use funds provided under this sub-*
12 *section to construct the remedy at the facility for*
13 *which funding is provided.*

14 “(7) *LIMITATION ON REIMBURSEMENT FOR RE-*
15 *MOVAL ACTIONS UNDER SECTION 104.—Reimburse-*
16 *ment to a State for exercising any removal authority*
17 *under subsection (c) or (d) shall be limited to facili-*
18 *ties for which removal authority is specifically dele-*
19 *gated or authorized under those subsections, except as*
20 *provided in section 123.*

21 “(8) *PERMITTED USE OF GRANT FUNDS.—A*
22 *State to which responsibility has been transferred*
23 *under this section may use grant funds, in accordance*
24 *with this Act and the National Contingency Plan, to*
25 *take any action or perform any duty necessary to im-*

1 *plement the authority delegated to the State under*
2 *this section.*

3 *“(9) COST SHARE.—A State receiving a grant*
4 *under this subsection—*

5 *“(A) shall provide an assurance that the*
6 *State will pay any amount required under sec-*
7 *tion 104(c)(3); and*

8 *“(B) may not use grant funds to pay any*
9 *amount required under section 104(c)(3).*

10 *“(10) CERTIFICATION OF USE OF FUNDS.—*

11 *“(A) IN GENERAL.—Not later than 1 year*
12 *after the date on which a State receives funds*
13 *under this subsection, and annually thereafter,*
14 *the Governor of the State shall submit to the Ad-*
15 *ministrator—*

16 *“(i) a certification that the State has*
17 *used the funds in accordance with the re-*
18 *quirements of this Act and the National*
19 *Contingency Plan; and*

20 *“(ii) information describing the man-*
21 *ner in which the State used the funds.*

22 *“(B) REVIEW OF USE OF FUNDS.—*

23 *“(i) IN GENERAL.—The Administrator*
24 *shall review a certification submitted by the*
25 *Governor under subparagraph (A) not later*

1 *than 120 days after the date of its submission.*
2

3 *“(ii) FINDING OF USE OF FUNDS IN-*
4 *CONSISTENT WITH THIS ACT.—If the Ad-*
5 *ministrator finds that funds were used in a*
6 *manner that is inconsistent with this Act,*
7 *the Administrator shall notify the Governor*
8 *in writing not later than 120 days after re-*
9 *ceiving the Governor’s certification.*

10 *“(iii) EXPLANATION.—Not later than*
11 *30 days after receiving a notice under*
12 *clause (ii), the Governor shall—*

13 *“(I) explain why the finding of*
14 *the Administrator is in error; or*

15 *“(II) explain to the satisfaction of*
16 *the Administrator how any*
17 *misapplication or misuse of funds will*
18 *be corrected.*

19 *“(iv) FAILURE TO EXPLAIN.—If the*
20 *Governor fails to make an explanation*
21 *under clause (iii) to the satisfaction of the*
22 *Administrator, the Administrator may re-*
23 *quest reimbursement of such amount of*
24 *funds as the Administrator finds was mis-*
25 *applied or misused.*

1 “(v) *REPAYMENT OF FUNDS.*—If the
2 Administrator fails to obtain reimburse-
3 ment from the State within a reasonable pe-
4 riod of time, the Administrator may, after
5 30 days’ notice to the State, bring a civil
6 action in United States district court to re-
7 cover from the transferee State any funds
8 that were advanced for a purpose or were
9 used for a purpose or in a manner that is
10 inconsistent with this Act.

11 “(C) *REGULATIONS.*—Not later than 1 year
12 after the date of enactment of this section, the
13 Administrator shall promulgate a regulation de-
14 scribing with particularity the information that
15 a State shall be required to provide under sub-
16 paragraph (A)(ii).

17 “(h) *COOPERATIVE AGREEMENTS.*—Nothing in this
18 section affects the authority of the Administrator under sec-
19 tion 104(d)(1) to enter into a cooperative agreement with
20 a State, a political subdivision of a State, or an Indian
21 Tribe to carry out actions under section 104.”.

22 “(b) *STATE COST SHARE.*—Section 104(c) of the Com-
23 prehensive Environmental Response, Compensation, and
24 Liability Act of 1980 (42 U.S.C. 9604(c)) is amended—

1 (1) by striking “(c)(1) Unless” and inserting the
2 *following:*

3 “(c) MISCELLANEOUS LIMITATIONS AND REQUIRE-
4 MENTS.—

5 “(1) CONTINUANCE OF OBLIGATIONS FROM
6 FUND.—Unless”;

7 (2) by striking “(2) The President” and insert-
8 ing the following:

9 “(2) CONSULTATION.—The President”; and

10 (3) by striking paragraph (3) and inserting the
11 following:

12 “(3) STATE COST SHARE.—

13 “(A) IN GENERAL.—The Administrator
14 shall not provide any funding for remedial ac-
15 tion under this section unless the State in which
16 the release occurs first enters into a contract or
17 cooperative agreement with the Administrator
18 providing assurances deemed adequate by the
19 Administrator that the State will pay, in cash or
20 through in-kind contributions, 10 percent of the
21 costs of the remedial action and operation and
22 maintenance costs.

23 “(B) ACTIVITIES WITH RESPECT TO WHICH
24 STATE COST SHARE IS REQUIRED.—No State

1 *cost share shall be required except for remedial*
2 *actions under section 104.*

3 “(C) *INDIAN TRIBES.*—*In the case of reme-*
4 *dial action to be taken on land or water held by*
5 *an Indian Tribe, held by the United States in*
6 *trust for an Indian Tribe, held by a member of*
7 *an Indian Tribe (if the land or water is subject*
8 *to a trust restriction on alienation), or otherwise*
9 *within the borders of an Indian reservation, the*
10 *requirements of this paragraph shall not apply.”.*

11 (c) *USES OF FUND.*—*Section 111(a) of the Com-*
12 *prehensive Environmental Response, Compensation, and*
13 *Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by*
14 *inserting after paragraph (6) the following:*

15 “(7) *GRANTS TO AUTHORIZED STATES AND DEL-*
16 *EGATED STATES.*—*Making a grant to an authorized*
17 *State or delegated State under section 130(g).”.*

18 (d) *INDIAN TRIBES.*—*Section 126 of the Comprehen-*
19 *sive Environmental Response, Compensation, and Liability*
20 *Act of 1980 (42 U.S.C. 9626) is amended—*

21 (1) *by striking “and section 105” and inserting*
22 *“; section 105”; and*

23 (2) *by inserting before the period at the end the*
24 *following: “, and section 130 (with respect to a facil-*
25 *ity that is located on Indian lands)”.*

1 (e) *RELATIONSHIP TO OTHER LAWS.*—

2 (1) *IN GENERAL.*—Section 114(b) of the Com-
3 prehensive Environmental Response, Compensation,
4 and Liability Act of 1980 (42 U.S.C. 9614(b)) is
5 amended by striking “removal” each place it appears
6 and inserting “response”.

7 (2) *CONFORMING AMENDMENT.*—Section
8 101(37)(B) of the Comprehensive Environmental Re-
9 sponse, Compensation, and Liability Act of 1980 (42
10 U.S.C. 9601(37)(B)) is amended by striking “section
11 114(c)” and inserting “section 114(b)”.

12 **TITLE III—LOCAL COMMUNITY**
13 **PARTICIPATION**

14 **SEC. 301. DEFINITIONS.**

15 (a) *SECTION 101.*—Section 101 of the Comprehensive
16 Environmental Response, Compensation, and Liability Act
17 of 1980 (42 U.S.C. 9601) (as amended by section 105(a))
18 is amended by adding at the end the following:

19 “(41) *ATSDR.*—The term ‘ATSDR’ means the
20 Agency for Toxic Substances and Disease Registry.”.

21 (b) *PUBLIC PARTICIPATION.*—

22 (1) *IN GENERAL.*—Section 117 of the Com-
23 prehensive Environmental Response, Compensation,
24 and Liability Act of 1980 (42 U.S.C. 9617) is amend-
25 ed—

1 (A) by redesignating subsections (a) through
2 (e) as subsections (b) through (f), respectively;
3 and

4 (B) by inserting after the section heading
5 the following:

6 “(a) *DEFINITIONS.*—*In this section:*

7 “(1) *AFFECTED COMMUNITY.*—*The term ‘affected*
8 *community’ means a group of 2 or more individuals*
9 *who may be affected by the release or threatened re-*
10 *lease of a hazardous substance, pollutant, or contami-*
11 *nant from a covered facility.*

12 “(2) *COVERED FACILITY.*—*The term ‘covered fa-*
13 *cility’ means a facility—*

14 “(A) *that has been listed or proposed for*
15 *listing on the National Priorities List; or*

16 “(B) *at which the Administrator is under-*
17 *taking a removal action that it is anticipated*
18 *will exceed—*

19 “(i) *in duration, 1 year; or*

20 “(ii) *in cost, the funding limit under*
21 *section 104(c)(1).”.*

22 (2) *CONFORMING AMENDMENTS.*—

23 (A) *Title I of the Comprehensive Environ-*
24 *mental Response, Compensation, and Liability*
25 *Act of 1980 is amended—*

1 (i) in section 111(a)(5) (42 U.S.C.
2 9611), by striking “117(e)” and inserting
3 “117(f)”;

4 (ii) in section 113(k)(2)(B) (42 U.S.C.
5 9613)—

6 (I) in clause (iii), by striking
7 “117(a)(2)” and inserting “117(b)(2)”;
8 and

9 (II) in the third sentence, by
10 striking “117(d)” and inserting
11 “117(e)”.

12 (B) Section 2705(e) of title 10, United
13 States Code, is amended—

14 (i) by striking “117(e)” and inserting
15 “117(f)”;

16 (ii) by striking “(42 U.S.C. 9617(e))”
17 and inserting “(42 U.S.C. 9617(f))”.

18 **SEC. 302. PUBLIC PARTICIPATION GENERALLY.**

19 Section 117 of the Comprehensive Environmental Re-
20 sponse, Compensation, and Liability Act of 1980 (42 U.S.C.
21 9617) is amended—

22 (1) in the first sentence of paragraph (2) of sub-
23 section (b) (as redesignated by section 301(b)), by in-
24 serting “, adequate notice,” after “oral comments”;

1 (2) *in subsection (e) (as redesignated by section*
2 *301(b)), by striking “major”; and*

3 (3) *by striking subsection (f) (as redesignated by*
4 *section 301(b)) and inserting the following:*

5 “(f) *AVAILABILITY OF RECORDS.—*

6 “(1) *IN GENERAL.—Except as provided in para-*
7 *graph (2), throughout all phases of a response action*
8 *at a facility and without the need to file a request*
9 *under section 552 of title 5, United States Code, the*
10 *President shall make available to the affected commu-*
11 *nity (including the recipient of a technical assistance*
12 *grant, if one has been awarded under subsection (i))*
13 *or a local community advisory group (if one has been*
14 *established under subsection (h)), all records in the*
15 *possession or control of the United States relating to*
16 *a release or threatened release of a hazardous sub-*
17 *stance, pollutant, or contaminant at the facility and*
18 *that do not relate to liability, for inspection and, sub-*
19 *ject to reasonable fees, for copying.*

20 “(2) *EXEMPT RECORDS.—Paragraph (1) shall*
21 *not apply to a record that is exempt from disclosure*
22 *under section 552 of title 5, United States Code (in-*
23 *cluding any information protected from disclosure by*
24 *privilege or as confidential business information), or*
25 *to any record that is exchanged between parties to a*

1 *dispute under this Act for the purposes of settling the*
 2 *dispute.”.*

3 **SEC. 303. IMPROVEMENT OF PUBLIC PARTICIPATION IN**
 4 **THE SUPERFUND DECISIONMAKING PROC-**
 5 **ESS; LOCAL COMMUNITY ADVISORY GROUPS;**
 6 **TECHNICAL ASSISTANCE GRANTS.**

7 *Section 117 of the Comprehensive Environmental Re-*
 8 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 9 *9617) (as amended by section 301) is amended by adding*
 10 *at the end the following:*

11 “(g) *IMPROVEMENT OF PUBLIC PARTICIPATION IN DE-*
 12 *CISIONMAKING PROCESS.—*

13 “(1) *VIEWS AND PREFERENCES.—*

14 “(A) *SOLICITATION.—To the extent prac-*
 15 *ticable, in addition to the solicitation of public*
 16 *comments on a proposed remedial action plan*
 17 *under subsection (a)(2), the Administrator, dur-*
 18 *ing the response action process (including the re-*
 19 *sponses under subsection (h)(4)(A)), shall—*

20 “(i) *disseminate information to the*
 21 *local community;*

22 “(ii) *solicit information from the local*
 23 *community;*

24 “(iii) *consider the views of the local*
 25 *community; and*

1 “(iv) include, in any administrative
2 record established under section 113(k), the
3 views of the local community and the re-
4 sponse of the Administrator to any signifi-
5 cant comments, criticisms, or new data sub-
6 mitted in a written or oral presentation.

7 “(B) *PROCEDURE.*—To solicit the views and
8 concerns of the local community, the Adminis-
9 trator may conduct, as appropriate—

10 “(i) face-to-face local community sur-
11 veys for purposes including the identifica-
12 tion of the location of private drinking
13 water wells, historic and current or poten-
14 tial use of water, and other environmental
15 resources in the local community;

16 “(ii) public meetings; and

17 “(iii) other appropriate participatory
18 activities.

19 “(C) *PUBLIC MEETINGS.*—The Adminis-
20 trator shall give particular consideration to pro-
21 viding the opportunity for public meetings in
22 advance of significant decision points in the re-
23 sponse action process.

24 “(D) *CONSULTATION.*—In determining
25 which of the procedures set forth in subpara-

1 *graph (B) may be appropriate, the Adminis-*
2 *trator shall consult with a local community ad-*
3 *visory group, if one has been established under*
4 *subsection (h), and members of the affected com-*
5 *munity.*

6 “(E) NOTIFICATION.—*The Administrator*
7 *shall notify the local community, affected Indian*
8 *Tribes, and local government concerning—*

9 “(i) *the schedule for commencement of*
10 *construction activities at the covered facility*
11 *and the location and availability of con-*
12 *struction plans;*

13 “(ii) *the results of the any review*
14 *under section 121(c) and any modifications*
15 *to the covered facility made as a result of*
16 *the review; and*

17 “(iii) *the execution of and any revision*
18 *to institutional controls being used as part*
19 *of a remedial action.*

20 “(2) MEETINGS BETWEEN LEAD AGENCY AND PO-
21 *TENTIALLY RESPONSIBLE PARTIES.—The Adminis-*
22 *trator, on a regular basis, shall inform local govern-*
23 *ment officials, Indian Tribes, a local community ad-*
24 *visory group (if any) and, to the extent practicable,*
25 *interested members of the affected community of the*

1 *progress and substance of technical meetings between*
2 *the lead agency and potentially responsible parties re-*
3 *garding a covered facility.*

4 “(3) *ALTERNATIVES.*—*Members of the local com-*
5 *munity may propose remedial action alternatives in*
6 *the same manner as alternatives proposed by any*
7 *other interested parties.*

8 “(h) *COMMUNITY ADVISORY GROUPS.*—

9 “(1) *NOTICE.*—*The Administrator shall, to the*
10 *extent practicable, provide notice of an opportunity to*
11 *form a community advisory group to members of the*
12 *affected community, particularly persons who are im-*
13 *mediately proximate to or may be or may have been*
14 *affected by the release or threatened release of a haz-*
15 *ardous substance, pollutant, or contaminant from the*
16 *facility.*

17 “(2) *ESTABLISHMENT.*—*The Administrator shall*
18 *assist in the establishment of a community advisory*
19 *group for a covered facility to achieve direct, regular,*
20 *and meaningful communication among members of*
21 *the local community throughout the response action*
22 *process—*

23 “(A) *at the request of at least 20 individ-*
24 *uals residing in, or at least 10 percent of the*

1 *population of, the area in which that facility is*
 2 *located;*

3 “(B) *if there is no request under subpara-*
 4 *graph (A), at the request of any local government*
 5 *with jurisdiction over the facility; or*

6 “(C) *if the Administrator determines that a*
 7 *community advisory group would be helpful to*
 8 *achieve the purposes of this Act.*

9 “(3) *RESPONSIBILITIES OF A COMMUNITY ADVI-*
 10 *SORY GROUP.—A community advisory group shall—*

11 “(A) *solicit the views of the local commu-*
 12 *nity on various issues affecting the development*
 13 *and implementation of response actions at the*
 14 *facility;*

15 “(B) *serve as a conduit for information be-*
 16 *tween the local community and other entities*
 17 *represented on the community advisory group;*

18 “(C) *present the views of the local commu-*
 19 *nity throughout the response process; and*

20 “(D) *provide the local community reason-*
 21 *able notice of and opportunities to participate in*
 22 *the meetings and other activities of the commu-*
 23 *nity advisory group.*

24 “(4) *RESPONSIBILITIES OF THE ADMINIS-*
 25 *TRATOR.—*

1 “(A) CONSULTATION.—*The Administrator*
2 *shall—*

3 “(i) *consult with the community advi-*
4 *sory group in developing and implementing*
5 *the response action for a covered facility,*
6 *including—*

7 “(I) *activities to be included in*
8 *the facility work plan and remedial in-*
9 *vestigation;*

10 “(II) *assumptions regarding rea-*
11 *sonably anticipated future land uses;*

12 “(III) *potential remedial alter-*
13 *natives;*

14 “(IV) *selection and implementa-*
15 *tion of removal and remedial actions*
16 *(including operation and maintenance*
17 *activities) and reviews performed*
18 *under section 121(c); and*

19 “(V) *use of institutional controls;*

20 “(ii) *encourage the Administrator of*
21 *ATSDR and State, in cooperation with*
22 *State, Indian Tribe, and local public health*
23 *officials to consult with the community ad-*
24 *visory group regarding health assessments;*

1 “(iii) keep the community advisory
2 group informed of progress in the develop-
3 ment and implementation of the response
4 action; and

5 “(iv) on request, provide to any person
6 the hazard ranking score of any facility
7 that has been scored under the hazardous
8 ranking system, and the preliminary assess-
9 ment and site inspection for the facility.

10 “(B) *TIMELY SUBMISSION OF COMMENTS.*—
11 *The Administrator shall consider comments, in-*
12 *formation, and recommendations that the com-*
13 *munity advisory group provides in a timely*
14 *manner.*

15 “(C) *CONSENSUS.*—*The community advi-*
16 *sory group shall attempt to achieve consensus*
17 *among its members before providing comments*
18 *and recommendations to the Administrator. If*
19 *consensus cannot be reached, the community ad-*
20 *visory group shall report or allow presentation of*
21 *divergent views.*

22 “(5) *COMPOSITION OF COMMUNITY ADVISORY*
23 *GROUPS.*—

24 “(A) *MEMBERS.*—*The Administrator shall,*
25 *to the extent practicable, ensure that the member-*

1 *ship of a community advisory group reflects the*
2 *composition of the affected community and a di-*
3 *versity of interests. A community advisory group*
4 *for a covered facility shall include a minimum*
5 *of 1 representative of the recipients of a technical*
6 *assistance grant, if any has been awarded with*
7 *respect to the facility, and shall include, to the*
8 *extent practicable, a person from each of the fol-*
9 *lowing groups:*

10 “(i) *Persons who reside or own residen-*
11 *tial property near the facility.*

12 “(ii) *Persons who, although they may*
13 *not reside or own property near the facility,*
14 *may be affected by the facility contamina-*
15 *tion.*

16 “(iii) *Local public health practitioners*
17 *or medical practitioners (particularly prac-*
18 *titioners that are practicing in the affected*
19 *community).*

20 “(iv) *Local Indian communities that*
21 *may be affected by the facility contamina-*
22 *tion.*

23 “(v) *Local citizen, civic, environ-*
24 *mental, or public interest groups.*

1 “(vi) *Members of the local business*
2 *community.*

3 “(vii) *Employees at the facility during*
4 *facility operation.*

5 “(B) *LOCAL RESIDENTS.—Local community*
6 *members shall comprise a majority of the voting*
7 *membership of a community advisory group.*

8 “(C) *NUMBER OF VOTING MEMBERS.—The*
9 *Administrator shall, to the extent practicable, en-*
10 *sure that the voting membership of the commu-*
11 *nity advisory group does not exceed 20 persons.*

12 “(D) *COMPENSATION.—Members of a com-*
13 *munity advisory group shall serve without com-*
14 *ensation.*

15 “(E) *NONVOTING MEMBERS.—The Adminis-*
16 *trator shall ensure that representatives of the fol-*
17 *lowing entities have an opportunity to partici-*
18 *pate as appropriate (as nonvoting members) in*
19 *community advisory group meetings for purposes*
20 *including providing information and technical*
21 *expertise):*

22 “(i) *The Administrator.*

23 “(ii) *The Administrator of the*
24 *ATSDR.*

25 “(iii) *Other Federal agencies.*

1 “(iv) *Affected States.*

2 “(v) *Affected Indian Tribes.*

3 “(vi) *Representatives of affected local*
4 *governments, such as city or county govern-*
5 *ments or local emergency planning commit-*
6 *tees, and any other governmental unit that*
7 *regulates land use or land use planning in*
8 *the vicinity of the facility.*

9 “(vii) *Facility owners.*

10 “(viii) *Potentially responsible parties.*

11 “(6) *TECHNICAL ASSISTANCE GRANTS.—The Ad-*
12 *ministrator may award a technical assistance grant*
13 *under subsection (i) to a community advisory group.*

14 “(7) *ADMINISTRATIVE SUPPORT.—The Adminis-*
15 *trator, to the extent practicable, may provide admin-*
16 *istrative services and support services to the commu-*
17 *nity advisory group.*

18 “(8) *OTHER COMMUNITY ADVISORY GROUPS.—*
19 *The President may determine that a Department of*
20 *Defense restoration advisory board, a Department of*
21 *Energy site specific advisory board, an ATSDR citi-*
22 *zen advisory panel, or an equivalent advisory group*
23 *can serve the same function as a community advisory*
24 *group, and in that instance no other community ac-*
25 *tion group shall be required.*

1 “(9) *FEDERAL ADVISORY COMMITTEE ACT.*—*The*
2 *Federal Advisory Committee Act (5 U.S.C. App.)*
3 *shall not apply to a community advisory group, to a*
4 *citizen advisory group (designated by the President to*
5 *serve the functions of a community advisory group, or*
6 *to a Department of Defense restoration advisory*
7 *board, Department of Energy Site Specific advisory*
8 *board, or an ATSDR citizen advisory panel.*

9 “(10) *OTHER PUBLIC INVOLVEMENT.*—*The exist-*
10 *ence of a community advisory group shall not dimin-*
11 *ish any other obligation of the President to consider*
12 *the views of any person in selecting response actions*
13 *under this Act. Nothing in this section affects the sta-*
14 *tus of any community advisory group formed before*
15 *the date of enactment of this subsection. Nothing in*
16 *this section affects the status, decisions, or future for-*
17 *mation of any Department of Defense Restoration Ad-*
18 *visory Board, or Department of Energy Site Specific*
19 *Advisory Board, and no community advisory group*
20 *need be established for a facility if any such Board*
21 *has been established for the facility.*

22 “(i) *TECHNICAL ASSISTANCE GRANTS.*—

23 “(1) *AUTHORITY.*—

24 “(A) *IN GENERAL.*—*The Administrator*
25 *may make grants available to members of an af-*

1 *ected community for a covered facility in ac-*
2 *cordance with this subsection.*

3 “(B) *ACCESSIBILITY OF APPLICATION PROC-*
4 *ESS.—To ensure that the application process for*
5 *a technical assistance grant is accessible to all*
6 *affected citizen groups, the Administrator shall*
7 *periodically review the application process and,*
8 *based on the review, implement appropriate*
9 *changes to improve access.*

10 “(2) *SPECIAL RULES.—*

11 “(A) *NO MATCHING CONTRIBUTION.—No*
12 *matching contribution shall be required for a*
13 *technical assistance grant.*

14 “(B) *METHODS OF PAYMENT.—The Admin-*
15 *istrator may disburse the grant to a recipient in*
16 *advance of the recipient’s making expenditures to*
17 *be covered by the grant. In the event that the Ad-*
18 *ministrator advances funds, funds shall be ad-*
19 *vanced in amounts that do not exceed to the*
20 *greater of \$5,000 or 10 percent of the grant*
21 *amount.*

22 “(3) *LIMIT PER FACILITY.—*

23 “(A) *IN GENERAL.—The Administrator*
24 *may award not more than 1 technical assistance*

1 *grant at 1 time with respect to a single covered*
2 *facility.*

3 “(B) *EXTENSION.*—*The Administrator may*
4 *extend a project period established in a grant to*
5 *facilitate public participation at all stages of a*
6 *response action.*

7 “(4) *FUNDING AMOUNT.*—

8 “(A) *IN GENERAL.*—*Except as provided in*
9 *subparagraph (B), the amount of a technical as-*
10 *sistance grant may not exceed \$50,000 for a sin-*
11 *gle grant recipient.*

12 “(B) *INCREASE.*—*The Administrator may*
13 *waive the limit on the amount of an initial tech-*
14 *nical assistance grant if such an increase is nec-*
15 *essary to reflect—*

16 “(i) *the complexity and duration of the*
17 *response action;*

18 “(ii) *the nature and extent of contami-*
19 *nation at the facility;*

20 “(iii) *the level of facility activity;*

21 “(iv) *projected total needs as requested*
22 *by the grant recipient;*

23 “(v) *the size of and distances between*
24 *the affected communities; or*

1 “(vi) the ability of the grant recipient
2 to identify and raise funds from other non-
3 Federal sources.

4 “(5) CONSIDERATIONS.—In determining how to
5 structure payment of the amount of a technical assist-
6 ance grant, whether to extend a grant project period
7 under subparagraph (3)(B), or whether to grant a
8 waiver under paragraph (4)(B), the Administrator
9 may consider factors such as the geographical size of
10 the facility and the distances between affected commu-
11 nities.

12 “(6) USE OF TECHNICAL ASSISTANCE GRANTS.—

13 “(A) IN GENERAL.—A technical assistance
14 grant recipient may use a grant—

15 “(i) to hire experts to assist the recipi-
16 ent in interpreting information and prepar-
17 ing the presentation of the recipient’s views
18 with regard to a response action at the fa-
19 cility (including any phase identified in
20 subsection (h)(4)(A));

21 “(ii) to publish newsletters or otherwise
22 disseminate information to other members
23 of the local community; or

24 “(iii) to provide funding for training
25 for interested affected citizens to enable the

1 “(B) the conduct of a program to provide to
2 affected communities educational and technical
3 assistance to and information regarding the ef-
4 fects or potential effects of the contamination on
5 human health and the environment.”.

6 **SEC. 305. AGENCY FOR TOXIC SUBSTANCES AND DISEASE**
7 **REGISTRY.**

8 (a) *NOTICE TO HEALTH AUTHORITIES.*—Section
9 104(b) of Comprehensive Environmental Response, Com-
10 pensation, and Liability Act of 1980 (42 U.S.C. 9604(b))
11 is amended by adding at the end the following:

12 “(3) *NOTICE TO HEALTH AUTHORITIES.*—The
13 President shall notify State, local, and tribal public
14 health authorities whenever a release of a hazardous
15 substance, pollutant, or contaminant has occurred, is
16 occurring, or is about to occur, or there is a threat
17 of such a release, and the release or threatened release
18 is under investigation pursuant to this section.”.

19 (b) *AMENDMENTS RELATING TO ATSDR.*—Section
20 104(i) of the Comprehensive Environmental Response,
21 Compensation, and Liability Act of 1980 (42 U.S.C.
22 9604(i)) is amended—

23 (1) in paragraph (1)—

24 (A) in the second sentence, by striking “and
25 appropriate State and local health officials” and

1 inserting “the Indian Health Service, and ap-
2 propriate State, tribal, and local health offi-
3 cials”;

4 (B) in subparagraphs (A) and (C), by in-
5 serting “and Indian Tribes” after “States”; and

6 (C) in subparagraph (E), by striking “ad-
7 mission to hospitals and other facilities and
8 services operated or provided by the Public
9 Health Service.” and inserting “referral to li-
10 censed or accredited health care providers.”;

11 (2) in paragraph (3), in the matter following
12 subparagraph (C)—

13 (A) in the sentence beginning “Profiles re-
14 quired under”, by striking “, but no less often”
15 and all that follows through the period at the end
16 and inserting “if the Administrator of ATSDR
17 determines that there is significant new informa-
18 tion.”; and

19 (B) in the last sentence, by inserting “and
20 Indian Tribes” after “States”;

21 (3) paragraph (4)—

22 (A) in the first sentence, by striking “State
23 officials” and inserting “State, tribal,”; and

24 (B) in the second sentence, by inserting “or
25 Indian Tribes” after “States”;

1 (4) in paragraph (5)(A)—

2 (A) in the first sentence, by inserting “and
3 the Indian Health Service” after “Public Health
4 Service”; and

5 (B) in the second sentence, by inserting
6 after “program of research” the following: “con-
7 ducted directly or by such means as cooperative
8 agreements and grants with appropriate public
9 and nonprofit institutions. The program shall
10 be”;

11 (5) in paragraph (6)—

12 (A) by striking “(6)(A) The Administrator”
13 and all that follows through the end of subpara-
14 graph (A) and inserting the following:

15 “(6) *HEALTH ASSESSMENTS AND RELATED*
16 *HEALTH ACTIVITIES.—*

17 “(A) *REQUIREMENTS.—The Administrator*
18 *of ATSDR shall perform a health assessment for*
19 *each covered facility unless the Administrator*
20 *publishes a finding that the facility presents no*
21 *significant health risk.”;*

22 (B) in subparagraph (D), by adding at the
23 end the following: “The President and the Ad-
24 ministrato*r of ATSDR shall, for each facility*
25 *that is placed on the National Priorities List on*

1 or after the date of enactment of the Superfund
 2 Cleanup Acceleration Act of 1998, complete a
 3 health assessment prior to the completion of the
 4 remedial investigation and feasibility study, but
 5 in no circumstance shall the President delay the
 6 progress of a remedial action pending completion
 7 of a health assessment. When appropriate, the
 8 Administrator of ATSDR shall, in cooperation
 9 with State and local health officials, provide to
 10 the President recommendations for sampling en-
 11 vironmental media. To the extent practicable, the
 12 President shall incorporate the recommendations
 13 into facility characterization activities.”;

14 (C) in the first sentence of subparagraph
 15 (E), by striking “or political subdivision carry-
 16 ing out a health assessment” and inserting “, In-
 17 dian Tribe, or political subdivision of a State
 18 carrying out a health assessment”;

19 (D) in subparagraph (F)—

20 (i) by striking “(F) For the purposes”
 21 and inserting the following:

22 “(F) DEFINITION OF HEALTH ASSESS-
 23 MENTS.—

24 “(i) IN GENERAL.—For the purposes”;

25 (ii) in the first sentence—

1 (I) by striking “existence of poten-
2 tial” and inserting “past, present, or
3 future potential”; and

4 (II) by striking “and the com-
5 parison” and inserting “the compari-
6 son”; and

7 (iii) by striking the second sentence
8 and inserting the following:

9 “(ii) *PROVISION OF DATA.*—*The Ad-*
10 *ministrator shall consider information pro-*
11 *vided by State, Indian Tribe, and local*
12 *health officials and the affected community*
13 *(including a community advisory group, if*
14 *one has been established under subsection*
15 *(g)) as is necessary to perform a health as-*
16 *essment.”;*

17 (E) in the last sentence of subparagraph
18 (G)—

19 (i) by striking “In using” and all that
20 follows through “to be taken” and inserting
21 “In performing health assessments”; and

22 (ii) by inserting before the period at
23 the end the following: “and shall give spe-
24 cial consideration, where appropriate, to
25 any practices of the affected community

1 that may result in increased exposure to
2 hazardous substances, pollutants, or con-
3 taminants, such as subsistence hunting,
4 fishing, and gathering”; and

5 (F) in the first sentence of subparagraph
6 (H), by striking “each affected State” and insert-
7 ing “appropriate State, Indian Tribe, and local
8 health officials and community advisory
9 groups”;

10 (6) in paragraph (10)—

11 (A) by striking “Two years” and all that
12 follows through “thereafter” and inserting
13 “Every 2 years”;

14 (B) by striking “and” at the end of sub-
15 paragraph (D);

16 (C) by striking the period at the end of sub-
17 paragraph (E) and inserting “; and”;

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

19 “(F) the health impacts on Indian Tribes of
20 hazardous substances, pollutants, and contami-
21 nants from covered facilities.”;

22 (7) in paragraph (14)—

23 (A) by striking “distribute to the States,
24 and upon request to medical colleges, physicians,
25 and” and inserting the following: “distribute—

1 “(A) to the States and local health officials, and
2 upon request to medical colleges, medical centers, local
3 health practitioners, and”;

4 (B) by striking “methods of diagnosis and
5 treatment” and inserting “methods of preven-
6 tion, diagnosis, and treatment”;

7 (C) by striking the period at the end and
8 inserting “; and”; and

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

10 “(B) to the community potentially affected by a
11 facility appropriate educational materials, facility-
12 specific information, and other information on
13 human health effects of hazardous substances using
14 available community information networks, includ-
15 ing, if appropriate, or a community advisory
16 group.”;

17 (8) in the first sentence of paragraph (15), by
18 striking “through cooperative” and all that follows
19 through “which the Administrator” and inserting the
20 following: “through grants to, or cooperative agree-
21 ments or contracts with, States (or political subdivi-
22 sions of States) or other appropriate public authori-
23 ties or private nonprofit entities, public or private in-
24 stitutions, colleges or universities, or professional as-
25 sociations that the Administrator”; and

1 (9) *by adding at the end the following:*

2 “(19) *PUBLIC HEALTH EDUCATION.*—

3 “(A) *IN GENERAL.*—*If the Administrator of*
4 *ATSDR considers it appropriate, the Adminis-*
5 *trator of ATSDR, in cooperation with State, In-*
6 *Indian Tribe, and other interested Federal and*
7 *local officials, shall conduct health education ac-*
8 *tivities to make a community near a covered fa-*
9 *ility aware of the steps the community may*
10 *take to mitigate or prevent exposure to hazard-*
11 *ous substances and the health effects of hazardous*
12 *substances.*

13 “(B) *DISSEMINATION.*—*In disseminating*
14 *public health information under this paragraph*
15 *relating to a covered facility, the Administrator*
16 *of ATSDR shall use community health centers,*
17 *area health education centers, or other commu-*
18 *nity information networks, including a commu-*
19 *nity advisory group, or a technical assistance*
20 *grant recipient.”.*

21 (c) *PUBLIC HEALTH RECOMMENDATIONS IN REME-*
22 *DIAL ACTIONS.*—*Section 121(c) of the Comprehensive Envi-*
23 *ronmental Response, Compensation, and Liability Act of*
24 *1980 (42 U.S.C. 9621(c)) is amended in the first sentence*
25 *by inserting after “such remedial action” the second place*

1 *it appears the following: “, including public health rec-*
2 *ommendations and decisions resulting from activities under*
3 *section 104(i),”.*

4 *(d) STUDY OF MULTIPLE SOURCES OF RISK.—*

5 *(1) IN GENERAL.—The Administrator of the*
6 *Agency for Toxic Substances and Disease Registry*
7 *(referred to in this subsection as “ATSDR”), in con-*
8 *sultation with the Administrator of the Environ-*
9 *mental Protection Agency, shall conduct a study re-*
10 *lating to the identification, assessment, and manage-*
11 *ment of, and response to, multiple sources of exposure*
12 *affecting or potentially affecting a community.*

13 *(2) COMPONENTS.—In conducting the study, the*
14 *Administrator of ATSDR may—*

15 *(A) examine various approaches to protect*
16 *communities affected or potentially affected by*
17 *multiple sources of exposure to hazardous sub-*
18 *stances; and*

19 *(B) include recommendations that the*
20 *President may consider in developing an imple-*
21 *mentation plan to address the effects or potential*
22 *effects of exposure at covered facilities (as defined*
23 *in section 117(a) of the Comprehensive Environ-*
24 *mental Response, Compensation, and Liability*
25 *Act of 1980 (42 U.S.C. 9617(a)).*

1 **SEC. 306. UNDERSTANDABLE PRESENTATION OF MATE-**
2 **RIALS.**

3 *Section 117 of the Comprehensive Environmental Re-*
4 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
5 *9617) (as amended by section 305) is amended by adding*
6 *at the end the following:*

7 “(k) *PRESENTATION OF MATERIALS.—The President*
8 *shall ensure that information prepared for or distributed*
9 *to the public under this section shall be provided or summa-*
10 *rized in a manner that may be easily understood by the*
11 *community, considering any unique cultural needs of the*
12 *community.” .*

13 **SEC. 307. NO IMPEDIMENT TO RESPONSE ACTIONS.**

14 *Section 117 of the Comprehensive Environmental Re-*
15 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
16 *9617) (as amended by section 307) is amended by adding*
17 *at the end the following:*

18 “(l) *NO IMPEDIMENT TO RESPONSE ACTIONS.—Noth-*
19 *ing in this section shall impede or delay the ability of the*
20 *Environmental Protection Agency to conduct a response ac-*
21 *tion necessary to protect human health and the environ-*
22 *ment.” .*

1 **TITLE IV—SELECTION OF**
 2 **REMEDIAL ACTIONS**

3 **SEC. 401. DEFINITIONS.**

4 *Section 101 of the Comprehensive Environmental Re-*
 5 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 6 *9601) (as amended by section 301(a)) is amended by adding*
 7 *at the end the following:*

8 “(42) *TECHNICALLY IMPRACTICABLE.*—*The term*
 9 *‘technically impracticable’ means impracticable due*
 10 *to engineering infeasibility or unreliability or inordi-*
 11 *nate costs.*

12 “(43) *BENEFICIAL USE.*—*The term ‘beneficial*
 13 *use’ means the use of land on completion of a re-*
 14 *sponse action in a manner that confers economic, so-*
 15 *cial, environmental, conservation, or aesthetic*
 16 *benefit.”.*

17 **SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL**
 18 **ACTIONS.**

19 *Section 121 of the Comprehensive Environmental Re-*
 20 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 21 *9621) is amended—*

22 (1) *by striking the section heading and sub-*
 23 *sections (a) and (b) and inserting the following:*

1 **“SEC. 121. SELECTION AND IMPLEMENTATION OF REME-**
2 **DIAL ACTIONS.**

3 *“(a) GENERAL RULES.—*

4 *“(1) SELECTION OF COST-EFFECTIVE REMEDIAL*
5 *ACTION THAT PROTECTS HUMAN HEALTH AND THE*
6 *ENVIRONMENT.—*

7 *“(A) IN GENERAL.—The President shall se-*
8 *lect a cost-effective remedial action that achieves*
9 *the mandate to protect human health and the en-*
10 *vironment as stated in subparagraph (B) and*
11 *attains or complies with applicable Federal and*
12 *State laws in accordance with subparagraph (C).*

13 *“(B) ATTAINMENT OF MANDATE TO PRO-*
14 *TECT HUMAN HEALTH AND THE ENVIRON-*
15 *MENT.—*

16 *“(i) PROTECTION OF HUMAN*
17 *HEALTH.—Notwithstanding any other pro-*
18 *vision of this Act, a remedial action shall*
19 *protect human health (including the health*
20 *of children and other highly exposed or*
21 *highly susceptible subpopulations). A reme-*
22 *dial action shall be considered to protect*
23 *human health if, considering the expected*
24 *exposures associated with the current or*
25 *reasonably anticipated future use of the*
26 *land and water resources and on the basis*

1 of a facility-specific risk evaluation in ac-
2 cordance with section 131, the remedial
3 action—

4 “(I) achieves a residual risk from
5 exposure to nonthreshold carcinogenic
6 hazardous substances, pollutants, or
7 contaminants such that cumulative
8 lifetime additional cancer risk from ex-
9 posure to hazardous substances, pollut-
10 ants, or contaminants from releases at
11 the facility range from 10^{-4} to 10^{-6}
12 for the affected population;

13 “(II) achieves a residual risk from
14 exposure to threshold carcinogenic and
15 noncarcinogenic hazardous substances,
16 pollutants, or contaminants at the fa-
17 cility, that does not exceed a hazard
18 index of 1; and

19 “(III) prevents or eliminates any
20 actual human ingestion of drinking
21 water containing any hazardous sub-
22 stance from the release at levels—

23 “(aa) in excess of the maxi-
24 mum contaminant level estab-
25 lished under the Safe Drinking

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

3 *“(bb) if no such maximum*
4 *contaminant level has been estab-*
5 *lished for the hazardous substance,*
6 *at levels that meet the goals for*
7 *protection of human health under*
8 *clause (i).*

9 *“(ii) PROTECTION OF THE ENVIRON-*
10 *MENT.—*

11 *“(I) IN GENERAL.—A remedial*
12 *action for a facility shall be considered*
13 *to be protective of the environment if,*
14 *considering the current or reasonably*
15 *anticipated use of any land and water*
16 *resources, the remedial action protects*
17 *plants and animals from significant*
18 *impacts resulting from releases of haz-*
19 *ardous substances at the facility.*

20 *“(II) PROTECTIVENESS DETER-*
21 *MINATION.—The determination under*
22 *subclause (I) of what is protective of*
23 *plants and animals shall not be based*
24 *on the impact to an individual plant*
25 *or animal in the absence of an impact*

1 *at the population, community, or eco-*
2 *system level, unless the plant or ani-*
3 *mal is listed as a threatened or endan-*
4 *gered species under the Endangered*
5 *Species Act of 1973 (16 U.S.C. 1531 et*
6 *seq.).*

7 “(C) COMPLIANCE WITH FEDERAL AND
8 STATE LAWS.—

9 “(i) APPLICABLE REQUIREMENTS.—

10 “(I) IN GENERAL.—Subject to
11 *clause (iii), a remedial action shall re-*
12 *quire, at the completion of the remedial*
13 *action, a level or standard of control*
14 *for each hazardous substance, pollut-*
15 *ant, and contaminant that at least at-*
16 *tains the substantive requirements of*
17 *all promulgated standards, require-*
18 *ments, criteria, and limitations,*
19 *under—*

20 “(aa) each Federal environ-
21 *mental law, that are legally ap-*
22 *licable to the conduct or oper-*
23 *ation of the remedial action or to*
24 *the level of cleanup for hazardous*
25 *substances, pollutants, or con-*

1 *taminants addressed by the reme-*
2 *dial action;*

3 “(bb) *any State environ-*
4 *mental or facility siting law, that*
5 *are more stringent than any Fed-*
6 *eral standard, requirement, cri-*
7 *terion, or limitation and are le-*
8 *gally applicable to the conduct or*
9 *operation of the remedial action*
10 *or to the level of cleanup for haz-*
11 *ardous substances, pollutants, or*
12 *contaminants addressed by the re-*
13 *medial action, and that the State*
14 *demonstrates are of general appli-*
15 *cability, publishes and identifies*
16 *to the President in a timely man-*
17 *ner as being applicable to the re-*
18 *medial action, and has consist-*
19 *ently applied to other remedial*
20 *actions in the State; and*

21 “(cc) *any more stringent*
22 *standard, requirement, criterion,*
23 *or limitation relating to an envi-*
24 *ronmental or facility siting law*
25 *promulgated by the State after the*

1 *date of enactment of the Super-*
2 *fund Cleanup Acceleration Act of*
3 *1998 that the State demonstrates*
4 *are of general applicability, pub-*
5 *lishes and identifies to the Presi-*
6 *dent in a timely manner as being*
7 *applicable to the remedial action,*
8 *and has consistently applied to*
9 *other remedial actions in the*
10 *State.*

11 “(II) *CONTAMINATED MEDIA.—*
12 *Compliance with substantive provi-*
13 *sions of section 3004 of the Solid Waste*
14 *Disposal Act (42 U.S.C. 6924) shall*
15 *not be required with respect to return,*
16 *replacement, or disposal of contami-*
17 *nated media (including residuals of*
18 *contaminated media and other solid*
19 *wastes generated onsite in the conduct*
20 *of a remedial action) into the same*
21 *media in or very near then-existing*
22 *areas of contamination onsite at a fa-*
23 *cility.*

24 “(ii) *APPLICABILITY OF REQUIRE-*
25 *MENTS TO RESPONSE ACTIONS CONDUCTED*

1 *ONSITE.—No procedural or administrative*
2 *requirement of any Federal, State, or local*
3 *law (including any requirement for a per-*
4 *mit) shall apply to a response action that*
5 *is conducted onsite at a facility if the re-*
6 *sponse action is selected and carried out in*
7 *compliance with this section.*

8 *“(iii) WAIVER PROVISIONS.—*

9 *“(I) IN GENERAL.—The President*
10 *may select a remedial action at a facil-*
11 *ity that meets the requirements of sub-*
12 *paragraph (B) that does not attain a*
13 *level or standard of control that is at*
14 *least equivalent to an applicable re-*
15 *quirement described in clause (i)(I) if*
16 *the President makes any of the follow-*
17 *ing findings:*

18 *“(aa) PART OF REMEDIAL*
19 *ACTION.—The selected remedial*
20 *action is only part of a total re-*
21 *medial action that will attain the*
22 *applicable requirements of clause*
23 *(i)(I) when the total remedial ac-*
24 *tion is completed.*

1 “(bb) *GREATER RISK.*—*At-*
2 *tainment of the requirements of*
3 *clause (i)(I) will result in greater*
4 *risk to human health or the envi-*
5 *ronment than alternative options.*

6 “(cc) *TECHNICAL IMPRAC-*
7 *TICABILITY.*—*Attainment of the*
8 *requirements of clause (i)(I) is*
9 *technically impracticable.*

10 “(dd) *EQUIVALENT TO*
11 *STANDARD OF PERFORMANCE.*—
12 *The selected remedial action will*
13 *attain a standard of performance*
14 *that is equivalent to that required*
15 *under clause (i)(I) through use of*
16 *another method or approach.*

17 “(ee) *INCONSISTENT APPLICA-*
18 *TION.*—*With respect to a State re-*
19 *quirement made applicable under*
20 *clause (i)(I), the State has not*
21 *consistently applied (or dem-*
22 *onstrated the intention to apply*
23 *consistently) the requirement in*
24 *similar circumstances to other re-*
25 *medial actions in the State.*

1 “(ff) *BALANCE.*—*In the case*
2 *of a remedial action to be funded*
3 *predominantly under section 104*
4 *or 137 using amounts from the*
5 *Fund, a selection of a remedial*
6 *action that attains that level or*
7 *standard of control described in*
8 *clause (i)(I) will not provide a*
9 *balance between the need for pro-*
10 *tection of public health and wel-*
11 *fare and the environment at the*
12 *facility, and the need to make*
13 *amounts from the Fund available*
14 *to respond to other facilities that*
15 *may present a threat to public*
16 *health or welfare or the environ-*
17 *ment, taking into consideration*
18 *the relative immediacy of the*
19 *threats presented by the various*
20 *facilities.*

21 “(II) *PUBLICATION.*—*The Presi-*
22 *dent shall publish any findings made*
23 *under subclause (I), including an ex-*
24 *planation and appropriate documenta-*
25 *tion and an explanation of how the se-*

1 lected remedial action meets the re-
2 quirements of section 121.

3 “(D) NO STANDARD.—If no applicable Fed-
4 eral or State standard has been established for a
5 specific hazardous substance, pollutant, or con-
6 taminant, a remedial action shall attain a
7 standard that the President determines to be pro-
8 tective of human health and the environment as
9 stated in subsection (a)(1)(B).

10 “(2) METHODOLOGY FOR SELECTION OF A REME-
11 DIAL ACTION.—The President shall select a remedial
12 action from among a range of alternative remedial
13 actions that satisfy the requirements of paragraph (1)
14 by balancing the criteria stated in paragraph (3).
15 The President’s selection of a remedial action under
16 this section shall take into account the remedy selec-
17 tion rules stated in subsection (b).

18 “(3) REMEDY SELECTION CRITERIA.—In select-
19 ing a remedial action from among alternatives that
20 satisfy the requirements of subsection (a)(1) and take
21 into account the rules stated in subsection (b), the
22 President shall balance the following factors, ensuring
23 that no single factor predominates over the others:

24 “(A) The effectiveness of the remedy in en-
25 suring the protection of human health (including

1 *the health of children and other highly exposed or*
2 *highly susceptible subpopulations) and the envi-*
3 *ronment.*

4 “(B) *The reliability of the remedial action*
5 *in achieving the protectiveness standards over*
6 *the long term.*

7 “(C) *Any short-term risk to the affected*
8 *community, those engaged in the remedial action*
9 *effort, and to the environment posed by the im-*
10 *plementation of the remedial action.*

11 “(D) *The acceptability of the remedial ac-*
12 *tion to the affected community.*

13 “(E) *The implementability of the remedial*
14 *action.*

15 “(F) *The reasonableness of the cost.*

16 “(b) *REMEDY SELECTION RULES.—*

17 “(1) *REASONABLY ANTICIPATED FUTURE USE OF*
18 *LAND AND WATER RESOURCES.—*

19 “(A) *IN GENERAL.—In selecting a response*
20 *action for a facility, the President shall take into*
21 *account the reasonably anticipated future use of*
22 *land and water resources potentially affected by*
23 *the release or threat of release of a hazardous*
24 *substance, pollutant, or contaminant from the fa-*
25 *cility.*

1 “(B) *USE OF LAND RESOURCES.*—

2 “(i) *CONSIDERATION OF VIEWS.*—*In*
3 *developing assumptions regarding reason-*
4 *ably anticipated future land uses to be used*
5 *in developing and evaluating remedial al-*
6 *ternatives, the President shall consider the*
7 *views of—*

8 “(I) *local government officials;*
9 *and*

10 “(II) *members of the affected com-*
11 *munity, particularly persons who are*
12 *immediately proximate to or may be*
13 *directly affected by the release or*
14 *threatened release of a hazardous sub-*
15 *stance, pollutant, or contaminant from*
16 *the facility.*

17 “(ii) *FACTORS TO BE CONSIDERED.*—
18 *In developing assumptions regarding rea-*
19 *sonably anticipated future land use to be*
20 *used in developing and evaluating remedial*
21 *alternatives, the President shall consider, in*
22 *addition to views of persons described in*
23 *clause (i), factors including the following:*

24 “(I) *The current land use zoning*
25 *and future land use plans of the local*

1 *government with land use regulatory*
2 *authority.*

3 “(II)(aa) *The recent land use his-*
4 *tory of the facility and properties in*
5 *the vicinity of the facility.*

6 “(bb) *The current land uses of the*
7 *facility and properties in the vicinity*
8 *of the facility.*

9 “(cc) *Recent development patterns*
10 *in the area where the facility is lo-*
11 *cated.*

12 “(dd) *Population projections for*
13 *the area where the facility is located.*

14 “(III) *Federal and State land use*
15 *designations, including—*

16 “(aa) *Federal facility and*
17 *national park designations;*

18 “(bb) *State ground water or*
19 *surface water recharge area des-*
20 *ignations established under a*
21 *State’s comprehensive protection*
22 *plan for ground water or surface*
23 *water; and*

24 “(cc) *recreational and con-*
25 *servation area designations.*

1 “(IV) *The potential for beneficial*
2 *use.*

3 “(V) *The proximity of the con-*
4 *tamination to residences, natural re-*
5 *sources, or areas of unique historic or*
6 *cultural significance.*

7 “(VI) *The plans of the owner or*
8 *operator of the facility.*

9 “(C) *USE OF WATER RESOURCES.—In de-*
10 *veloping assumptions regarding what future*
11 *ground water and surface water uses may be rea-*
12 *sonably anticipated, the President shall—*

13 “(i) *consider and accord substantial*
14 *deference to the classifications and designa-*
15 *tions set forth in a State comprehensive*
16 *ground water protection program that has*
17 *been endorsed by the Administrator; and*

18 “(ii) *consider other designations or*
19 *plans adopted by the governmental unit*
20 *that regulates surface or ground water use*
21 *planning in the vicinity of the facility, in-*
22 *cluding a State’s designation of uses under*
23 *the underground injection control program*
24 *or a State classification guideline.*

1 “(D) *ADMINISTRATIVE RECORDS.*—All in-
2 formation on which the President bases the devel-
3 opment of assumptions under this paragraph
4 shall be included in the administrative record es-
5 tablished under section 113(k).

6 “(2) *GROUND WATER.*—

7 “(A) *IN GENERAL.*—

8 “(i) *SELECTION OF REMEDIAL AC-*
9 *TION.*—The President shall select a remedial
10 action for contaminated ground water in
11 accordance with subsection (a), as modified
12 by the requirements of this paragraph.

13 “(ii) *PHASING.*—The use of phasing
14 shall be considered in a remedial action for
15 ground water in order to allow collection of
16 sufficient data to evaluate the effect of any
17 other remedial action taken at the site and
18 to determine the appropriate scope of the re-
19 medial action.

20 “(iii) *FACTORS TO BE TAKEN INTO AC-*
21 *COUNT.*—A decision regarding a remedial
22 action for contaminated ground water shall
23 take into account—

1 “(I) *the current or reasonably an-*
2 *ticipated future use of the ground*
3 *water and the timing of that use;*

4 “(II) *any attenuation or bio-*
5 *degradation that would occur if no re-*
6 *medial action were taken; and*

7 “(III) *the effect of any other com-*
8 *pleted or planned response action.*

9 “(B) *UNCONTAMINATED GROUND WATER.—*
10 *Subject to subparagraph (E), a remedial action*
11 *shall seek to protect uncontaminated ground*
12 *water that is suitable for use as drinking water*
13 *for such beneficial use unless it is technically im-*
14 *practicable to do so.*

15 “(C) *CONTAMINATED GROUND WATER.—*

16 “(i) *IN GENERAL.—In the case of con-*
17 *taminated ground water for which the cur-*
18 *rent or reasonably anticipated future use of*
19 *the resource is as drinking water, unless the*
20 *President determines that restoration of*
21 *some portion of the contaminated ground*
22 *water to a condition suitable for the use is*
23 *technically impracticable, the President*
24 *shall restore the ground water to a condi-*
25 *tion suitable for beneficial use.*

1 “(ii) *EVALUATION OF TECHNICAL*
2 *PRACTICABILITY.*—*In evaluating the tech-*
3 *nical practicability of restoration and the*
4 *time frame in which restoration can be*
5 *achieved, the President may distinguish*
6 *among 2 or more zones of ground water*
7 *contamination at a facility and may select*
8 *a remedial action that includes different ac-*
9 *tions, points of compliance, and time*
10 *frames tailored to the circumstances of each*
11 *such zone.*

12 “(iii) *INTEGRATION OF ACTIONS.*—*Ac-*
13 *tions taken in any zone shall be integrated*
14 *with actions taken, points of compliance,*
15 *and time frames selected in other zones.*

16 “(iv) *REMEDIAL ACTION STANDARDS.*—
17 *A remedial action for contaminated ground*
18 *water the current or reasonably anticipated*
19 *future use of which is drinking water shall,*
20 *unless technically impracticable, attain in*
21 *the contaminated ground water plume, ex-*
22 *tending to the boundary of any hazardous*
23 *substance, pollutant, or contaminant that*
24 *will be managed in place as part of the re-*
25 *medial action, 1 of the following standards*

1 *(provided that the standard is no more*
2 *stringent than the naturally occurring back-*
3 *ground levels of the contaminants in the*
4 *surrounding area):*

5 *“(I) Maximum contaminant levels*
6 *established under the Safe Drinking*
7 *Water Act (42 U.S.C. 300f et seq.), un-*
8 *less a standard under subclause (II)*
9 *would be more stringent.*

10 *“(II) State drinking water stand-*
11 *ards or State water quality standards*
12 *for water designated for drinking*
13 *water use.*

14 *“(III) If no standard under sub-*
15 *clause (I) or (II) is applicable, a level*
16 *selected in accordance with subsection*
17 *(a)(1)(D) and section 131 that is pro-*
18 *TECTIVE OF HUMAN HEALTH AND THE*
19 *environment.*

20 *“(v) CONTAMINANTS MANAGED IN*
21 *PLACE.—Restoration to beneficial use and*
22 *the standards under clause (iv) are not re-*
23 *quired to be attained in an area in which*
24 *any hazardous substance, pollutant, or con-*
25 *taminant is managed in place.*

1 “(vi) *NOT A POTENTIAL SOURCE OF*
2 *DRINKING WATER.—In the case of contami-*
3 *nated ground water or surface water that is*
4 *not suitable for beneficial use as drinking*
5 *water (as determined under subparagraph*
6 *(F)), a remedial action shall, unless it is*
7 *technically impracticable for it to do so, at-*
8 *tain a standard that is protective for the*
9 *current or reasonably anticipated future*
10 *uses of the water and any surface water to*
11 *which the contaminated water discharges.*

12 “(vii) *RESTORATION TECHNICALLY IM-*
13 *PRACTICABLE.—*

14 “(I) *IN GENERAL.—A remedial*
15 *action for contaminated ground water*
16 *having current or reasonably antici-*
17 *ipated future use as a drinking water*
18 *source for which attainment of the lev-*
19 *els described in clause (iv) is tech-*
20 *nically impracticable shall be selected*
21 *in accordance with this clause.*

22 “(II) *NO INGESTION.—A remedial*
23 *action shall include, as appropriate,*
24 *provision of an alternate water supply,*
25 *point-of-entry, or point-of-use treat-*

1 *ment or other measures to ensure that*
2 *there will be no ingestion of or expo-*
3 *sure of humans to drinking water at*
4 *levels exceeding the requirements of*
5 *subparagraph (C)(iv).*

6 “(III) *PREVENTION OF IMPAIR-*
7 *MENT OF DESIGNATED SURFACE*
8 *WATER USE.—A remedial action shall,*
9 *unless it is technically impracticable*
10 *for it to do so, prevent impairment of*
11 *any designated surface water use estab-*
12 *lished under section 303 of the Federal*
13 *Water Pollution Control Act (42*
14 *U.S.C. 1313) or comparable State law*
15 *caused by a hazardous substance, pol-*
16 *lutant, or contaminant in any surface*
17 *water into which contaminated ground*
18 *water is known or expected to enter.*

19 “(IV) *PROVISION FOR LONG-TERM*
20 *MONITORING.—A remedial action shall*
21 *provide for long-term monitoring, as*
22 *appropriate (including any informa-*
23 *tion needed for the purposes of review*
24 *under subsection (c)).*

1 “(V) *RESPONSIBILITY OF PAR-*
2 *TIES.—If the President selects point-of-*
3 *entry or point-of-use treatment, an al-*
4 *ternative source of water supply, or*
5 *another method of treating contami-*
6 *nated water (including treatment be-*
7 *fore distribution), the party or parties*
8 *otherwise responsible for remediation*
9 *shall be responsible for providing*
10 *drinking water meeting the require-*
11 *ments of clause (iv), including all di-*
12 *rectly associated incremental costs for*
13 *operation and maintenance and for de-*
14 *livery of drinking water for current*
15 *and reasonably anticipated future uses*
16 *until such time as the level of contami-*
17 *nation is reliably and consistently at*
18 *or below the levels specified under*
19 *clause (iv).*

20 “(D) *MONITORED NATURAL ATTENU-*
21 *ATION.—*

22 “(i) *IN GENERAL.—Monitored natural*
23 *attenuation may be used as an element of*
24 *a remedial action for contaminated ground*
25 *water.*

1 “(ii) *FACTORS TO BE TAKEN INTO AC-*
2 *COUNT.—In using monitored natural at-*
3 *tenuation as part of a ground water action,*
4 *the President or preparer of the remedial*
5 *action plan shall take into account the fac-*
6 *tors listed in subparagraph (A) (iii).*

7 “(E) *ALTERNATE CONCENTRATION LIMITS*
8 *FOR CONTAMINATED GROUND WATER.—For the*
9 *purposes of this section, a process for establishing*
10 *alternate concentration limits to those otherwise*
11 *applicable for hazardous substances, pollutants,*
12 *or contaminants under subparagraph (C)(iv)*
13 *may not be used to establish standards under*
14 *this paragraph if the process assumes a point of*
15 *human exposure beyond the boundary of the fa-*
16 *ility, as defined at the conclusion of the reme-*
17 *dial investigation and feasibility study, except*
18 *that where—*

19 “(i) *there are known and projected*
20 *points of entry of ground water into surface*
21 *water; and*

22 “(ii) *on the basis of measurements or*
23 *projections, there is and will be no impair-*
24 *ment of the designated use established under*
25 *section 303 of the Federal Water Pollution*

1 *Control Act (42 U.S.C. 1313) from ground*
2 *water in such surface water at the point of*
3 *entry or at any point where there is reason*
4 *to believe accumulation of constituents may*
5 *occur downstream; and*

6 *“(iii) the remedial action includes en-*
7 *forceable measures that will preclude human*
8 *exposure to the contaminated ground water*
9 *at any point between the facility boundary*
10 *and all known and projected points of entry*
11 *of such ground water into surface water;*

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

14 *“(F) GROUND WATER NOT SUITABLE FOR*
15 *BENEFICIAL USE AS DRINKING WATER.—Not-*
16 *withstanding any other evaluation or determina-*
17 *tion regarding the suitability of ground water*
18 *for drinking water use, ground water that is not*
19 *suitable for use as drinking water because of—*

20 *“(i) naturally occurring conditions;*

21 *“(ii) contamination resulting from*
22 *broad-scale human activity unrelated to a*
23 *specific facility or release that restoration of*
24 *drinking water quality is technically im-*
25 *practicable; or*

1 “(iii) *physical incapability of yielding*
2 *a quantity of 150 gallons per day of water*
3 *to a well or spring (unless the well or*
4 *spring is currently being used as a source*
5 *of drinking water);*

6 *shall not be considered as suitable for beneficial*
7 *use as drinking water.*

8 “(3) *PREFERENCE FOR TREATMENT.—*

9 “(A) *IN GENERAL.—For any discrete area*
10 *containing a hazardous substance, pollutant, or*
11 *contaminant that—*

12 “(i) *cannot be reliably contained; and*

13 “(ii) *presents a substantial risk to*
14 *human health and the environment because*
15 *of—*

16 “(I) *the high toxicity of the haz-*
17 *ardous substance, pollutant, or con-*
18 *taminant;*

19 “(II) *the high mobility of the haz-*
20 *ardous substance, pollutant, or con-*
21 *taminant; and*

22 “(III) *a reasonable probability of*
23 *actual exposure based upon an evalua-*
24 *tion of site-specific factors;*

1 *the remedy selection process described in sub-*
2 *section (a) shall include a preference for a reme-*
3 *dial action that includes treatment that reduces*
4 *the risk posed by the nature and probability of*
5 *exposure to the hazardous substance, pollutant,*
6 *or contaminant over remedial actions that do*
7 *not include such treatment.*

8 “(B) *FINAL CONTAINMENT.*—*With respect to*
9 *a discrete area described in subparagraph (A),*
10 *the President may select a final containment*
11 *remedy at a landfill or mining site or similar*
12 *facility if—*

13 “(i)(I) *the discrete area is small rel-*
14 *ative to the overall volume of waste or con-*
15 *tamination being addressed;*

16 “(II) *the discrete area is not readily*
17 *identifiable and accessible; and*

18 “(III) *without the presence of the dis-*
19 *crete area, containment would have been se-*
20 *lected as the appropriate remedy under this*
21 *subsection for the larger body of waste or*
22 *larger area of contamination in which the*
23 *discrete area is located; or*

24 “(ii) *the volume and size of the discrete*
25 *area is extraordinary compared to other fa-*

1 *cilities listed on the National Priorities*
2 *List, and, because of the volume, size, and*
3 *other characteristics of the discrete area, it*
4 *is highly unlikely that any treatment tech-*
5 *nology will be developed that could be im-*
6 *plemented at a reasonable cost.*

7 “(4) *INSTITUTIONAL AND ENGINEERING CON-*
8 *TROLS.—*

9 “(A) *DEFINITION OF INSTITUTIONAL CON-*
10 *TROL.—In this paragraph, the term ‘institu-*
11 *tional control’ means a restriction on the permis-*
12 *sible use of land, ground water, or surface water,*
13 *included as part of the basis of decision in a*
14 *final record of decision or any other enforceable*
15 *decision document for a facility on the National*
16 *Priorities List, to comply with the requirements*
17 *of section 121(a) to protect human health and*
18 *the environment, including—*

19 “(i) *a zoning restriction or future land*
20 *use plan of the local government with land*
21 *use regulatory authority;*

22 “(ii) *a contaminated ground water*
23 *management zone or permit program of the*
24 *government unit that regulates ground*
25 *water;*

1 “(iii) site acquisition under paragraph
2 (1) or (2) of section 104(j) by the Adminis-
3 trator or the State to control access to the
4 facility;

5 “(iv) an easement or deed restriction
6 precluding or limiting specific uses of the
7 facility; and

8 “(v) a notice, advisory, or alert to
9 warn of a public health threat from con-
10 taminated ground water or from eating fish
11 from contaminated surface water.

12 “(B) USES.—The Administrator may not
13 select a remedial action that allows a hazardous
14 substance, pollutant, or contaminant to remain
15 at a facility above a level that would be protec-
16 tive for unrestricted use unless institutional and
17 engineering controls are incorporated into the re-
18 medial action to ensure protection of human
19 health and the environment during and after
20 completion of the remedial action.

21 “(C) REQUIREMENTS FOR INSTITUTIONAL
22 CONTROLS.—In a case in which the Adminis-
23 trator selects a response action that relies in
24 whole or in part on restrictions on land use or

1 *other resources or activities, the Administrator*
2 *shall ensure that institutional controls—*

3 *“(i) are adequate to protect human*
4 *health and the environment;*

5 *“(ii) ensure the long-term reliability of*
6 *the response action; and*

7 *“(iii) will be appropriately imple-*
8 *mented, monitored, and enforced.*

9 *“(D) RECORD OF DECISION.—Each record*
10 *of decision with respect to a facility shall clearly*
11 *identify any institutional controls that restrict*
12 *uses of land or other resources or activities at the*
13 *facility.*

14 *“(E) REGISTRY.—The Administrator shall*
15 *maintain a registry of institutional controls*
16 *that—*

17 *“(i) place restrictions on the use of*
18 *land, water, or other resources; and*

19 *“(ii) are included as part of the basis*
20 *of decision in a final record of decision or*
21 *any other enforceable decision document*
22 *with respect to a facility on the National*
23 *Priorities List.*

24 *“(5) TECHNICAL IMPRACTICABILITY.—*

1 “(A) *MINIMIZATION OF RISK.*—If the Presi-
2 dent, after reviewing the remedy selection meth-
3 odology stated in subsection (a)(2), finds that
4 complying with or attaining a standard required
5 by subparagraph (C) or (D) of subsection (a)(1),
6 or, if applicable, by a rule stated in subsection
7 (b), is technically impracticable, the President
8 shall evaluate remedial measures and select a
9 technically practicable remedial action that—

10 “(i) protects human health (as defined
11 in subsection (a)(1)(B)(i)); and

12 “(ii) will most closely achieve the goals
13 stated in paragraph (1) through cost-effec-
14 tive means.

15 “(B) *BASIS FOR FINDING.*—A finding of
16 technical impracticability may be made on the
17 basis of projections, modeling, or other analysis
18 on a site-specific basis.

19 “(C) *PROMPT DETERMINATION.*—The Presi-
20 dent shall make a determination of technical im-
21 practicability as soon as the President deter-
22 mines that sufficient information is available to
23 make the determination.

24 “(D) *PROCESS.*—

1 “(i) *DETERMINATION OF NECESSITY OF*
2 *COMPLIANCE WITH STANDARD OR REQUIRE-*
3 *MENT.—The President shall evaluate and*
4 *determine if it is not appropriate for a re-*
5 *medial action to attain or comply with a*
6 *required standard under subparagraphs (C)*
7 *and (D) of subsection (a)(1), or, where ap-*
8 *plicable, with a requirement stated in a rule*
9 *in subsection (b).*

10 “(ii) *WAIVER ON THE BASIS OF TECH-*
11 *NICAL IMPRACTICABILITY.—A finding that*
12 *it is technically impracticable to attain or*
13 *comply with an applicable Federal or State*
14 *law under subsection (a)(1)(C)(i)(I) shall*
15 *constitute a waiver under subsection*
16 *(a)(1)(C)(iii).*

17 “(iii) *INITIATION OF REVIEW.—The*
18 *President may initiate a review to deter-*
19 *mine whether a finding of technical imprac-*
20 *ticability is appropriate on the Administra-*
21 *tor’s own initiative or on the request of a*
22 *person that is conducting a remedial action,*
23 *if the request is supported by appropriate*
24 *documentation.*

1 “(E) NOTICE OF FINDING.—If the President
2 makes a finding of technical impracticability,
3 the President shall publish the finding, accom-
4 panied by—

5 “(i) an explanation of the finding,
6 with appropriate justification; and

7 “(ii) an explanation of how the selected
8 remedial action meets the requirements of
9 subsection (a)(1)(B).”;

10 (2) by striking subsection (d); and

11 (3) by redesignating subsections (e) and (f) as
12 subsections (d) and (e), respectively.

13 **SEC. 403. REMEDY SELECTION METHODOLOGY.**

14 Title I of the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
16 et seq.) (as amended by section 201(a)) is amended by add-
17 ing at the end the following:

18 **“SEC. 131. FACILITY-SPECIFIC RISK EVALUATIONS.**

19 “(a) IN GENERAL.—The goal of a facility-specific risk
20 evaluation performed under this Act is to provide inform-
21 ative and understandable estimates that neither minimize
22 nor exaggerate the current or potential risk posed by a facil-
23 ity.

24 “(b) RISK EVALUATION PRINCIPLES.—

1 “(1) *IN GENERAL.*—A facility-specific risk eval-
2 uation shall—

3 “(A)(i) use chemical-specific and facility-
4 specific data in preference to default assump-
5 tions whenever it is practicable to obtain such
6 data; or

7 “(ii) if it is not practicable to obtain such
8 data, use a range and distribution of realistic
9 and scientifically supportable default assump-
10 tions;

11 “(B) ensure that the exposed population
12 and all current and potential pathways and pat-
13 terns of exposure are evaluated;

14 “(C) consider the current or reasonably an-
15 ticipated future use of the land and water re-
16 sources in estimating exposure; and

17 “(D) consider the use of institutional con-
18 trols that comply with the requirements stated in
19 section 121(b)(4).

20 “(2) *CRITERIA FOR USE OF SCIENCE.*—Any
21 chemical-specific and facility-specific data or default
22 assumptions used in connection with a facility-spe-
23 cific risk evaluation shall be consistent with the cri-
24 teria for the use of science in decisionmaking stated
25 in subsection (e).

1 “(3) *INSTITUTIONAL CONTROLS.*— *In conducting*
2 *a risk assessment to determine the need for remedial*
3 *action, the President may consider only institutional*
4 *controls that are in place at the facility at the time*
5 *at which the risk assessment is conducted.*

6 “(c) *USES.*—*A facility-specific risk evaluation shall be*
7 *used to—*

8 “(1) *determine the need for remedial action;*

9 “(2) *evaluate the current and potential hazards,*
10 *exposures, and risks at the facility;*

11 “(3) *screen out potential contaminants, areas, or*
12 *exposure pathways from further study at a facility;*

13 “(4) *evaluate the protectiveness of alternative re-*
14 *medial actions proposed for a facility;*

15 “(5) *demonstrate that the remedial action se-*
16 *lected for a facility is capable of protecting human*
17 *health and the environment considering the current*
18 *and reasonably anticipated future use of the land and*
19 *water resources; and*

20 “(6) *establish protective concentration levels if no*
21 *applicable requirement under section 121(a)(1)(C) ex-*
22 *ists or if an otherwise applicable requirement is not*
23 *sufficiently protective of human health and the envi-*
24 *ronment under section 121(a)(1)(B).*

1 “(d) *RISK COMMUNICATION PRINCIPLES.*—*In carrying*
2 *out this section, the President shall ensure that the presen-*
3 *tation of information on public health effects is comprehen-*
4 *sive, informative, and understandable. The document re-*
5 *porting the results of a facility-specific risk evaluation shall*
6 *specify, to the extent practicable—*

7 “(1) *each population addressed by any estimate*
8 *of public health effects;*

9 “(2) *the expected risk or central estimate of risk*
10 *for the specific populations;*

11 “(3) *each appropriate upper-bound or lower-*
12 *bound estimate of risk;*

13 “(4) *each significant uncertainty identified in*
14 *the process of the assessment of public health effects*
15 *and research that would assist in resolving the uncer-*
16 *tainty; and*

17 “(5) *peer-reviewed studies known to the Presi-*
18 *dent that support, are directly relevant to, or fail to*
19 *support any estimate of public health effects and the*
20 *methodology used to reconcile inconsistencies in the*
21 *scientific data.*

22 “(e) *USE OF SCIENCE IN DECISIONMAKING.*—*In carry-*
23 *ing out this section, the President shall use—*

1 “(1) *the best available peer-reviewed science and*
2 *supporting studies conducted in accordance with*
3 *sound and objective scientific practices; and*

4 “(2) *data collected by accepted methods or best*
5 *available methods (if the reliability of the method and*
6 *the nature of the decision justifies use of the data).*

7 “(f) *REGULATIONS.—Not later than 18 months after*
8 *the date of enactment of this section, the President shall*
9 *issue a final regulation implementing this section.*

10 **“SEC. 132. PRESUMPTIVE REMEDIAL ACTIONS.**

11 “(a) *IN GENERAL.—In order to streamline the reme-*
12 *dial action selection process, the Administrator shall estab-*
13 *lish presumptive remedial actions that—*

14 “(1) *identify preferred technologies and ap-*
15 *proaches (which may include as an element institu-*
16 *tional and engineering controls, if appropriate) for*
17 *common categories of facilities; and*

18 “(2) *identify, as appropriate, site categorization*
19 *methodologies for those categories of facilities.*

20 “(b) *PRESUMPTIVE REMEDIAL ACTIONS.—*

21 “(1) *IN GENERAL.—The Administrator shall es-*
22 *tablish presumptive remedial actions that are tech-*
23 *nically practicable, cost-effective, and demonstrated*
24 *methods to protect human health and the environment*
25 *under this Act.*

1 “(2) *MATTERS TO BE TAKEN INTO ACCOUNT.*—*In*
2 *establishing a presumptive remedial action, the Ad-*
3 *ministrator shall take into account the goals stated in*
4 *section 121(a)(1), the factors stated in section*
5 *121(a)(3), and the rules stated in section 121(b).*

6 “(3) *PROCEDURE; JUDICIAL REVIEW.*—*The iden-*
7 *tification of categories of facilities and site categoriza-*
8 *tion methodologies and the establishment of presump-*
9 *tive remedial actions under this section shall not be*
10 *subject to—*

11 “(A) *the rulemaking procedure of section*
12 *553 of title 5, United States Code; or*

13 “(B) *judicial review.*

14 “(c) *USE OF PRESUMPTIVE REMEDIAL ACTIONS.*—*In*
15 *appropriate circumstances, the Administrator may select a*
16 *presumptive remedial action—*

17 “(1) *from among technologies and approaches*
18 *identified under subsection (a)(1); or*

19 “(2) *based on only the site characterization*
20 *methodologies identified under subsection (a)(2), with-*
21 *out consideration of technologies, approaches, or meth-*
22 *odologies that have not been identified for that cat-*
23 *egory of facility in the list prepared under subsection*
24 *(d).*

25 “(d) *NOTICE AND PERIODIC REVIEW.*—

1 “(b) *ACCELERATION OF INVESTIGATIVE ACTIVITIES*
2 *AND RESPONSE ACTIONS.*—

3 “(1) *PHASING OF INVESTIGATIVE AND RESPONSE*
4 *ACTIVITIES.*—*The President shall seek to expedite pro-*
5 *tection of human health and the environment and*
6 *completion of response actions in an efficient and*
7 *cost-effective manner through appropriate phasing*
8 *and integration of investigative and response activi-*
9 *ties.*

10 “(2) *USE OF RESULTS OF INITIAL INVESTIGA-*
11 *TIONS.*—*The results of initial investigations of a fa-*
12 *cility shall be used, as appropriate—*

13 “(A) *to focus subsequent data collection ef-*
14 *forts in order to characterize the nature and ex-*
15 *tent of contamination at the facility in an effi-*
16 *cient and cost-effective manner; or*

17 “(B) *to develop and support multiple phases*
18 *of a response action, as appropriate.*

19 “(3) *EARLY RESPONSE ACTIONS.*—

20 “(A) *IMPLEMENTATION.*—*An early response*
21 *action under section 104 or 106 shall be imple-*
22 *mented, to the extent practicable, to—*

23 “(i) *prevent exposure to hazardous sub-*
24 *stances, pollutants, and contaminants; and*

1 “(ii) prevent further migration of haz-
2 ardous substances, pollutants, or contami-
3 nants.

4 “(B) *USE OF RESULTS.*—*The results of an*
5 *early response action shall be used to—*

6 “(i) further characterize the nature
7 and extent of contamination at the facility;
8 and

9 “(ii) provide information needed to
10 evaluate and select any additional appro-
11 priate response actions that are needed to
12 protect human health and the environment.

13 “(C) *COMPLIANCE WITH REQUIREMENTS.*—
14 *An early response action shall—*

15 “(i) meet the requirements of this Act
16 (including the requirements for public par-
17 ticipation) and

18 “(ii) to the extent practicable, contrib-
19 ute to the efficient performance of any long-
20 term remedial action with respect to the re-
21 lease or threatened release concerned.

22 “(c) *PARTICIPATION IN THE RESPONSE ACTION PROC-*
23 *ESS BY POTENTIALLY RESPONSIBLE PARTIES.*—

24 “(1) *REQUIREMENTS.*—*When the President de-*
25 *termines under paragraph (5) that a response action*

1 *will be performed properly and promptly by a poten-*
2 *tially responsible party or group of potentially re-*
3 *sponsible parties in accordance with the requirements*
4 *of this Act, the President may allow the potentially*
5 *responsible party or group of potentially responsible*
6 *parties to perform the response action in accordance*
7 *with this section, section 106, or section 122.*

8 “(2) *PERFORMANCE OF RESPONSE ACTION.—The*
9 *President may authorize performance of a response*
10 *action by a potentially responsible party or group of*
11 *potentially responsible parties only if—*

12 “(A) *the President determines that the po-*
13 *tentially responsible party or group of poten-*
14 *tially responsible parties is qualified to perform*
15 *the response action; and*

16 “(B) *the potentially responsible party or*
17 *group of potentially responsible parties agrees to*
18 *reimburse the Fund for any cost incurred by the*
19 *President in overseeing and reviewing the per-*
20 *formance of the response action by the poten-*
21 *tially responsible party or group of potentially*
22 *responsible parties, including the costs of con-*
23 *tracting or arranging for a qualified person to*
24 *assist the President in conducting the oversight*
25 *and review.*

1 “(3) *OVERSIGHT OF RESPONSE ACTIONS.*—*The*
2 *President may tailor the level of oversight that will*
3 *accompany performance of a response action by the*
4 *potentially responsible party or group of potentially*
5 *responsible parties based on factors including the fac-*
6 *tors set forth in paragraph (5).*

7 “(4) *RESPONSE ACTION ACTIVITIES.*—*The Presi-*
8 *dent may authorize a potentially responsible party or*
9 *group of potentially responsible parties to perform re-*
10 *moval and remedial actions, including—*

11 “(A) *remedial investigations (including risk*
12 *assessments);*

13 “(B) *feasibility studies;*

14 “(C) *preparation of draft proposed remedial*
15 *action plans;*

16 “(D) *remedial designs;*

17 “(E) *operation and maintenance;*

18 “(F) *maintenance of institutional controls;*

19 “(G) *studies that the President determines*
20 *are necessary for the President to conduct review*
21 *under section 135(c)(2); and*

22 “(H) *any response action that the President*
23 *determines is required as a result of the review*
24 *under of section 135(c)(2).*

1 “(5) *OVERSIGHT FACTORS.*—*In determining for*
2 *the purposes of paragraph (1) whether a potentially*
3 *responsible party or group of potentially responsible*
4 *parties will perform a response action properly and*
5 *promptly in accordance with requirements of this Act,*
6 *and in determining the appropriate level of oversight*
7 *required for performance by a potentially responsible*
8 *party or group of potentially responsible parties of a*
9 *response action, the President shall consider factors*
10 *that include—*

11 “(A) *the technical and financial capability*
12 *of the potentially responsible party or group of*
13 *potentially responsible parties;*

14 “(B) *the willingness of the potentially re-*
15 *sponsible party or group of potentially respon-*
16 *sible parties to complete performance of the re-*
17 *sponse action within the period of time pre-*
18 *scribed by the President;*

19 “(C) *the assurance of the potentially respon-*
20 *sible party or group of potentially responsible*
21 *parties that it will comply with the requirements*
22 *of this Act, the National Contingency Plan, and*
23 *guidelines issued by the Administrator;*

24 “(D) *the level of effort that the Environ-*
25 *mental Protection Agency has expended in re-*

1 *viewing performance by the potentially respon-*
2 *sible party or group of potentially responsible*
3 *parties in other instances regulated by the Agen-*
4 *cy;*

5 *“(E) the history of cooperation of the poten-*
6 *tially responsible party or group of potentially*
7 *responsible parties in other Agency actions;*

8 *“(F) the level of concern of the local*
9 *community;*

10 *“(G) the degree of technical complexity or*
11 *uncertainty associated with the response action*
12 *to be performed; and*

13 *“(H) the resources of the Environmental*
14 *Protection Agency.*

15 *“(d) DRAFT PROPOSED REMEDIAL ACTION PLANS.—*

16 *“(1) IN GENERAL.—The Administrator shall*
17 *issue guidelines identifying the contents of a draft*
18 *proposed remedial action plan, which shall include,*
19 *at a minimum—*

20 *“(A) a brief description of the remedial al-*
21 *ternatives that were analyzed, including the re-*
22 *spective capital costs, operation and mainte-*
23 *nance costs, and estimated present worth costs of*
24 *the remedial alternatives;*

1 “(B) a recommended remedial action alter-
2 native; and

3 “(C) a summary of information relied on to
4 make the recommendation, including a brief de-
5 scription of site risks.

6 “(2) ADMINISTRATIVE RECORD.—Nothing in this
7 paragraph shall affect or impede the establishment by
8 the President of an administrative record under sec-
9 tion 113(k).

10 “(e) REMEDY REVIEW BOARD.—

11 “(1) ESTABLISHMENT.—

12 “(A) IN GENERAL.—In order to promote
13 cost-effective remedy selection decisions, the Ad-
14 ministrator shall establish and appoint the mem-
15 bers of at least 1 remedy review board consisting
16 of a balance of technical and policy experts with-
17 in the Environmental Protection Agency and
18 other Federal and State agencies with respon-
19 sibility for remediating contaminated facilities.

20 “(B) STATE RESPONSIBILITY.—If respon-
21 sibility for the conduct of a response action at a
22 facility has been transferred to a State under
23 section 130, technical and policy experts from
24 State agencies with responsibility for remediat-
25 ing contaminated facilities shall constitute not

1 *less than $\frac{1}{3}$ of the membership of the remedy re-*
2 *view board that reviews a draft proposed reme-*
3 *dial action plan for the facility.*

4 “(2) *PROCEDURES AND CRITERIA.*—

5 “(A) *PROCEDURES.*—*Not later than 180*
6 *days after the date of enactment of this section,*
7 *the Administrator shall promulgate a regulation*
8 *that establishes procedures for the operation of*
9 *remedy review board, including cost-based or*
10 *other appropriate criteria for determining which*
11 *draft proposed remedial action plans will be eli-*
12 *gible for review by a remedy review board.*

13 “(B) *CRITERIA.*—

14 “(i) *DIFFERING CRITERIA.*—*The Ad-*
15 *ministrator may develop different criteria*
16 *under subparagraph (A) for different cat-*
17 *egories of facilities.*

18 “(ii) *PROPORTION OF FACILITIES ELI-*
19 *GIBLE FOR REVIEW.*—*Application of the*
20 *criteria under subparagraph (A) shall, to*
21 *the extent practicable, result in the eligi-*
22 *bility for review of not less than an annual*
23 *average of $\frac{1}{3}$ of the number of draft pro-*
24 *posed remedial action plans prepared and*
25 *ready for issuance for public comment.*

1 “(3) *REVIEW.*—

2 “(A) *TIMING.*—*Subject to paragraph (4),*
3 *before issuance for public comment, a draft pro-*
4 *posed remedial action plan that meets the cri-*
5 *teria under paragraph (2) (B) shall be submitted*
6 *to the remedy review board.*

7 “(B) *NO REVIEW.*—*A remedy review board*
8 *shall not review a remedy that meets the criteria*
9 *under paragraph (2) (B) if the Administrator*
10 *determines that review by the remedy review*
11 *board would result in an unacceptable delay in*
12 *taking measures to achieve protection of human*
13 *health or the environment.*

14 “(4) *NOTICE AND COMMENT.*—

15 “(A) *NOTICE.*—*The Administrator shall*
16 *give interested parties (including representatives*
17 *of the State and local community in which the*
18 *facility is located) adequate notice of the submis-*
19 *sion of a draft proposed remedial action plan to*
20 *the remedy review board and an opportunity to*
21 *comment.*

22 “(B) *COMMENT.*—

23 “(i) *IN GENERAL.*—*Potentially respon-*
24 *sible parties that are participating in the*
25 *performance of a remedial investigation and*

1 *feasibility study shall be permitted to sub-*
2 *mit comments on a draft remedial action*
3 *plan to a remedy review board and be pro-*
4 *vided a reasonable opportunity to meet with*
5 *the remedy review board.*

6 “(ii) *LENGTH OF SUBMISSIONS.—Any*
7 *limitation on the length of a submission es-*
8 *tablished by the Administrator shall be ra-*
9 *tionally related to the level of detail con-*
10 *tained in the draft proposed plan.*

11 “(5) *RECOMMENDATIONS.—*

12 “(A) *IN GENERAL.—A remedy review board*
13 *shall provide recommendations to the Adminis-*
14 *trator.*

15 “(B) *CONSIDERATIONS.—In preparing a*
16 *recommendation, a remedy review board shall*
17 *consider—*

18 “(i) *whether the proposed remedial ac-*
19 *tion meets the requirements of section 121;*

20 “(ii) *the nature of the facility;*

21 “(iii) *the risks posed by the facility;*

22 “(iv) *the opinions of the affected Envi-*
23 *ronmental Protection Agency regional ad-*
24 *ministrator and State government regard-*
25 *ing the proposed remedial action;*

1 “(v) *the quality and reasonableness of*
2 *the cost estimates; and*

3 “(vi) *any other relevant factors that*
4 *the Administrator considers appropriate.*

5 “(C) *EPA CONSIDERATION OF REC-*
6 *COMMENDATIONS.—*

7 “(i) *SUBSTANTIAL WEIGHT.—In deter-*
8 *mining whether to modify a draft proposed*
9 *remedial action plan, the Administrator*
10 *shall give substantial weight to the rec-*
11 *ommendations of a remedy review board.*

12 “(ii) *DECISION NOT TO FOLLOW REC-*
13 *COMMENDATION.—A decision by the Admin-*
14 *istrator not to follow a recommendation of*
15 *the remedy review board shall not, by itself,*
16 *render a decision arbitrary and capricious.*

17 “(f) *APPROVAL OF DRAFT PROPOSED REMEDIAL AC-*
18 *TION PLAN.—The President may approve a draft proposed*
19 *remedial action plan prepared by a potentially responsible*
20 *party or group of potentially responsible parties that the*
21 *President has determined to be qualified under subsection*
22 *(c). If the President approves the draft proposed remedial*
23 *action plan, the President may treat the document as the*
24 *President’s proposed plan, and provide it to the public for*
25 *comment under section 117(a).”.*

1 **SEC. 405. COMPLETION OF PHYSICAL CONSTRUCTION AND**
 2 **DELISTING.**

3 *Title I of the Comprehensive Environmental Response,*
 4 *Compensation, and Liability Act of 1980 (42 U.S.C. 9601*
 5 *et seq.) (as amended by section 404) is amended by adding*
 6 *at the end the following:*

7 **“SEC. 135. COMPLETION OF PHYSICAL CONSTRUCTION AND**
 8 **DELISTING.**

9 *“(a) IN GENERAL.—*

10 *“(1) PROPOSED NOTICE OF COMPLETION AND*
 11 *PROPOSED DELISTING.—Not later than 180 days after*
 12 *the completion by the President of physical construc-*
 13 *tion necessary to implement a response action at a fa-*
 14 *cility, or not later than 180 days after receipt of a*
 15 *notice of such completion from the implementing*
 16 *party, the President shall publish a notice of comple-*
 17 *tion and proposed delisting of the facility from the*
 18 *National Priorities List in the Federal Register and*
 19 *in a newspaper of general circulation in the area*
 20 *where the facility is located.*

21 *“(2) PHYSICAL CONSTRUCTION.—For the pur-*
 22 *poses of paragraph (1), physical construction nec-*
 23 *essary to implement a response action at a facility*
 24 *shall be considered to be complete when—*

25 *“(A) construction of all systems, structures,*
 26 *devices, and other components necessary to im-*

1 *plement a response action for the entire facility*
2 *has been completed in accordance with the reme-*
3 *dial design plan; or*

4 *“(B) no construction, or no further con-*
5 *struction, is expected to be undertaken.*

6 *“(3) CONSTRUCTION COMPLETE BEFORE ENACT-*
7 *MENT.—Any facility at which physical construction*
8 *necessary to implement a response action has been*
9 *completed before the date of enactment of this section*
10 *shall qualify for a proposed delisting under para-*
11 *graph (1), if the procedures set out in paragraph (1)*
12 *for seeking a proposal to delist the facility are fol-*
13 *lowed.*

14 *“(4) COMMENTS.—The public shall be provided*
15 *30 days in which to submit comments on the notice*
16 *of completion and proposed delisting.*

17 *“(5) FINAL NOTICE.—*

18 *“(A) IN GENERAL.—Not later than 60 days*
19 *after the end of the comment period, or such ex-*
20 *tended period as may be determined under sub-*
21 *paragraph (B), the President shall—*

22 *“(i) issue a final notice of completion*
23 *and delisting or a notice of withdrawal of*
24 *the proposed notice until the implementa-*

1 *tion of the remedial action is determined to*
2 *be complete; and*

3 *“(ii) publish the notice in the Federal*
4 *Register and in a newspaper of general cir-*
5 *ulation in the area where the facility is*
6 *located.*

7 *“(B) EXTENSION OF TIME.—The President*
8 *may extend the 60-day period for issuing and*
9 *publishing a final notice under subparagraph*
10 *(A) if the President determines, for good cause,*
11 *that additional time is needed, and publishes an*
12 *explanation of the need for more time in the*
13 *Federal Register and in a newspaper of general*
14 *circulation in the area where the facility is lo-*
15 *cated.*

16 *“(6) EFFECT OF DELISTING.—The delisting of a*
17 *facility shall have no effect on—*

18 *“(A) liability allocation requirements or*
19 *cost-recovery provisions otherwise provided in*
20 *this Act;*

21 *“(B) any liability of a potentially respon-*
22 *sible party or the obligation of any person to*
23 *provide continued operation and maintenance;*

1 **“SEC. 136. REMEDY REVIEW PROCESS.**

2 “(a) *DEFINITION OF REMEDY REVIEW BOARD.*—In
3 *this section, the term ‘remedy review board’ means a rem-*
4 *edy review board established under section 134(e).*

5 “(b) *PETITIONS FOR REMEDY UPDATE.*—

6 “(1) *FILING.*—In the case of a facility or oper-
7 *able unit with respect to which a record of decision*
8 *was signed before the date of enactment of this section*
9 *and that meets the criteria of paragraph (3), the*
10 *implementor of the record of decision, not later than*
11 *1 year after the date of enactment of this section, may*
12 *submit to a remedy review board a petition to update*
13 *the record of decision to incorporate in the remedial*
14 *action at the facility or operable unit an alternative*
15 *technology, methodology, or approach.*

16 “(2) *PROVISION OF COPIES.*—The implementor
17 *shall provide a copy of the petition to the State, af-*
18 *ected Indian Tribes, local governments, any applica-*
19 *ble community action group, and the recipient of any*
20 *technical assistance grant.*

21 “(3) *CRITERIA FOR ACCEPTANCE FOR REVIEW.*—

22 “(A) *IN GENERAL.*—A remedy review board
23 *may accept for review a petition for remedy up-*
24 *date if the implementor demonstrates that—*

1 “(i) *the alternative remedial action*
2 *proposed in the petition meets the require-*
3 *ments of section 121;*

4 “(ii) *the Governor of the State in*
5 *which the facility is located does not object*
6 *to consideration of the petition;*

7 “(iii) *the record of decision—*

8 “(I) *was issued before September*
9 *27, 1996; or*

10 “(II) *in the case of a record of de-*
11 *cision involving primarily ground*
12 *water extraction and treatment rem-*
13 *edies, was issued before October 1,*
14 *1993; and*

15 “(iv)(I) *the record of decision has an*
16 *estimated implementation cost in excess of*
17 *\$30,000,000; or*

18 “(II) *the record of decision with an es-*
19 *timated implementation cost of between*
20 *\$5,000,000 and \$30,000,000, and the alter-*
21 *native remedial action achieves a cost sav-*
22 *ing of at least 50 percent of the total costs*
23 *of the record of decision.*

24 “(B) *WAIVER OF COST THRESHOLD.—With*
25 *the concurrence of the Administrator, a remedy*

1 *review board may approve a petition that does*
2 *not meet the cost threshold of subparagraph*
3 *(A)(iv).*

4 “(4) *PRIORITIZATION OF PETITIONS.—*

5 “(A) *IN GENERAL.—A remedy review board*
6 *shall prioritize its decision to accept petitions for*
7 *remedy update based on the criteria of para-*
8 *graph (3) and the potential cost savings of the*
9 *proposed remedy update.*

10 “(B) *CONSIDERATIONS.—When factoring*
11 *cost savings into the prioritization of petitions*
12 *for remedy update, a remedy review board shall*
13 *consider—*

14 “(i) *the gross cost saving estimated for*
15 *the proposed remedy update; and*

16 “(ii) *the proportion of total remedy*
17 *costs that the saving would represent.*

18 “(c) *REVIEW FACTORS.—In formulating a rec-*
19 *ommendation, a remedy review board shall consider factors*
20 *that include—*

21 “(1) *the continued relevance of the exposure sce-*
22 *narios and risk assumptions in the original remedy;*

23 “(2) *the effectiveness of the original cleanup*
24 *strategy in light of any new information or changed*
25 *circumstances at the facility;*

1 “(3) *the appropriateness and attainability of the*
2 *original cleanup goals;*

3 “(4) *the ability to enhance the original cleanup*
4 *strategy through the application of new technologies,*
5 *methodologies, or approaches;*

6 “(5) *the level and degree of community, State,*
7 *tribal, and potentially responsible parties involvement*
8 *and consensus in selecting the original cleanup strat-*
9 *egy;*

10 “(6) *the reasonableness of the original cost esti-*
11 *mates and whether the costs remain justifiable and*
12 *cost-effective;*

13 “(7) *the consistency of the original cleanup strat-*
14 *egy with similar remedies selected by the Agency; and*

15 “(8) *the effectiveness of the original cleanup*
16 *strategy in meeting the cleanup goals.*

17 “(d) *RECOMMENDATIONS.—Not later than 180 days*
18 *after the acceptance of a petition for remedy update, a rem-*
19 *edy review board shall—*

20 “(1) *submit to the Administrator a written rec-*
21 *ommendation with respect to the petition; and*

22 “(2) *provide responses to all comments submitted*
23 *during the review process with respect to the petition.*

24 “(e) *CONSIDERATION OF RECOMMENDATIONS.—In de-*
25 *ciding whether to approve a proposed remedy update, the*

1 *Administrator shall give substantial weight to the rec-*
2 *ommendation of a remedy review board.*

3 “(f) *REPORT TO CONGRESS.*—

4 “(1) *IN GENERAL.*—*The Administrator shall sub-*
5 *mit an annual report to Congress on the Administra-*
6 *tor’s activity in reviewing and modifying records of*
7 *decision signed before the date of enactment of this*
8 *section (whether or not the records of decision meet*
9 *the criteria under subsection (b)(3))—*

10 “(A) *to apply the amendments made to sec-*
11 *tion 121 by the Superfund Cleanup Acceleration*
12 *Act of 1998;*

13 “(B) *to incorporate new information re-*
14 *garding science, technology, and site conditions;*
15 *or*

16 “(C) *to improve the cost-effectiveness of re-*
17 *medial actions.*

18 “(2) *CONTENTS.*—*A report under paragraph (1)*
19 *shall describe—*

20 “(A) *the petitions for remedy update re-*
21 *ceived;*

22 “(B) *the disposition of the petitions for*
23 *remedy update; and*

24 “(C) *the cost savings, if any, that are esti-*
25 *mated to result from the remedy updates.*

1 “(g) *REMEDIAL ACTION REVIEWS UNDER SECTION*
2 *121(C).—In conducting remedial action reviews under sec-*
3 *tion 121(c), the Administrator should—*

4 “(1) *give priority consideration to records of de-*
5 *cision that—*

6 “(A) *were issued before October 1, 1993;*
7 *and*

8 “(B) *involve primarily ground water ex-*
9 *traction and treatment remedies for dense,*
10 *nonaqueous phase liquids; and*

11 “(2) *based on the review factors stated in sub-*
12 *section (c), make a determination whether a remedy*
13 *update is justified.”.*

14 **SEC. 407. NATIONAL PRIORITIES LIST.**

15 “(a) *AMENDMENTS.—Section 105 of the Comprehensive*
16 *Environmental Response, Compensation, and Liability Act*
17 *of 1980 (42 U.S.C. 9605) is amended—*

18 “(1) *in subsection (a)(8) by adding at the end the*
19 *following:*

20 “(C) *provision that, to the extent practicable, in*
21 *listing a facility on the National Priorities List, the*
22 *Administrator will not include any parcel of real*
23 *property at which no release has actually occurred,*
24 *but to which a released hazardous substance, pollut-*
25 *ant, or contaminant has migrated in ground water*

1 *that has moved through subsurface strata from an-*
 2 *other parcel of real estate at which the release actu-*
 3 *ally occurred, unless—*

4 “(i) *the ground water is in use as a public*
 5 *drinking water supply or was in such use at the*
 6 *time of the release; and*

7 “(ii) *the owner or operator of the facility is*
 8 *liable, or is affiliated with any other person that*
 9 *is liable, for any response costs at the facility,*
 10 *through any direct or indirect familial relation-*
 11 *ship, or any contractual, corporate, or financial*
 12 *relationship other than that created by the in-*
 13 *struments by which title to the facility is con-*
 14 *veyed or financed.”; and*

15 (2) *by adding at the end the following:*

16 “(h) *LISTING OF PARTICULAR PARCELS.—*

17 “(1) *DEFINITION.—In subsection (a)(8)(C) and*
 18 *paragraph (2) of this subsection, the term ‘parcel of*
 19 *real property’ means a parcel, lot, or tract of land*
 20 *that has a separate legal description from that of any*
 21 *other parcel, lot, or tract of land the legal description*
 22 *and ownership of which has been recorded in accord-*
 23 *ance with the law of the State in which it is located.*

24 “(2) *STATUTORY CONSTRUCTION.—Nothing in*
 25 *subsection (a)(8)(C) shall be construed to limit the*

1 *Administrator’s authority under section 104 to obtain*
 2 *access to and undertake response actions at any par-*
 3 *cel of real property to which a released hazardous*
 4 *substance, pollutant, or contaminant has migrated in*
 5 *the ground water.”.*

6 *(b) REVISION OF NATIONAL PRIORITIES LIST.—The*
 7 *President shall revise the National Priorities List to con-*
 8 *form with the amendments made by subsection (a) not later*
 9 *that 180 days of the date of enactment of this Act.*

10 **TITLE V—LIABILITY**

11 **SEC. 501. LIABILITY EXCEPTIONS AND LIMITATIONS.**

12 *(a) DEFINITIONS.—Section 101 of the Comprehensive*
 13 *Environmental Response, Liability, and Compensation Act*
 14 *of 1980 (42 U.S.C. 9601) (as amended by section 401) is*
 15 *amended by adding at the end of the following:*

16 *“(44) CODISPOSAL LANDFILL.—The term ‘codis-*
 17 *posal landfill’ means a landfill that—*

18 *“(A) was listed on the National Priorities*
 19 *List as of January 1, 1997;*

20 *“(B) received for disposal municipal solid*
 21 *waste or sewage sludge; and*

22 *“(C) may also have received, before the effec-*
 23 *tive date of requirements under subtitle C of the*
 24 *Solid Waste Disposal Act (42 U.S.C. 6921 et*
 25 *seq.), any hazardous waste, if the landfill con-*

1 *tains predominantly municipal solid waste or*
 2 *sewage sludge that was transported to the land-*
 3 *fill from outside the facility.*

4 “(45) *MUNICIPAL SOLID WASTE.*—

5 “(A) *IN GENERAL.*—*The term ‘municipal*
 6 *solid waste’ means waste material generated*
 7 *by—*

8 “(i) *a household (such as a single- or*
 9 *multi-family residence) or a public lodging*
 10 *(such as a hotel or motel); or*

11 “(ii) *a commercial, institutional, or*
 12 *industrial source, to the extent that—*

13 “(I) *the waste material is sub-*
 14 *stantially similar to waste normally*
 15 *generated by a household or public*
 16 *lodging (without regard to differences*
 17 *in volume); or*

18 “(II) *the waste material is col-*
 19 *lected and disposed of with other mu-*
 20 *nicipal solid waste or sewage sludge*
 21 *and, regardless of when generated,*
 22 *would be conditionally exempt small*
 23 *quantity generator waste under the*
 24 *regulation issued under section 3001(d)*

1 *of the Solid Waste Disposal Act (42*
2 *U.S.C. 6921(d)).*

3 “(B) *INCLUSIONS.*—*The term ‘municipal*
4 *solid waste’ includes food and yard waste, paper,*
5 *clothing, appliances, consumer product packag-*
6 *ing, disposable diapers, office supplies, cosmetics,*
7 *glass and metal food containers, elementary or*
8 *secondary school science laboratory waste, and*
9 *household hazardous waste.*

10 “(C) *EXCLUSIONS.*—*The term ‘municipal*
11 *solid waste’ does not include combustion ash gen-*
12 *erated by resource recovery facilities or municipi-*
13 *pal incinerators or waste from manufacturing or*
14 *processing (including pollution control) oper-*
15 *ations that is not described in subclause (I) or*
16 *(II).*

17 “(46) *MUNICIPALITY.*—

18 “(A) *IN GENERAL.*—*The term ‘municipal-*
19 *ity’ means a political subdivision of a State (in-*
20 *cluding a city, county, village, town, township,*
21 *borough, parish, school district, sanitation dis-*
22 *trict, water district, or other public entity per-*
23 *forming local governmental functions).*

24 “(B) *INCLUSIONS.*—*The term ‘municipality’*
25 *includes a natural person acting in the capacity*

1 *of an official, employee, or agent of any entity*
 2 *described in subparagraph (A) in the perform-*
 3 *ance of a governmental function.*

4 “(47) *SEWAGE SLUDGE.*—*The term ‘sewage*
 5 *sludge’ means solid, semisolid, or liquid residue re-*
 6 *moved during the treatment of municipal waste*
 7 *water, domestic sewage, or other waste water at or by*
 8 *publicly owned treatment works.”.*

9 **(b) EXCEPTIONS AND LIMITATIONS.**—*Section 107 of*
 10 *the Comprehensive Environmental Response, Compensa-*
 11 *tion, and Liability Act of 1980 (42 U.S.C. 9607) (as*
 12 *amended by section 306(b)) is amended by adding at the*
 13 *end the following:*

14 **“(q) LIABILITY EXEMPTION FOR MUNICIPAL SOLID**
 15 **WASTE AND SEWAGE SLUDGE.**—

16 **“(1) IN GENERAL.**—*No person shall be liable to*
 17 *the United States or to any other person (including*
 18 *liability for contribution) under this section or any*
 19 *other Federal or State law for any response costs in-*
 20 *curring after the date of enactment of this subsection*
 21 *at a facility listed on the National Priorities List to*
 22 *the extent that—*

23 **“(A) the person is liable solely under sub-**
 24 **paragraph (C) or (D) of subsection (a)(1); and**

25 **“(B) the person is—**

1 “(i) an owner, operator, or lessee of
2 residential property from which all of the
3 person’s municipal solid waste was gen-
4 erated;

5 “(ii) a business entity that, during the
6 tax year preceding the date of transmittal
7 of written notification that the business is
8 potentially liable, employs not more than
9 100 individuals; or

10 “(iii) a nonprofit organization de-
11 scribed in section 501(c)(3) of the Internal
12 Revenue Code of 1986 that employs not
13 more than 100 individuals, from which all
14 of the person’s municipal solid waste was
15 generated.

16 “(2) *EXCEPTIONS.*—Paragraph (1) shall not
17 apply in a case in which the person has failed to sub-
18 stantially comply with the requirement stated in sub-
19 section (y) with respect to the facility.

20 “(3) *COSTS AND FEES.*—A person that, lacking
21 a reasonable basis in law or fact, commences an ac-
22 tion for recovery of response costs or for contribution
23 against a person that is not liable by operation of
24 this subsection shall be liable to the defendant for all

1 *reasonable costs of defending the action, including all*
2 *reasonable attorney's fees and expert witness fees.*

3 *“(r) DE MICROMIS CONTRIBUTOR EXEMPTION.—*

4 *“(1) IN GENERAL.—In the case of a vessel or fa-*
5 *ility listed on the National Priorities List, no person*
6 *described in subparagraph (C) or (D) of subsection*
7 *(a)(1) shall be liable to the United States or to any*
8 *other person (including liability for contribution) for*
9 *any response costs under this section or any other*
10 *Federal or State law incurred after the date of enact-*
11 *ment of this subsection, if the activity specifically at-*
12 *tributable to the person resulted in the disposal or*
13 *treatment of not more than 200 pounds or 110 gallons*
14 *of material containing a hazardous substance at the*
15 *vessel or facility before January 1, 1997, or such*
16 *greater amount as the Administrator may determine*
17 *by regulation.*

18 *“(2) EXCEPTION.—Paragraph (1) shall not*
19 *apply in a case in which the Administrator deter-*
20 *mines that—*

21 *“(A) material described in paragraph (1)*
22 *has contributed or may contribute significantly,*
23 *individually, to the amount of response costs at*
24 *the facility; or*

1 “(B) the person has failed to substantially
2 comply with the requirement stated in subsection
3 (y) with respect to the vessel or facility.

4 “(3) COSTS AND FEES.—A person that, lacking
5 a reasonable basis in law or fact, commences an ac-
6 tion for recovery of response costs or for contribution
7 against a person that is not liable by operation of
8 this subsection shall be liable to the defendant for all
9 reasonable costs of defending the action, including all
10 reasonable attorney’s fees and expert witness fees.

11 “(s) SMALL BUSINESS EXEMPTION.—

12 “(1) IN GENERAL.—No person shall be liable to
13 the United States or to any person (including liabil-
14 ity for contribution) under this section or any other
15 Federal or State law for any response costs at a facil-
16 ity listed on the National Priorities List incurred
17 after the date of enactment of this subsection if—

18 “(A) the person is a business that—

19 “(i) during the taxable year preceding
20 the date of transmittal of notification that
21 the business is a potentially responsible
22 party, had full- and part-time employees
23 whose combined time was equivalent to 75
24 or fewer full-time employees; or

1 “(i) for that taxable year reported
2 \$3,000,000 or less in gross revenue;

3 “(B) the activity specifically attributable to
4 the person resulted in the disposal or treatment
5 of material containing a hazardous substance at
6 the vessel or facility before January 1, 1997; and

7 “(C) the person is not affiliated through
8 any familial or corporate relationship with any
9 person that is or was a party potentially respon-
10 sible for response costs at the facility.

11 “(2) EXCEPTION.—Paragraph (1) shall not
12 apply in a case in which—

13 “(A) the material containing a hazardous
14 substance referred to in subparagraph (A) con-
15 tributed significantly or could contribute signifi-
16 cantly to the cost of the response action with re-
17 spect to the facility; or

18 “(B) the person has failed to substantially
19 comply with the requirement stated in subsection
20 (y) with respect to the facility.

21 “(3) COSTS AND FEES.—A person that, lacking
22 a reasonable basis in law or fact, commences an ac-
23 tion for recovery of response costs or for contribution
24 against a person that is not liable by operation of
25 this subsection shall be liable to the defendant for all

1 *reasonable costs of defending the action, including all*
 2 *reasonable attorney's fees and expert witness fees.*

3 “(t) *CODISPOSAL LANDFILL EXEMPTION AND LIMITA-*
 4 *TIONS.—*

5 “(1) *LIABILITY CAP APPLICABLE TO GENERA-*
 6 *TORS AND TRANSPORTERS OF MUNICIPAL SOLID*
 7 *WASTE.—*

8 “(A) *ALLOCATION PROCESS.—A person lia-*
 9 *ble as a generator or transporter of municipal*
 10 *solid waste or sewage sludge (not otherwise ex-*
 11 *empted by subsection (q)) shall have its potential*
 12 *liability determined in an expedited settlement*
 13 *process under section 137(e) or an allocation*
 14 *process under section 137(f).*

15 “(B) *LIABILITY CAP.—To the extent that a*
 16 *person or group of persons is liable as a genera-*
 17 *tor or transporter of municipal solid waste or*
 18 *sewage sludge (not otherwise exempted by sub-*
 19 *section (q)), the total aggregate liability for all*
 20 *such persons or groups of persons for response*
 21 *costs incurred after the date of enactment of this*
 22 *section, pursuant to this section or any other*
 23 *Federal or State law, shall not be greater than*
 24 *10 percent of such costs.*

25 “(2) *MUNICIPAL OWNERS AND OPERATORS.—*

1 “(A) *AGGREGATE LIABILITY OF LARGE MU-*
2 *NICIPALITIES.*—

3 “(i) *IN GENERAL.*—*With respect to a*
4 *codisposal landfill that is owned or operated*
5 *in whole or in part by municipalities with*
6 *a population of 100,000 or more (according*
7 *to the 1990 census), and that is not subject*
8 *to the criteria for solid waste landfills pub-*
9 *lished under subtitle D of the Solid Waste*
10 *Disposal Act (42 U.S.C. 6941 et seq.) at*
11 *part 258 of title 40, Code of Federal Regu-*
12 *lations (or a successor regulation), the ag-*
13 *gregate amount of liability of such municipi-*
14 *pal owners and operators for response costs*
15 *incurred after the date of enactment of this*
16 *section under this section or any other Fed-*
17 *eral or State law shall be not greater than*
18 *20 percent of such costs.*

19 “(ii) *INCREASED AMOUNT.*—*The Presi-*
20 *dent or the allocator may increase the per-*
21 *centage under clause (i) to not more than*
22 *35 percent with respect to a municipality if*
23 *the President or allocator determines that*
24 *the municipality committed specific acts*

1 *that exacerbated environmental contamina-*
2 *tion or exposure with respect to the facility.*

3 “(iii) *DECREASED AMOUNT.—The*
4 *President or the allocator may decrease the*
5 *percentage under clause (i) with respect to*
6 *a municipality to not less than 10 percent*
7 *if the President or allocator determines that*
8 *the municipality took specific acts of miti-*
9 *gation during the operation of the facility*
10 *to avoid environmental contamination or*
11 *exposure with respect to the facility.*

12 “(B) *AGGREGATE LIABILITY OF SMALL MU-*
13 *NICIPALITIES.—*

14 “(i) *IN GENERAL.—With respect to a*
15 *codisposal landfill that is owned or operated*
16 *in whole or in part by municipalities with*
17 *a population of less than 100,000 (accord-*
18 *ing to the 1990 census), that is not subject*
19 *to the criteria for solid waste landfills pub-*
20 *lished under subtitle D of the Solid Waste*
21 *Disposal Act (42 U.S.C. 6941 et seq.) at*
22 *part 258 of title 40, Code of Federal Regu-*
23 *lations (or a successor regulation), the ag-*
24 *gregate amount of liability of such munici-*
25 *pal owners and operators for response costs*

1 *incurred after the date of enactment of this*
2 *section under this section or any other Fed-*
3 *eral or State law shall be not greater than*
4 *10 percent of such costs.*

5 *“(ii) INCREASED AMOUNT.—The Presi-*
6 *dent or the allocator may increase the per-*
7 *centage under clause (i) to not more than*
8 *20 percent with respect to a municipality if*
9 *the President or allocator determines that*
10 *the municipality committed specific acts*
11 *that exacerbated environmental contamina-*
12 *tion or exposure with respect to the facility.*

13 *“(iii) DECREASED AMOUNT.—The*
14 *President or the allocator may decrease the*
15 *percentage under clause (i) with respect to*
16 *a municipality to not less than 5 percent if*
17 *the President or allocator determines that*
18 *the municipality took specific acts of miti-*
19 *gation during the operation of the facility*
20 *to avoid environmental contamination or*
21 *exposure with respect to the facility.*

22 *“(C) SETTLEMENT AMOUNT.—The Presi-*
23 *dent, as soon as reasonably practicable after the*
24 *date of enactment of this subsection, shall offer a*

1 *settlement to a municipality with respect to the*
2 *liability described in subparagraph (A) or (B).*

3 “(3) *APPLICABILITY.—This subsection shall not*
4 *apply to—*

5 “(A) *a person that acted in violation of sub-*
6 *title C of the Solid Waste Disposal Act (42*
7 *U.S.C. 6921 et seq.) at a facility that is subject*
8 *to a response action under this title, if the viola-*
9 *tion pertains to a hazardous substance the re-*
10 *lease of threat of release of which caused the in-*
11 *currence of response costs at the facility;*

12 “(B) *a person that owned or operated a co-*
13 *disposal landfill in violation of the applicable re-*
14 *quirements for municipal solid waste landfill*
15 *units under subtitle D of the Solid Waste Dis-*
16 *posal Act (42 U.S.C. 6941 et seq.) after October*
17 *9, 1991, if the violation pertains to a hazardous*
18 *substance the release of threat of release of which*
19 *caused the incurrence of response costs at the fa-*
20 *cility; or*

21 “(C) *a person described in section 137(s).*

22 “(4) *PERFORMANCE OF RESPONSE ACTIONS.—As*
23 *a condition of a settlement with a municipality under*
24 *this subsection, the President may require that the*

1 *municipality perform or participate in the perform-*
2 *ance of the response actions at the facility.*

3 “(5) *WAIVER OF CLAIMS.—The President shall*
4 *require, as a condition of a settlement under this sub-*
5 *section, that a municipality or combination of 2 or*
6 *more municipalities waive claims (including a claim*
7 *for contribution under section 113) that the party*
8 *may have against other potentially responsible parties*
9 *for all response costs incurred after the date of enact-*
10 *ment of this subsection addressed in the settlement at*
11 *the facility.*

12 “(6) *EXCEPTIONS.—The President may decline*
13 *to offer a settlement under this subsection with respect*
14 *to a facility if the President determines that—*

15 “(A) *all known potentially responsible par-*
16 *ties are insolvent, defunct, or eligible for a settle-*
17 *ment under this subsection or section 122(g); or*

18 “(B) *the municipal owner or operator has*
19 *failed to substantially comply with the require-*
20 *ment stated in subsection (y) with respect to the*
21 *facility.”.*

22 (c) *EFFECTIVE DATE AND TRANSITION RULES.—The*
23 *amendments made by this section—*

24 (1) *shall take effect with respect to an action*
25 *under section 106, 107, or 113 of the Comprehensive*

1 *Environmental Response, Compensation, and Liabil-*
 2 *ity Act of 1980 (42 U.S.C. 9606, 9607, and 9613)*
 3 *that becomes final on or after the date of enactment*
 4 *of this Act; but*

5 (2) *shall not apply to an action brought by any*
 6 *person under section 107 or 113 of that Act (42*
 7 *U.S.C. 9607 and 9613) for costs or damages incurred*
 8 *by the person before the date of enactment of this Act.*

9 (d) *RELATIONSHIP TO LIABILITY UNDER OTHER*
 10 *LAW.—Section 122 of the Comprehensive Environmental*
 11 *Response, Liability, and Compensation Act of 1980 (42*
 12 *U.S.C. 9622) is amended by adding at the end the following:*

13 “(n) *RELATIONSHIP TO LIABILITY UNDER OTHER*
 14 *LAW.—Nothing in this section affects the obligation of any*
 15 *person to comply with any other Federal, State, or local*
 16 *law (including requirements under the Solid Waste Dis-*
 17 *posal Act (42 U.S.C. 6901 et seq.)).”*

18 **SEC. 502. CONTRIBUTION FROM THE FUND.**

19 *Section 112 of the Comprehensive Environmental Re-*
 20 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 21 *9612) is amended by adding at the end the following:*

22 “(g) *CONTRIBUTION FROM THE FUND.—*

23 “(1) *COMPLETION OF OBLIGATIONS.—A person*
 24 *that is undertaking a response action pursuant to an*
 25 *administrative order issued under section 106 or has*

1 *entered into a settlement decree with the United*
2 *States or a State as of the date of enactment of this*
3 *subsection shall complete the person's obligations*
4 *under the order or settlement decree.*

5 *“(2) CONTRIBUTION.—A person described in*
6 *paragraph (1) shall receive contribution from the*
7 *Fund for any portion of the costs (excluding attor-*
8 *neys' fees) incurred for the performance of the re-*
9 *sponse action after the date of enactment of this sub-*
10 *section if the person is not liable for such costs by rea-*
11 *son of a liability exemption under section 107.*

12 *“(3) APPLICATION FOR CONTRIBUTION.—*

13 *“(A) IN GENERAL.—Contribution under this*
14 *section shall be made upon receipt by the Ad-*
15 *ministrator of an application requesting con-*
16 *tribution.*

17 *“(B) PERIODIC APPLICATIONS.—Beginning*
18 *with the 7th month after the date of enactment*
19 *of this subsection, 1 application for each facility*
20 *shall be submitted every 6 months for all persons*
21 *with contribution rights (as determined under*
22 *subparagraph (2)).*

23 *“(4) REGULATIONS.—Contribution shall be made*
24 *in accordance with such regulations as the Adminis-*

1 *trator shall issue within 180 days after the date of en-*
2 *actment of this section.*

3 “(5) *DOCUMENTATION.*—*The regulations under*
4 *paragraph (4) shall, at a minimum, require that an*
5 *application for contribution contain such documenta-*
6 *tion of costs and expenditures as the Administrator*
7 *considers necessary to ensure compliance with this*
8 *subsection.*

9 “(6) *EXPEDITION.*—*The Administrator shall,*
10 *consistent with section 137(p), develop and implement*
11 *such procedures as may be necessary to provide con-*
12 *tribution to such persons in an expeditious manner,*
13 *but in no case shall a contribution be made later than*
14 *1 year after submission of an application under this*
15 *subsection.*

16 “(7) *CONSISTENCY WITH NATIONAL CONTINGENCY*
17 *PLAN.*—*No contribution shall be made under this sub-*
18 *section unless the Administrator determines that such*
19 *costs are consistent with the National Contingency*
20 *Plan.”.*

21 **SEC. 503. EXPEDITED SETTLEMENT FOR CERTAIN PARTIES.**

22 (a) *PARTIES ELIGIBLE.*—*Section 122(g) of the Com-*
23 *prehensive Environment Response, Liability, and Com-*
24 *pensation Act of 1980 (42 U.S.C. 9622(g)) is amended—*

1 (1) *by striking the subsection heading and in-*
2 *serting the following:*

3 “(g) *EXPEDITED FINAL SETTLEMENT.—*”;

4 (2) *in paragraph (1)—*

5 (A) *by redesignating subparagraph (B) as*
6 *subparagraph (C);*

7 (B) *by striking “(1)” and all that follows*
8 *through subparagraph (A) and inserting the fol-*
9 *lowing:*

10 “(1) *PARTIES ELIGIBLE.—*

11 “(A) *IN GENERAL.—As expeditiously as*
12 *practicable, the President shall—*

13 “(i) *notify each potentially responsible*
14 *party that meets 1 or more of the conditions*
15 *stated in subparagraphs (B), (C), and (D)*
16 *of the party’s eligibility for a settlement;*
17 *and*

18 “(ii) *offer to reach a final administra-*
19 *tive or judicial settlement with the party.*

20 “(B) *DE MINIMIS CONTRIBUTION.—The con-*
21 *dition stated in this subparagraph is that the li-*
22 *ability is for response costs based on subpara-*
23 *graph (C) or (D) of section 107(a)(1) and the*
24 *party’s contribution of a hazardous substance at*
25 *a facility is de minimis. For the purposes of this*

1 *subparagraph, a potentially responsible party's*
2 *contribution shall be considered to be de minimis*
3 *only if the President determines that both of the*
4 *following criteria are met:*

5 “(i) *The amount of material contain-*
6 *ing a hazardous substance contributed by*
7 *the potentially responsible party to the fa-*
8 *ility is minimal relative to the total*
9 *amount of material containing hazardous*
10 *substances at the facility. The amount of a*
11 *potentially responsible party's contribution*
12 *shall be presumed to be minimal if the*
13 *amount is 1 percent or less of the total*
14 *amount of material containing a hazardous*
15 *substance at the facility, unless the Admin-*
16 *istrator promptly identifies a greater*
17 *threshold based on site-specific factors.*

18 “(ii) *The material containing a haz-*
19 *ardous substance contributed by the poten-*
20 *tially responsible party does not present*
21 *toxic or other hazardous effects that are sig-*
22 *nificantly greater than the toxic or other*
23 *hazardous effects of other material contain-*
24 *ing a hazardous substance at the facility.”;*

1 (C) in subparagraph (C) (as redesignated
2 by subparagraph (A))—

3 (i) by redesignating clauses (i) through
4 (iii) as subclauses (I) through (III), respec-
5 tively, and adjusting the margins appro-
6 priately;

7 (ii) by striking “(C) The potentially
8 responsible party” and inserting the follow-
9 ing:

10 “(C) OWNERS OF REAL PROPERTY.—

11 “(i) IN GENERAL.—The condition stat-
12 ed in this subparagraph is that the poten-
13 tially responsible party”; and

14 (iii) by striking “This subparagraph
15 (B)” and inserting the following:

16 “(ii) APPLICABILITY.—Clause (i)”; and
17 (D) by adding at the end the following:

18 “(D) REDUCTION IN SETTLEMENT AMOUNT
19 BASED ON LIMITED ABILITY TO PAY.—

20 “(i) IN GENERAL.—The condition stat-
21 ed in this subparagraph is that—

22 “(I) the potentially responsible
23 party is—

24 “(aa) a natural person;

25 “(bb) a small business; or

1 “(cc) a municipality;

2 “(II) the potentially responsible
3 party demonstrates to the President an
4 inability to pay or has only a limited
5 ability to pay response costs, as deter-
6 mined by the Administrator under a
7 regulation promulgated by the Admin-
8 istrator, after public notice and oppor-
9 tunity for comment and after consulta-
10 tion with the Administrator of the
11 Small Business Administration and
12 the Secretary of Housing and Urban
13 Development; and

14 “(III) in the case of a potentially
15 responsible party that is a small busi-
16 ness, the potentially responsible party
17 does not qualify for the small business
18 exemption under section 107(s) because
19 of the application of section
20 107(s)(2)(A).

21 “(ii) SMALL BUSINESSES.—

22 “(I) DEFINITION OF SMALL BUSI-
23 NESS.—In this subparagraph, the term
24 ‘small business’ means a business en-
25 tity that—

1 “(aa) during the taxable year
2 preceding the date of transmittal
3 of notification that the business is
4 a potentially responsible party,
5 had full- and part-time employees
6 whose combined time was equiva-
7 lent to 50 or fewer full-time em-
8 ployees or for that taxable year re-
9 ported \$3,000,000 or less in gross
10 revenue; and

11 “(bb) the person is not affili-
12 ated through any familial or cor-
13 porate relationship with any per-
14 son that is or was a party poten-
15 tially responsible for response
16 costs at the facility.

17 “(II) CONSIDERATIONS.—At the
18 request of a small business, the Presi-
19 dent shall take into consideration the
20 ability of the small business to pay re-
21 sponse costs and still maintain its
22 basic business operations, including
23 consideration of the overall financial
24 condition of the small business and de-

1 *monstrable constraints on the ability of*
2 *the small business to raise revenues.*

3 “(III) *INFORMATION.*—A *small*
4 *business requesting settlement under*
5 *this paragraph shall promptly provide*
6 *the President with all relevant infor-*
7 *mation needed to determine the ability*
8 *of the small business to pay response*
9 *costs.*

10 “(IV) *DETERMINATION.*—A *small*
11 *business shall demonstrate the amount*
12 *of its ability to pay response costs, and*
13 *the President shall perform any analy-*
14 *sis that the President determines may*
15 *assist in demonstrating the impact of a*
16 *settlement on the ability of the small*
17 *business to maintain its basic oper-*
18 *ations. The President, in the discretion*
19 *of the President, may perform such*
20 *analysis for any other party or request*
21 *such other party to perform the analy-*
22 *sis.*

23 “(V) *ALTERNATIVE PAYMENT*
24 *METHODS.*—*If the President deter-*
25 *mines that a small business is unable*

1 to pay its total settlement amount im-
2 mediately, the President shall consider
3 such alternative payment methods as
4 may be necessary or appropriate.

5 “(iii) MUNICIPALITIES.—

6 “(I) CONSIDERATIONS.—The
7 President shall consider the inability
8 or limited ability to pay of a munici-
9 pality to the extent that the municipa-
10 lity provides necessary information
11 with respect to—

12 “(aa) the general obligation
13 bond rating and information
14 about the most recent bond issue
15 for which the rating was pre-
16 pared;

17 “(bb) the amount of total
18 available funds (other than dedi-
19 cated funds or State assistance
20 payments for remediation of inac-
21 tive hazardous waste sites);

22 “(cc) the amount of total op-
23 erating revenues (other than obli-
24 gated or encumbered revenues);

1 “(dd) the amount of total ex-
2 penses;

3 “(ee) the amounts of total
4 debt and debt service;

5 “(ff) per capita income and
6 cost of living;

7 “(gg) real property values;

8 “(hh) unemployment infor-
9 mation; and

10 “(ii) population information.

11 “(II) EVALUATION OF IMPACT.—A
12 municipality may also submit for con-
13 sideration by the President an evalua-
14 tion of the potential impact of the set-
15 tlement on the provision of municipal
16 services and the feasibility of making
17 delayed payments or payments over
18 time.

19 “(III) RISK OF DEFAULT OR VIO-
20 LATION.—A municipality may estab-
21 lish an inability to pay for purposes of
22 this subparagraph through an affirma-
23 tive showing that payment of its liabil-
24 ity under this Act would—

1 “(aa) create a substantial de-
2 monstrable risk that the municipi-
3 pality would default on debt obli-
4 gations existing as of the time of
5 the showing, be forced into bank-
6 ruptcy, be forced to dissolve, or be
7 forced to make budgetary cutbacks
8 that would substantially reduce
9 the level of protection of public
10 health and safety; or

11 “(bb) necessitate a violation
12 of legal requirements or limita-
13 tions of general applicability con-
14 cerning the assumption and
15 maintenance of fiscal municipal
16 obligations.

17 “(IV) OTHER FACTORS RELEVANT
18 TO SETTLEMENTS WITH MUNICIPALI-
19 TIES.—In determining an appropriate
20 settlement amount with a municipality
21 under this subparagraph, the President
22 may consider other relevant factors, in-
23 cluding the fair market value of any
24 in-kind services that the municipality

1 *may provide to support the response*
2 *action at the facility.*

3 “(iv) *OTHER POTENTIALLY RESPON-*
4 *SIBLE PARTIES.—This subparagraph does*
5 *not affect the President’s authority to evalu-*
6 *ate the ability to pay of a potentially re-*
7 *sponsible party other than a natural person,*
8 *small business, or municipality or to enter*
9 *into a settlement with such other party*
10 *based on that party’s ability to pay.*

11 “(F) *ADDITIONAL CONDITIONS FOR EXPE-*
12 *DITED SETTLEMENTS.—*

13 “(i) *WAIVER OF CLAIMS.—The Presi-*
14 *dent shall require, as a condition of settle-*
15 *ment under this paragraph, that a poten-*
16 *tially responsible party waive the claims*
17 *(including a claim for contribution under*
18 *section 113) that the party may have*
19 *against other potentially responsible parties*
20 *for all response costs addressed in the settle-*
21 *ment.*

22 “(ii) *EXCEPTION.—The President may*
23 *decline to offer a settlement to a potentially*
24 *responsible party under this paragraph if*
25 *the President determines that the poten-*

1 *tially responsible party has failed to sub-*
2 *stantially comply with the requirement stat-*
3 *ed in subsection (y) with respect to the fa-*
4 *cility.*

5 “(iii) *RESPONSIBILITY TO PROVIDE IN-*
6 *FORMATION.—A potentially responsible*
7 *party that enters into a settlement under*
8 *this paragraph shall not be relieved of the*
9 *responsibility to provide any information*
10 *requested by the President in accordance*
11 *with subsection (e)(3)(B) or section 104(e).*

12 “(iv) *BASIS OF DETERMINATION.—If*
13 *the President determines that a potentially*
14 *responsible party is not eligible for settle-*
15 *ment under this paragraph, the President*
16 *shall state the reasons for the determination*
17 *in writing to any potentially responsible*
18 *party that requests a settlement under this*
19 *paragraph.*

20 “(v) *NO JUDICIAL REVIEW.—A deter-*
21 *mination by the President under this para-*
22 *graph shall not be subject to judicial re-*
23 *view.”.*

24 (b) *SETTLEMENT OFFERS.—Section 122(g) of the*
25 *Comprehensive Environment Response, Liability, and*

1 *Compensation Act of 1980 (42 U.S.C. 9622(g)) is amend-*
2 *ed—*

3 (1) *by redesignating paragraph (6) as para-*
4 *graph (9); and*

5 (2) *by inserting after paragraph (5) the follow-*
6 *ing:*

7 “(6) *SETTLEMENT OFFERS.—*

8 “(A) *IN GENERAL.—As soon as practicable*
9 *after receipt of sufficient information, the Ad-*
10 *ministrator shall submit a written settlement*
11 *offer (stated in dollars) to each person that the*
12 *Administrator determines, based on information*
13 *available to the Administrator at the time at*
14 *which the determination is made, to be eligible*
15 *for a settlement under paragraph (1).*

16 “(B) *INFORMATION.—At the time at which*
17 *the Administrator submits an offer under para-*
18 *graph (1), the Administrator shall, at the request*
19 *of the recipient of the offer, make available to the*
20 *recipient any information available under sec-*
21 *tion 552 of title 5, United States Code, on which*
22 *the Administrator bases the settlement offer, and*
23 *if the settlement offer is based in whole or in*
24 *part on information not available under that*
25 *section, so inform the recipient.*

1 “(7) *LITIGATION MORATORIUM.*—

2 “(A) *IN GENERAL.*—No person eligible for
3 an expedited settlement under paragraph (1)
4 shall be named as a defendant in any action
5 under this Act or any other Federal or State law
6 for recovery of response costs incurred after the
7 date of enactment of this paragraph (including
8 an action for contribution) during the period be-
9 ginning on the date on which the person receives
10 from the President written notice of the person’s
11 potential liability and notice that the person is
12 a party that may qualify for an expedited settle-
13 ment, and ending on the earlier of—

14 “(i) the date that is 90 days after the
15 date on which the President tenders a writ-
16 ten settlement offer to the person; or

17 “(ii) the date that is 1 year after the
18 date specified in subparagraph (A).

19 “(B) *TOLLING OF PERIOD OF LIMITATION.*—
20 The period of limitation under section 113(g)
21 applicable to a claim against a person described
22 in subparagraph (A) for response costs (includ-
23 ing an action for contribution or natural re-
24 source damages) shall be tolled during the period
25 described in subparagraph (A).

1 “(8) *NOTICE OF SETTLEMENT.*—After a settle-
 2 ment under this subsection becomes final with any
 3 person with respect to a facility, the President shall
 4 promptly notify potentially responsible parties at the
 5 facility that have not resolved their liability to the
 6 United States of the settlement.”.

7 **SEC. 504. ALLOCATION OF LIABILITY FOR CERTAIN FACILI-**
 8 **TIES.**

9 Title I of the Comprehensive Environmental Response,
 10 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
 11 *et seq.*) (as amended by section 406) is amended by adding
 12 at the end the following:

13 **“SEC. 137. ALLOCATION OF LIABILITY FOR CERTAIN FACILI-**
 14 **TIES.**

15 “(a) *DEFINITIONS.*—In this section:

16 “(1) *ALLOCATED SHARE.*—The term ‘allocated
 17 share’ means the percentage of responsibility assigned
 18 to a potentially responsible party by the allocator in
 19 an allocation report under subsection (h).

20 “(2) *ALLOCATION PARTY.*—

21 “(A) *IN GENERAL.*—The term ‘allocation
 22 party’ means a party, named on a list of parties
 23 issued by the Administrator, that will be subject
 24 to the allocation process under this section.

25 “(B) *EXCLUSION.*—

1 “(i) *IN GENERAL.*—The term ‘allocation
2 party’ does not include a person that
3 is qualified for an exemption under sub-
4 section (q), (r), or (s), but such a person
5 shall be required to respond to information
6 requests under subsections (d) and (j).

7 “(ii) *DETERMINATION OF ALLOCATION*
8 *SHARES.*—Notwithstanding clause (i), an
9 allocator shall determine the allocation
10 share of a person that is qualified for the
11 exemption under subsection (q) or (s) for
12 the purpose of determining the orphan share
13 under section 137(i).

14 “(3) *ALLOCATOR.*—The term ‘allocator’ means a
15 neutral third party retained to conduct an allocation
16 for a facility under this section.

17 “(4) *ADR NEUTRAL.*—The term ‘ADR neutral’
18 means an alternative dispute resolution neutral re-
19 tained to assist the parties at a facility in resolving
20 a dispute related to a settlement.

21 “(5) *MANDATORY ALLOCATION FACILITY.*—The
22 term ‘mandatory allocation facility’ means—

23 “(A) a non-federally owned vessel or facility
24 listed on the National Priorities List with re-
25 spect to which response costs are incurred after

1 *the date of enactment of this section and at*
2 *which there are 2 or more potentially responsive*
3 *persons (including 1 or more persons that are*
4 *qualified for an exemption under subsection (q),*
5 *(r), or (s) of section 107), if at least 1 potentially*
6 *responsible person is viable and not entitled to*
7 *an exemption under subsection (q), (r), or (s) of*
8 *section 107 for which the potentially responsible*
9 *parties demonstrate that the response costs to be*
10 *incurred after the date of enactment of this Act*
11 *will exceed \$1,000,000;*

12 *“(B) a federally owned vessel or facility*
13 *listed on the National Priorities List with re-*
14 *spect to which response costs are incurred after*
15 *the date of enactment of this section, and with*
16 *respect to which 1 or more potentially respon-*
17 *sible parties (other than a department, agency, or*
18 *instrumentality of the United States) are liable*
19 *or potentially liable if at least 1 potentially lia-*
20 *ble party is liable and not entitled to an exemp-*
21 *tion under subsection (q), (r), or (s) of section*
22 *107 for which the potentially responsible parties*
23 *demonstrate that the response costs to be in-*
24 *curring after the date of enactment of this Act*
25 *will exceed \$1,000,000; and*

1 “(C) a codisposal landfill with respect to
2 which costs are incurred after the date of enact-
3 ment of this section.

4 “(6) ORPHAN SHARE.—The term ‘orphan share’
5 means the total of the allocated shares determined by
6 the Administrator and the parties to a negotiation
7 under subsection (e) or by the allocator under sub-
8 section (i).

9 “(b) ALLOCATIONS OF RESPONSIBILITY.—

10 “(1) MANDATORY ALLOCATIONS.—The Adminis-
11 trator shall conduct the allocation process under this
12 section for each mandatory allocation facility.

13 “(2) REQUESTED ALLOCATIONS.—For a facility
14 (other than a mandatory allocation facility) involving
15 2 or more potentially responsible parties, the Admin-
16 istrator may conduct the allocation process under this
17 section if the allocation is requested in writing by a
18 potentially responsible party that has—

19 “(A) incurred response costs with respect to
20 a response action; or

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

1 “(3) *ORPHAN SHARE*.—An allocation performed
2 at a vessel or facility identified under paragraph (2)
3 shall not require payment of an orphan share under
4 subsection (i) or contribution under subsection (o).

5 “(4) *CODISPOSAL LANDFILLS*.—In determining
6 the order in which to conduct allocations at facilities
7 identified under paragraph (1) or (2), the Adminis-
8 trator shall give priority to allocations at codisposal
9 landfills.

10 “(5) *EXCLUDED FACILITIES*.—A facility for
11 which there was in effect as of the date of enactment
12 of this section a settlement decree or order that deter-
13 mines the liability and allocated shares of all poten-
14 tially responsible parties with respect to the response
15 action shall not be considered to be a mandatory allo-
16 cation facility for the purposes of paragraph (1).

17 “(6) *LIMITATION OF CERTAIN FACILITIES*.—

18 “(A) *IN GENERAL*.—In the case of a manda-
19 tory allocation facility that is the subject of a ju-
20 dicial or administrative consent decree or unilat-
21 eral administrative order under section 106 that
22 was issued, signed, lodged, or entered on or be-
23 fore February 1, 1998, in which there may be an
24 orphan share, there shall be no mandatory allo-
25 cation process under this section for the purpose

1 *of determining the amount of the orphan share*
2 *unless, after the Administrator rejects a request*
3 *for mandatory allocation, a neutral third party*
4 *determines that the amount of the orphan share*
5 *of the response costs remaining to be incurred*
6 *can reasonably be expected to amount to*
7 *\$500,000 or more.*

8 “(B) *PRESENTATION TO NEUTRAL THIRD*
9 *PARTY.—Two or more persons subject to a con-*
10 *sent decree or unilateral administrative order de-*
11 *scribed in subparagraph (A) that seek an alloca-*
12 *tion process for the purpose of determining the*
13 *amount of the orphan share shall—*

14 “(i) *nominate, with the approval of the*
15 *Administrator, a neutral third party to*
16 *make the determination under subpara-*
17 *graph (A); and*

18 “(ii) *not later than 30 days after selec-*
19 *tion of the neutral third party, submit to*
20 *the neutral third party a written presen-*
21 *tation showing the amount of the orphan*
22 *share of the response costs then remaining*
23 *to be incurred.*

24 “(C) *DETERMINATION.—Not later than 60*
25 *days after the receipt of the presentation under*

1 *subparagraph (B), the neutral third party shall*
2 *determine the reasonably expected amount of the*
3 *orphan share of the response costs remaining to*
4 *be incurred.*

5 “(D) *CONCLUSIVENESS OF DETERMINA-*
6 *TION.—The determination of a neutral third*
7 *party under subparagraph (C) shall be conclu-*
8 *sive on all persons and shall not be subject to re-*
9 *view by the Administrator or any court.*

10 “(E) *COST.—The cost of obtaining a deter-*
11 *mination under this paragraph shall be paid by*
12 *the person or group of persons seeking an orphan*
13 *share allocation.*

14 “(F) *SCOPE.—If the requirement of sub-*
15 *paragraph (A) is met, an allocation shall be per-*
16 *formed for the sole purpose of determining the*
17 *orphan share under subsection (i)(1). The alloca-*
18 *tion shall take into account any monetary or*
19 *nonmonetary compromises made by the Admin-*
20 *istrator in negotiating the underlying consent*
21 *decree. If the allocator under subsection (i)(1) de-*
22 *termines that the amount of the orphan share of*
23 *the response costs remaining to be incurred is*
24 *less than \$500,000, there shall be no orphan*
25 *shares provided.*

1 “(G) *REQUESTED ALLOCATIONS.*—A deter-
2 mination under this paragraph that a manda-
3 tory allocation process shall not be conducted
4 shall not preclude the conduct of a requested allo-
5 cation with the approval of the Administrator.

6 “(H) *EFFECT OF PARAGRAPH.*—This para-
7 graph does not limit or otherwise affect the obli-
8 gation of any person to implement a response
9 action as required by a consent decree or unilat-
10 eral administrative order.

11 “(7) *SCOPE OF ALLOCATIONS.*—

12 “(A) *IN GENERAL.*—An allocation under
13 this section shall apply to—

14 “(i) response costs incurred after the
15 date of enactment of this section, with re-
16 spect to a mandatory allocation facility;

17 “(ii) unrecovered response costs of the
18 United States incurred before the date of en-
19 actment of this section, with respect to a
20 mandatory allocation facility; and

21 “(iii) response costs incurred at a fa-
22 cility that is the subject of a requested allo-
23 cation under paragraph (2).

24 “(B) *COSTS INCURRED BEFORE DATE OF*
25 *ENACTMENT.*—With the agreement of the alloca-

1 *tion parties and the United States, the allocator*
2 *may also provide an allocation of response costs*
3 *incurred at a facility before the date of enact-*
4 *ment of this section, but that portion of the allo-*
5 *cation shall not qualify for reimbursement of an*
6 *orphan share.*

7 *“(8) OTHER MATTERS.—This section shall not*
8 *limit or affect—*

9 *“(A) the obligation of the Administrator to*
10 *conduct the allocation process for a response ac-*
11 *tion at a facility that has been the subject of a*
12 *partial or expedited settlement;*

13 *“(B) the ability of any person to resolve*
14 *any liability, with respect to a facility, to any*
15 *other person at any time before initiation or*
16 *completion of the allocation process, subject to*
17 *subsection (n)(2);*

18 *“(C) the validity, enforceability, finality, or*
19 *merits of any judicial or administrative order,*
20 *judgment, or decree, issued prior to the date of*
21 *enactment of this section with respect to liability*
22 *under this Act; or*

23 *“(D) the validity, enforceability, finality, or*
24 *merits of any preexisting contract or agreement*
25 *relating to any allocation of responsibility or*

1 *any indemnity for, or sharing of, any response*
2 *costs under this Act.*

3 “(c) *MORATORIUM ON LITIGATION AND ENFORCE-*
4 *MENT.—*

5 “(1) *IN GENERAL.—No person may assert a*
6 *claim for recovery of a response cost or contribution*
7 *toward a response cost (including a claim for insur-*
8 *ance proceeds) incurred after the date of enactment of*
9 *this section under this Act or any other Federal or*
10 *State law in connection with a response action—*

11 “(A) *for which an allocation is required to*
12 *be performed under subsection (b)(1);*

13 “(B) *for which the Administrator has initi-*
14 *ated settlement negotiations under subsection (e);*
15 *or*

16 “(C) *for which the Administrator has initi-*
17 *ated the allocation process under this section;*
18 *until the date that is 120 days after the date of*
19 *issuance of a report by the allocator under subsection*
20 *(h) or, if a second or subsequent report is issued*
21 *under subsection (m), the date of issuance of the sec-*
22 *ond or subsequent report.*

23 “(2) *PENDING ACTIONS OR CLAIMS.—If a claim*
24 *described in paragraph (1) is pending on the date of*
25 *enactment of this section or on initiation of an allo-*

1 *cation under this section, the portion of the claim*
 2 *pertaining to response costs that are the subject of the*
 3 *allocation shall be stayed until the date that is 120*
 4 *days after the date of issuance of a report by the allo-*
 5 *cator under subsection (h) or, if a second or subse-*
 6 *quent report is issued under subsection (m), the date*
 7 *of issuance of the second or subsequent report, unless*
 8 *the court determines that a stay would result in*
 9 *manifest injustice.*

10 *“(3) TOLLING OF PERIOD OF LIMITATION.—*

11 *“(A) BEGINNING OF TOLLING.—Any appli-*
 12 *cable period of limitation with respect to a claim*
 13 *subject to paragraph (1) shall be tolled beginning*
 14 *on the earlier of—*

15 *“(i) the date of listing of the facility on*
 16 *the National Priorities List if the listing oc-*
 17 *curs after the date of enactment of this sec-*
 18 *tion; or*

19 *“(ii) the date of commencement of set-*
 20 *tlement negotiations or initiation of the al-*
 21 *location process under this section.*

22 *“(B) END OF TOLLING.—A period of limita-*
 23 *tion shall be tolled under subparagraph (A) until*
 24 *the later of—*

1 “(i) the date that is 180 days after the
2 date of entry by a United States district
3 court of a settlement under subsection (e); or

4 “(ii) the date that is 180 days after the
5 date of issuance of a report by the allocator
6 under subsection (h), or of a second or sub-
7 sequent report under subsection (m).

8 “(4) *ACTIONS CONTEMPORANEOUS WITH SETTLE-*
9 *MENT.*—Notwithstanding this section, the Attorney
10 General may commence a civil action against a po-
11 tentially responsible party or allocation party at any
12 time if at the same time the Attorney General files a
13 judicial consent decree resolving the liability of the
14 potentially responsible party or allocation party.

15 “(d) *IDENTIFICATION OF POTENTIALLY RESPONSIBLE*
16 *PARTIES.*—

17 “(1) *IN GENERAL.*—As soon as reasonably prac-
18 ticable, the Administrator shall perform a comprehen-
19 sive search to identify all potentially responsible par-
20 ties at each mandatory allocation facility, and pro-
21 vide appropriate opportunity for participation by po-
22 tentially responsible parties. The search shall be initi-
23 ated not later than 60 days after commencement of
24 the remedial investigation or selection of a removal
25 action, whichever occurs first.

1 “(2) *NOMINATION OF ADDITIONAL PARTIES.*—

2 “(A) *SUBMISSION OF NAMES.*—*The Admin-*
3 *istrator shall allow each potentially responsible*
4 *party identified by the Administrator under*
5 *paragraph (1) a reasonable period of time in*
6 *which to submit the names of additional poten-*
7 *tially responsible parties.*

8 “(B) *STATEMENT OF BASIS.*—*A potentially*
9 *responsible party nominating another person as*
10 *a potentially responsible party shall—*

11 “(i) *include a statement setting forth*
12 *the basis in law and fact why the nomi-*
13 *nated party is potentially liable under this*
14 *Act; and*

15 “(ii) *submit to the Administrator and*
16 *a majority of the nominated person all*
17 *available information that identifies the na-*
18 *ture and extent of the nominated person’s*
19 *involvement at, and contribution of hazard-*
20 *ous substances to, the facility.*

21 “(C) *SUBMISSION BY NOMINATED PER-*
22 *SONS.*—*A person nominated as a potentially re-*
23 *sponsible party may within a reasonable time*
24 *submit to the Administrator information relat-*

1 *ing to inclusion of the person as a potentially re-*
2 *sponsible party at the facility.*

3 “(3) *INCLUSION OF NOMINATED PERSONS.—The*
4 *Administrator shall include each person nominated*
5 *under paragraph (2) on the list of potentially respon-*
6 *sible parties, unless the Administrator determines*
7 *that inclusion of the person as a potentially liable*
8 *party is not warranted by law or not based on facts*
9 *that have reasonable evidentiary support under the*
10 *circumstances.*

11 “(4) *LIST OF POTENTIALLY RESPONSIBLE PAR-*
12 *TIES.—On completion of the identification of poten-*
13 *tially responsible parties and before commencing set-*
14 *tlement negotiations under subsection (e), the Admin-*
15 *istrator shall publish a list of potentially responsible*
16 *parties.*

17 “(5) *NOT FINAL AGENCY ACTION.—The identi-*
18 *fication of potentially responsible parties by the Ad-*
19 *ministrator under this subsection shall not constitute*
20 *final agency action for the purposes of chapter 7 of*
21 *title 5, United States Code and shall not be subject to*
22 *judicial review.*

23 “(e) *SETTLEMENT NEGOTIATIONS.—*

24 “(1) *IN GENERAL.—Unless the Administrator de-*
25 *termines not to use the negotiation procedures under*

1 *this subsection (in which case subsection (f) shall*
2 *apply), the Administrator shall provide a 90-day pe-*
3 *riod of negotiation under section 122(e)(2) for each*
4 *mandatory allocation facility before initiating an al-*
5 *location process under subsection (f). The 90-day pe-*
6 *riod may be extended by agreement of the Adminis-*
7 *trator and a majority of the parties to the negotia-*
8 *tion.*

9 *“(2) ADR NEUTRAL.—The Administrator may*
10 *use the services of an ADR neutral to assist in nego-*
11 *tiations if requested by the potentially responsible*
12 *parties.*

13 *“(3) ORPHAN SHARE.—If settling potentially re-*
14 *sponsible parties agree to perform the response action*
15 *and agree to additional terms and conditions of set-*
16 *tlement that are acceptable to the United States, the*
17 *United States shall reimburse the settling parties, by*
18 *payment or otherwise, 100 percent of the orphan*
19 *share identified by the Administrator under sub-*
20 *section (i).*

21 *“(4) MANDATORY SETTLEMENT.—The Adminis-*
22 *trator shall promptly adopt any settlement that—*

23 *“(A) allocates at least 90 percent of the re-*
24 *coverable costs at a facility (including any or-*
25 *phan share identified by the Administrator); and*

1 “(B) contains the terms and conditions
2 under subsection (n)(2) other than the require-
3 ment to pay a premium under subsection
4 (n)(2)(A)(ii)(I).

5 “(5) *NONSETTLING PARTY*.—A potentially re-
6 sponsible party that does not agree to a settlement
7 under paragraph (4) is subject to post-settlement liti-
8 gation under subsection (q).

9 “(f) *ALLOCATION PROCESS*.—

10 “(1) *IN GENERAL*.—At the request of any poten-
11 tially responsible party that has not resolved its li-
12 ability to the United States (other than a nonsettling
13 party described in subsection (e)(5)), not later than
14 30 days after the conclusion of settlement negotiations
15 if undertaken pursuant to subsection (e), the Admin-
16 istrator shall initiate an allocation process concerning
17 a mandatory allocation facility in accordance with
18 this subsection.

19 “(2) *TIMING*.—A potentially responsible party
20 described in paragraph (1) shall submit to the Ad-
21 ministrator a written request for an allocation not
22 later than 30 days after the earlier of—

23 “(A) the date on which the Administrator
24 notifies the potentially responsible parties in
25 writing that negotiations under subsection (e)

1 *have concluded without a settlement having been*
2 *reached;*

3 “(B) *the date on which a settlement under*
4 *subsection (e) has been lodged in United States*
5 *district court; or*

6 “(C) *the Administrator determines not to*
7 *use the negotiation procedure under subsection*
8 *(e), and provides the potentially responsible*
9 *party notice of the determination.*

10 “(3) *FLEXIBLE PROCESS.—*

11 “(A) *IN GENERAL.—Each allocation under*
12 *this section shall be performed by an allocator in*
13 *a fair, efficient, and impartial manner.*

14 “(B) *COST MINIMIZATION.—The allocator*
15 *shall make every effort to streamline the alloca-*
16 *tion process and minimize the cost of conducting*
17 *the allocation.*

18 “(C) *OPPORTUNITY FOR COMMENT.—Before*
19 *issuing the final allocation report, the allocator*
20 *shall give each allocation party and the Presi-*
21 *dent an opportunity to comment on a draft allo-*
22 *cation report.*

23 “(D) *JUDICIAL REVIEW.—*

24 “(i) *IN GENERAL.—A decision by the*
25 *allocator shall be subject to judicial review*

1 *in United States district court under sub-*
2 *chapter II of chapter 5 of title 5, United*
3 *States Code.*

4 “(i) *STANDARD OF REVIEW.*—*A deci-*
5 *sion by the allocator shall be upheld unless*
6 *the objecting party demonstrates that the*
7 *decision was arbitrary and capricious or*
8 *otherwise not in accordance with law.*

9 “(4) *RETENTION OF ALLOCATOR.*—

10 “(A) *IN GENERAL.*—*An allocator shall be*
11 *selected by the Administrator and the allocation*
12 *parties to conduct an allocation under this sec-*
13 *tion.*

14 “(B) *SELECTION BY THE ADMINIS-*
15 *TRATOR.*—*An allocator shall be selected by the*
16 *Administrator if the allocation parties do not*
17 *agree to the selection of an allocator within a*
18 *reasonable time.*

19 “(C) *PROCEDURE FOR EXPEDITED RETEN-*
20 *TION.*—

21 “(i) *IN GENERAL.*—*The Administrator*
22 *shall establish, by regulation or otherwise—*

23 “(I) *a simplified acquisition pro-*
24 *cedure for the expedited selection and*
25 *retention by contract of ADR neutrals*

1 *and allocators (including, if appro-*
2 *priate, establishing alternative conflict*
3 *of interest screening procedures and al-*
4 *ternative sole source contracting re-*
5 *quirements); and*

6 “(II) *a procedure for the conduct*
7 *of the allocation process.*

8 “(ii) *MANDATORY CONTRACT*
9 *SOURCE.—On selection of an ADR neutral*
10 *or allocator, the Administrator shall treat*
11 *the selected ADR neutral or allocator as a*
12 *mandatory source for contracting purposes.*

13 “(iii) *NO RESTRICTION OF ALLO-*
14 *CATOR’S DISCRETION.—The Administrator*
15 *shall not establish by the regulation under*
16 *clause (i) or otherwise, any procedure that*
17 *restricts the allocator’s discretion in assign-*
18 *ing estimated contribution shares and the*
19 *orphan share under this section.*

20 “(D) *PARTICIPATION BY ADMINISTRATOR OR*
21 *ATTORNEY GENERAL.—The Administrator or the*
22 *Attorney General shall participate in the alloca-*
23 *tion process on behalf of the United States and*
24 *as the representative of the Fund.*

1 “(E) *SUPPORT SERVICES.*—*Each contract*
2 *by which the Administrator retains an allocator*
3 *shall authorize the allocator to acquire reason-*
4 *able support services.*

5 “(F) *INFORMATION REGARDING POTEN-*
6 *TIALLY RESPONSIBLE PARTIES.*—*The Adminis-*
7 *trator shall provide the allocator all information*
8 *regarding potentially responsible parties ob-*
9 *tained under paragraphs (1) and (2) of sub-*
10 *section (d).*

11 “(G) *FEDERAL POTENTIALLY RESPONSIBLE*
12 *PARTIES.*—*Federal departments, agencies, or in-*
13 *strumentalities, or their agents, that are identi-*
14 *fied as potentially responsible parties or alloca-*
15 *tion parties under this Act—*

16 “(i) *shall be subject to, and be entitled*
17 *to the benefits of, the settlement negotiation*
18 *and allocation processes provided in this*
19 *section to the same extent as any other po-*
20 *tentially responsible party; but*

21 “(ii) *shall not be entitled to post-allo-*
22 *cation contribution under subsection (o).*

23 “(g) *EQUITABLE FACTORS FOR ALLOCATION.*—*The al-*
24 *locator shall prepare a nonbinding allocation of percentage*
25 *shares of responsibility to each allocation party and to the*

1 orphan share, in accordance with this section and without
2 regard to any theory of joint and several liability, based
3 on—

4 “(1) the amount of hazardous substances contrib-
5 uted by each allocation party;

6 “(2) the degree of toxicity of hazardous sub-
7 stances contributed by each allocation party;

8 “(3) the mobility of hazardous substances con-
9 tributed by each allocation party;

10 “(4) the degree of involvement of each allocation
11 party in the generation, transportation, treatment,
12 storage, or disposal of hazardous substances;

13 “(5) the degree of care exercised by each alloca-
14 tion party with respect to hazardous substances, tak-
15 ing into account the characteristics of the hazardous
16 substances;

17 “(6) the cooperation of each allocation party in
18 contributing to any response action and in providing
19 complete and timely information to the United States,
20 an ADR neutral, or the allocator; and

21 “(7) such other equitable factors as the allocator
22 recommends, with the agreement of the allocation par-
23 ties and the United States.

24 “(h) ALLOCATOR’S REPORT.—

1 “(1) *ALLOCATION REPORT.*—*The allocator shall*
2 *provide a written final allocation report to the Ad-*
3 *ministrator, the Attorney General, and each alloca-*
4 *tion party that specifies the estimated contribution*
5 *share of each allocation party and of any orphan*
6 *share.*

7 “(2) *OPPORTUNITY FOR COMMENT.*—*Before*
8 *issuing the final allocation report, the allocator shall*
9 *give each allocation party and the United States a*
10 *reasonable opportunity to comment on a draft alloca-*
11 *tion report.*

12 “(3) *ADMISSIBILITY OF ALLOCATION REPORT.*—

13 “(A) *IN GENERAL.*—*No draft or final allo-*
14 *cation report shall be admissible in any court for*
15 *any purpose except as provided in subparagraph*
16 *(B).*

17 “(B) *ADMISSION IN SUPPORT OF SETTLE-*
18 *MENT.*—*The final allocator’s report, subject to*
19 *the rules and discretion of the court, may be ad-*
20 *mitted into evidence solely for the purpose of*
21 *supporting a settlement between the United*
22 *States and an allocation party.*

23 “(4) *COSTS.*—*The Administrator may require*
24 *potentially responsible parties that did not enter into*

1 *a settlement under subsection (e) to pay the costs of*
2 *the allocation process.*

3 “(5) *JUDICIAL REVIEW.*—*A draft allocation re-*
4 *port or final allocation report of an allocator and any*
5 *other determination made by the Administrator or the*
6 *allocator for the purposes of this subsection shall not*
7 *be subject to judicial review.*

8 “(6) *ADMINISTRATIVE ORDERS.*—*Neither the*
9 *conduct nor the results of an allocation shall con-*
10 *stitute sufficient cause for noncompliance with an*
11 *order issued under section 106.*

12 “(i) *ORPHAN SHARES.*—

13 “(1) *MAKEUP OF ORPHAN SHARE.*—*The orphan*
14 *share shall consist of—*

15 “(A) *any share that the allocator determines*
16 *is attributable to an allocation party that is in-*
17 *solvent or defunct and that is not affiliated with*
18 *any financially viable allocation party; and*

19 “(B) *the difference between the aggregate*
20 *share that the allocator determines is attrib-*
21 *utable to an allocation party and the aggregate*
22 *share actually paid by the allocation party if—*

23 “(i) *the person is eligible for an expe-*
24 *ditated settlement with the United States*
25 *under section 122;*

1 “(ii) *the liability of the person is*
 2 *eliminated, limited, or reduced by sub-*
 3 *section (o), (p), (q), (s), (t), (u), (v), (w), or*
 4 *(x) of section 107 or section 112(g); or*

5 “(iii) *the person settled with the*
 6 *United States before the completion of the*
 7 *allocation.*

8 “(2) *UNATTRIBUTABLE SHARES.—A share at-*
 9 *tributable to a hazardous substance that the allocator*
 10 *determines was disposed at the facility that cannot be*
 11 *attributed to any identifiable party shall be distrib-*
 12 *uted among the allocation parties and the orphan*
 13 *share in accordance with the allocated share assigned*
 14 *to each.*

15 “(j) *INFORMATION-GATHERING AUTHORITY.—*

16 “(1) *IN GENERAL.—The ADR neutral or allo-*
 17 *cator may gather such information as is necessary to*
 18 *conduct a fair and impartial settlement or allocation.*

19 “(2) *TYPES OF AUTHORITY.—In carrying out*
 20 *paragraph (1), the ADR neutral or allocator may—*

21 “(A) *exercise the information-gathering au-*
 22 *thority of the President under section 104(e) or*
 23 *issue a subpoena;*

24 “(B) *request that the Attorney General en-*
 25 *force any information request or subpoena issued*

1 *by the ADR neutral or the allocator and, if the*
2 *Attorney General does not respond to the request*
3 *within 15 days after receipt of the request, retain*
4 *counsel to enforce the information request or sub-*
5 *poena; and*

6 “(C) *request that the Attorney General seek*
7 *to impose civil penalties for any failure to sub-*
8 *mit a complete and timely answer to an infor-*
9 *mation request or subpoena or for any violation*
10 *of subsection (k), or criminal penalties under*
11 *section 1001 of title 18, United States Code, for*
12 *any false or misleading material statement made*
13 *in connection with the allocation process.*

14 “(3) *NONALLOCATION PARTIES.—The allocator*
15 *may exercise the authorities under this subsection*
16 *with respect to any party, regardless of whether the*
17 *party participates in an allocation process under sub-*
18 *section (f). An exemption from, or limitation on, li-*
19 *ability does not limit or otherwise affect any require-*
20 *ment under section 104(e) or 122(e).*

21 “(k) *CONFIDENTIALITY OF INFORMATION.—*

22 “(1) *IN GENERAL.—All persons involved in the*
23 *settlement or allocation shall ensure the confidential-*
24 *ity at all times of all information submitted to the al-*
25 *locator.*

1 “(2) *CONFIDENTIALITY.*—*Information submitted*
2 *to the ADR neutral or allocator—*

3 “(A) *shall not be—*

4 “(i) *disclosed to any person except as*
5 *required by court order;*

6 “(ii) *subject to disclosure to any person*
7 *under section 552 of title 5, United States*
8 *Code; or*

9 “(iii) *discoverable or admissible in any*
10 *Federal, State, or local judicial or adminis-*
11 *trative proceeding (if not independently dis-*
12 *coverable or admissible); and*

13 “(B) *shall be deemed to be a dispute resolu-*
14 *tion communication for purposes of the confiden-*
15 *tiality provisions of sections 571 through 583 of*
16 *title 5, United States Code (commonly known as*
17 *the ‘Administrative Dispute Resolution Act’),*
18 *which shall apply for all activities under this*
19 *section.*

20 “(3) *NO WAIVER.*—*The submission to the ADR*
21 *neutral or allocator of information shall not con-*
22 *stitute a waiver of any privilege under any Federal*
23 *or State law (including any regulation).*

24 “(l) *REJECTION OF ALLOCATION REPORT.*—

1 “(1) *REJECTION.*—*The Administrator and the*
2 *Attorney General may jointly reject a report issued*
3 *by an allocator only if the Administrator and the At-*
4 *torney General jointly publish, not later than 180*
5 *days after the Administrator receives the report, a*
6 *written determination that—*

7 “(A) *the final allocation report does not*
8 *provide a basis for a settlement that would be*
9 *fair, reasonable, and consistent with the objec-*
10 *tives of this Act; or*

11 “(B) *the allocation process was directly and*
12 *substantially affected by bias, procedural error,*
13 *fraud, or unlawful conduct.*

14 “(2) *FINALITY.*—*A report issued by an allocator*
15 *may not be rejected after the date that is 180 days*
16 *after the date on which the United States accepts a*
17 *settlement offer based on the allocation.*

18 “(m) *SECOND AND SUBSEQUENT ALLOCATIONS.*—

19 “(1) *IN GENERAL.*—*If a report is rejected under*
20 *subsection (l), the Administrator and the allocation*
21 *parties shall select an allocator to perform, on an ex-*
22 *pedited basis, a new allocation based, to the extent*
23 *appropriate, on the same record available to the pre-*
24 *vious allocator.*

1 “(2) *SUBSEQUENT ALLOCATOR PROCESS.*—If a
2 *second allocation report is rejected under subsection*
3 *(l), subsequent allocation processes may be provided*
4 *at the discretion of the Administrator.*

5 “(3) *MORATORIUM AND TOLLING.*—The morato-
6 *rium and tolling provisions of subsection (l) shall be*
7 *extended until the date that is 180 days after the date*
8 *of issuance of any second or subsequent allocation re-*
9 *port under paragraph (1).*

10 “(n) *SETTLEMENTS BASED ON ALLOCATIONS.*—

11 “(1) *IN GENERAL.*—Unless an allocation report
12 *is rejected under subsection (l), any allocation party*
13 *at a mandatory allocation facility (including an allo-*
14 *cation party whose allocated share is funded partially*
15 *or fully by orphan share funding under subsection*
16 *(i)) shall be entitled to resolve the liability of the*
17 *party to the United States for response costs subject*
18 *to allocation if, not later than 90 days after the date*
19 *of issuance of a report by the allocator, the party—*

20 “(A) *makes a written offer to settle with the*
21 *United States based on the allocated share speci-*
22 *fied by the allocator; and*

23 “(B) *agrees to the other terms and condi-*
24 *tions stated in this subsection.*

25 “(2) *PROVISIONS OF SETTLEMENTS.*—

1 “(A) *IN GENERAL.*—*A settlement based on*
2 *an allocation under this section—*

3 “(i) *shall provide the Administrator*
4 *with authority to require that any alloca-*
5 *tion party or group of parties (other than*
6 *an allocation party that satisfies the re-*
7 *quirements of section 107(v)) perform a re-*
8 *ponse action; and*

9 “(ii) *shall include—*

10 “(I) *a provision under which the*
11 *United States shall provide, by reim-*
12 *bursement or otherwise, 90 percent of*
13 *the estimated contribution share as-*
14 *signed to the orphan share, as deter-*
15 *mined by the allocator in the final al-*
16 *location report, and, if applicable, the*
17 *estimated contribution shares of non-*
18 *settling parties;*

19 “(II) *a waiver of claims against*
20 *the Fund for reimbursement;*

21 “(III) *a waiver of contribution*
22 *rights against all persons that are po-*
23 *tentially responsible parties for any re-*
24 *sponse cost addressed in the settlement;*

1 “(IV) a covenant not to sue that
2 is consistent with section 122(f) and,
3 except in the case of a cash-out settle-
4 ment, provisions regarding perform-
5 ance or adequate assurance of perform-
6 ance of the response action;

7 “(V) complete protection from all
8 claims for contribution regarding the
9 response costs incurred after the date of
10 enactment of this section that are ad-
11 dressed in the settlement;

12 “(VI) provisions through which a
13 settling party shall receive prompt con-
14 tribution from the Fund under sub-
15 section (o) of any response cost that is
16 the subject of the allocation in excess of
17 the allocated share of the party, includ-
18 ing the allocated portion of any or-
19 phan share; and

20 “(VII) provisions through which a
21 settling party shall waive any chal-
22 lenge to any settlement that the Ad-
23 ministrator or Attorney General enters
24 into with any other potentially respon-
25 sible party at the facility.

1 “(B) NOT CONTINGENT.—Contribution
2 under subparagraph (A)(ii)(VI) shall not be con-
3 tingent on recovery by the United States of any
4 response costs from any person other than the
5 settling party.

6 “(o) POST-ALLOCATION CONTRIBUTION.—

7 “(1) IN GENERAL.—An allocation party that in-
8 curs costs after the date of enactment of this section
9 for implementation of a response action that is the
10 subject of an allocation under this section to an extent
11 that exceeds the percentage share of the allocation
12 party, as determined by the allocator, shall be entitled
13 to prompt payment of contribution for the excess
14 amount, including any orphan share, from the Fund,
15 unless the allocation report is rejected under sub-
16 section (l).

17 “(2) NOT CONTINGENT.—The right to contribu-
18 tion under paragraph (1) shall not be contingent on
19 recovery by the United States of a response cost from
20 any other person.

21 “(3) TERMS AND CONDITIONS.—

22 “(A) RISK PREMIUM.—A contribution pay-
23 ment shall be reduced by an amount not exceed-
24 ing the litigation risk premium under subsection
25 (n)(2)(A)(ii)(I) that would apply to a settlement

1 *by the allocation party concerning the response*
2 *action, based on the total allocated shares of the*
3 *parties that have not reached a settlement with*
4 *the United States.*

5 “(B) *TIMING.*—

6 “(i) *IN GENERAL.*—*A contribution*
7 *payment shall be paid out during the course*
8 *of the response action that was the subject*
9 *of the allocation, using reasonable progress*
10 *payments at significant milestones.*

11 “(ii) *CONSTRUCTION.*—*Contribution*
12 *for the construction portion of the work*
13 *shall be paid out not later than 120 days*
14 *after the date of completion of the construc-*
15 *tion unless construction takes longer than 1*
16 *year, in which case contribution shall be*
17 *made in appropriate periodic payments.*

18 “(C) *FINANCIAL CONTROLS ON CONTRIBU-*
19 *TION.*—*The Administrator shall require all*
20 *claims for contribution under paragraph (1) to*
21 *be supported by—*

22 “(i) *documentation of actual costs in-*
23 *curring; and*

24 “(ii) *sufficient information to enable*
25 *the Administrator to determine whether the*

1 *costs were reasonable, necessary, and con-*
2 *sistent with the National Contingency Plan.*

3 “(D) *EQUITABLE OFFSET.*—*A contribution*
4 *payment shall be subject to equitable offset or*
5 *recoupment by the Administrator at any time if*
6 *the allocation party fails to perform the work in*
7 *a proper and timely manner.*

8 “(E) *WAIVER.*—

9 “(i) *IN GENERAL.*—*An allocation*
10 *party that receives contribution under this*
11 *section waives the right to seek from any*
12 *other person potentially liable under this*
13 *Act—*

14 “(I) *recovery of response costs in-*
15 *curring after the date of enactment of*
16 *this section in connection with the re-*
17 *sponse action; or*

18 “(II) *contribution toward the re-*
19 *sponse costs incurred after the date of*
20 *enactment of this section.*

21 “(ii) *CLAIMS AGAINST INSURERS.*—
22 *Clause (i) does not preclude a claim by an*
23 *allocation party against an insurer of the*
24 *allocation party for the portion of response*
25 *costs borne by the allocation party that is*

1 *not covered by the amount of contribution*
2 *received by the allocation party.*

3 “(p) *FUNDING OF ORPHAN SHARES.*—

4 “(1) *CONTRIBUTION.*—*For each settlement en-*
5 *tered into under subsection (n) and each administra-*
6 *tive order or settlement decree to which subsection (o)*
7 *applies, the Administrator shall promptly provide*
8 *contribution to the settling allocation parties as pro-*
9 *vided in those subsections.*

10 “(2) *ENTITLEMENT.*—*Paragraph (1) constitutes*
11 *an entitlement to any allocation party eligible to re-*
12 *ceive contribution.*

13 “(3) *AMOUNTS OWED.*—

14 “(A) *DELAY IF FUNDS ARE UNAVAILABLE.*—
15 *If funds are unavailable in any fiscal year to*
16 *provide contribution to all allocation parties*
17 *under paragraph (1), the Administrator may*
18 *delay payment until funds are available.*

19 “(B) *PRIORITY.*—*The priority for contribu-*
20 *tion shall be based on the length of time that has*
21 *passed since the settlement between the United*
22 *States and the allocation parties under sub-*
23 *section (n).*

24 “(C) *PAYMENT FROM FUNDS MADE AVAIL-*
25 *ABLE IN SUBSEQUENT FISCAL YEARS.*—*Any*

1 *amount due and owing in excess of available ap-*
2 *propriations in any fiscal year shall be paid*
3 *from amounts made available in subsequent fis-*
4 *cal years, along with interest on the unpaid bal-*
5 *ances at the rate equal to that of the current av-*
6 *erage market yield on outstanding marketable*
7 *obligations of the United States with a maturity*
8 *of 1 year.*

9 “(4) *AUDITING.*—*The Administrator may re-*
10 *quire an independent auditing of any claim for con-*
11 *tribution.*

12 “(q) *POST-SETTLEMENT LITIGATION.*—

13 “(1) *IN GENERAL.*—*Subject to subsections (m)*
14 *and (n), and on the expiration of the moratorium pe-*
15 *riod under subsection (c), the Administrator may*
16 *commence an action under section 107 against an al-*
17 *location party that has not resolved the liability of*
18 *the party to the United States following allocation*
19 *and may seek to recover response costs not recovered*
20 *through settlements with other persons, including the*
21 *costs of the allocation process under paragraph (4).*

22 “(2) *RECOVERY.*—*In any action under para-*
23 *graph (1), a nonsettling party shall be subject to joint*
24 *and several liability for response costs not recovered*
25 *through settlements with other persons, including the*

1 *cost of any federally funded orphan share and share*
 2 *of nonsettling parties, but not including any esti-*
 3 *mated contribution shares allocated to Federal agen-*
 4 *cies, departments, or instrumentalities.*

5 “(3) *IMPLEADER.*—*A defendant in an action*
 6 *under paragraph (1) may implead an allocation*
 7 *party only if the allocation party did not resolve its*
 8 *liability to the United States.*

9 “(4) *RESPONSE COSTS.*—

10 “(A) *ALLOCATION PROCESS.*—*The cost of*
 11 *implementing the allocation process or settlement*
 12 *process under this section, including reasonable*
 13 *fees and expenses of the allocator, shall be consid-*
 14 *ered to be a necessary response cost.*

15 “(B) *FUNDING OF ORPHAN SHARES.*—*The*
 16 *cost attributable to funding an orphan share*
 17 *under this section—*

18 “(i) *shall be considered to be a nec-*
 19 *essary response cost; and*

20 “(ii) *shall be recoverable under section*
 21 *107 only from an allocation party that does*
 22 *not reach a settlement under subsection (n).*

23 “(r) *RETAINED AUTHORITY.*—*Except as specifically*
 24 *provided in this section, this section does not affect the au-*
 25 *thority of the Administrator to—*

1 “(1) exercise the powers conferred by section 103,
2 104, 105, 106, or 122;

3 “(2) commence an action against a party if
4 there is a contemporaneous filing of a judicial consent
5 decree resolving the liability of the party;

6 “(3) file a proof of claim or take other action in
7 a proceeding under title 11, United States Code;

8 “(4) require implementation of a response action
9 at an allocation facility during the conduct of the al-
10 location process; or

11 “(5) file any actions necessary to prevent dis-
12 sipation of the assets of a potentially responsible
13 party.

14 “(s) *ILLEGAL ACTIVITIES*.—Subsections (o), (p), (q),
15 (r), (s), (t), (u), (v), (w), and (x) of section 107 and section
16 112(g) shall not apply to any person whose liability for
17 response costs under section 107(a)(1) is otherwise based on
18 any act, omission, or status that is determined by a court
19 or administrative body of competent jurisdiction, within the
20 applicable statute of limitation, to have been a violation
21 of any Federal or State law pertaining to the treatment,
22 storage, disposal, or handling of hazardous substances if the
23 violation pertains to a hazardous substance, the release or
24 threat of release of which caused the incurrence of response
25 costs at the vessel or facility.”.

1 **SEC. 505. CERTAIN FACILITIES OWNED BY LOCAL GOVERN-**
 2 **MENTS.**

3 *Section 107 of the Comprehensive Environmental Re-*
 4 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 5 *9607(a)) (as amended by section 501(b)) is amended by*
 6 *adding at the end the following:*

7 *“(u) CERTAIN FACILITIES OWNED BY LOCAL GOVERN-*
 8 *MENTS.—A general purpose unit of local government that,*
 9 *as a result of tax forfeiture, abandonment, bankruptcy, or*
 10 *foreclosure, has acquired a facility—*

11 *“(1) at which there has been a release or threat-*
 12 *ened release of a hazardous substance; and*

13 *“(2) that is or may be contaminated by the re-*
 14 *lease;*

15 *shall not be considered to be an owner or operator of the*
 16 *property for the purposes of this section or any other provi-*
 17 *sion of this Act.”.*

18 **SEC. 506. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

19 *(a) LIABILITY OF CONTRACTORS.—Section 101(20) of*
 20 *the Comprehensive Environmental Response, Compensa-*
 21 *tion, and Liability Act of 1980 (42 U.S.C. 9601(20)) is*
 22 *amended by adding at the end the following:*

23 *“(H) LIABILITY OF CONTRACTORS.—*

24 *“(i) IN GENERAL.—The term ‘owner or*
 25 *operator’ does not include a response action*
 26 *contractor (as defined in section 119(e)).*

1 “(ii) *LIABILITY LIMITATIONS.*—A per-
2 son described in clause (i) shall not, in the
3 absence of negligence by the person, be con-
4 sidered to—

5 “(I) *cause or contribute to any re-*
6 *lease or threatened release of a hazard-*
7 *ous substance, pollutant, or contami-*
8 *nant;*

9 “(II) *arrange for disposal or*
10 *treatment of a hazardous substance,*
11 *pollutant, or contaminant;*

12 “(III) *arrange with a transporter*
13 *for transport or disposal or treatment*
14 *of a hazardous substance, pollutant, or*
15 *contaminant; or*

16 “(IV) *transport a hazardous sub-*
17 *stance, pollutant, or contaminant.*

18 “(iii) *EXCEPTIONS.*—*This subpara-*
19 *graph does not apply—*

20 “(I) *to a person that is poten-*
21 *tially responsible under section 106 or*
22 *107 other than a person that is associ-*
23 *ated solely with the provision of a serv-*
24 *ice relating to a response action; or*

1 “(II) *with respect to liability for*
2 *a facility at which a response action*
3 *contractor did not perform a response*
4 *action.*”.

5 (b) *NATIONAL UNIFORM NEGLIGENCE STANDARD.*—
6 *Section 119(a) of the Comprehensive Environmental Re-*
7 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
8 *9619(a)) is amended—*

9 (1) *in paragraph (1), by striking “title or under*
10 *any other Federal law” and inserting “title or under*
11 *any other Federal or State law”; and*

12 (2) *by striking paragraph (2) and inserting the*
13 *following:*

14 “(2) *APPLICATION OF STATE LAW.*—*Paragraph*
15 (1) *shall not apply in determining the liability of a*
16 *response action contractor under the law of a State*
17 *if the State has adopted by statute a law determining*
18 *the liability of a response action contractor.*”.

19 (c) *EXTENSION OF INDEMNIFICATION AUTHORITY.*—
20 *Section 119(c)(1) of the Comprehensive Environmental Re-*
21 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
22 *9619(c)(1)) is amended by adding at the end the following:*
23 *“The agreement may apply to a claim for negligence in*
24 *connection with a response action undertaken pursuant to*
25 *this Act arising under Federal or State law.*”.

1 (d) *INDEMNIFICATION DETERMINATIONS.*—Section
2 *119(c) of the Comprehensive Environmental Response,*
3 *Compensation, and Liability Act of 1980 (42 U.S.C.*
4 *9619(c)) is amended by striking paragraph (4) and insert-*
5 *ing the following:*

6 “(4) *DECISION TO INDEMNIFY.*—

7 “(A) *IN GENERAL.*—For each response ac-
8 *tion contract for a vessel or facility, the Admin-*
9 *istrator shall make a decision whether to enter*
10 *into an indemnification agreement with a re-*
11 *sponse action contractor.*

12 “(B) *STANDARD.*—The Administrator may
13 *enter into an indemnification agreement to the*
14 *extent that the potential liability (including the*
15 *risk of harm to public health, safety, environ-*
16 *ment, and property) involved in a response ac-*
17 *tion exceed or are not covered by insurance*
18 *available to the contractor at a fair and reason-*
19 *able price at the time at which the response ac-*
20 *tion is begun (including consideration of pre-*
21 *mium, policy terms, and deductibles). The Ad-*
22 *ministrator shall assess both the amount of po-*
23 *tential liability and the amount of insurance*
24 *available.*

1 “(C) *DILIGENT EFFORTS.*—*The Administrator*
2 *may enter into an indemnification agree-*
3 *ment if the Administrator determines that the re-*
4 *sponse action contractor has made diligent ef-*
5 *forts to obtain insurance coverage from non-Fed-*
6 *eral sources to cover potential liabilities.*

7 “(D) *CONTINUED DILIGENT EFFORTS.*—*An*
8 *indemnification agreement shall require the re-*
9 *sponse action contractor to continue, not more*
10 *frequently than annually, to make diligent efforts*
11 *to obtain insurance coverage from non-Federal*
12 *sources to cover potential liabilities.*

13 “(E) *LIMITATIONS ON INDEMNIFICATION.*—
14 *An indemnification agreement provided under*
15 *this subsection shall include deductibles and shall*
16 *place limits on the amount of indemnification*
17 *made available in amounts determined by the*
18 *contracting agency to be appropriate in light of*
19 *the unique risk factors associated with the clean-*
20 *up activity.”.*

21 “(e) *INDEMNIFICATION FOR THREATENED RELEASES.*—
22 *Section 119(c)(5)(A) of the Comprehensive Environmental*
23 *Response, Compensation, and Liability Act of 1980 (42*
24 *U.S.C. 9619(c)(5)(A)) is amended by inserting “or threat-*
25 *ened release” after “release” each place it appears.*

1 (f) *EXTENSION OF COVERAGE TO ALL RESPONSE AC-*
2 *TIONS.*—Section 119(e)(1) of the Comprehensive Environ-
3 *mental Response, Compensation, and Liability Act of 1980*
4 *(42 U.S.C. 9619(e)(1)) is amended—*

5 (1) *in subparagraph (D) by striking “carrying*
6 *out an agreement under section 106 or 122”; and*

7 (2) *in the matter following subparagraph (D)—*

8 (A) *by striking “any remedial action under*
9 *this Act at a facility listed on the National Pri-*
10 *orities List, or any removal under this Act,” and*
11 *inserting “any response action under this Act,”;*
12 *and*

13 (B) *by inserting before the period at the end*
14 *the following: “or to undertake appropriate ac-*
15 *tion necessary to protect and restore any natural*
16 *resource damaged by the release or threatened re-*
17 *lease”.*

18 (g) *DEFINITION OF RESPONSE ACTION CONTRAC-*
19 *TOR.*—Section 119(e)(2)(A)(i) of the Comprehensive Envi-
20 *ronmental Response, Compensation, and Liability Act of*
21 *1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking*
22 *“and is carrying out such contract” and inserting “covered*
23 *by this section and any person (including any subcontrac-*
24 *tor) hired by a response action contractor”.*

1 *(h) SURETY BONDS.—Section 119 of the Comprehen-*
 2 *sive Environmental Response, Compensation, and Liability*
 3 *Act of 1980 (42 U.S.C. 9619) is amended—*

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

6 *(2) in subsection (g)(5) by striking “, or after*
 7 *December 31, 1995”.*

8 *(i) NATIONAL UNIFORM STATUTE OF REPOSE.—Sec-*
 9 *tion 119 of the Comprehensive Environmental Response,*
 10 *Compensation, and Liability Act of 1980 (42 U.S.C. 9619)*
 11 *is amended by adding at the end the following:*

12 *“(h) LIMITATION ON ACTIONS AGAINST RESPONSE AC-*
 13 *TION CONTRACTORS.—*

14 *“(1) IN GENERAL.—No action may be brought*
 15 *under this Act as a result of the performance of serv-*
 16 *ices under a response contract against a response ac-*
 17 *tion contractor after the date that is 7 years after the*
 18 *date of completion of work at any facility under the*
 19 *contract to recover—*

20 *“(A) injury to property, real or personal;*

21 *“(B) personal injury or wrongful death;*

22 *“(C) other expenses or costs arising out of*
 23 *the performance of services under the contract; or*

1 “(D) contribution or indemnity for damages
2 sustained as a result of an injury described in
3 subparagraphs (A) through (C).

4 “(2) *EXCEPTION.*—Paragraph (1) does not bar
5 recovery for a claim caused by the conduct of the re-
6 sponse action contractor that is grossly negligent or
7 that constitutes intentional misconduct.

8 “(3) *INDEMNIFICATION.*—This subsection does
9 not affect any right of indemnification that a re-
10 sponse action contractor may have under this section
11 or may acquire by contract with any person.”.

12 **SEC. 507. RELEASE OF EVIDENCE.**

13 (a) *TIMELY ACCESS TO INFORMATION FURNISHED*
14 *UNDER SECTION 104(e).*—Section 104(e)(7)(A) of the Com-
15 *prehensive Environmental Response, Compensation, and*
16 *Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is amended*
17 *by inserting after “shall be available to the public” the fol-*
18 *lowing: “not later than 14 days after the records, reports,*
19 *or information is obtained”.*

20 (b) *REQUIREMENT TO PROVIDE POTENTIALLY RE-*
21 *SPONSIBLE PARTIES EVIDENCE OF LIABILITY.*—

22 (1) *ABATEMENT ACTIONS.*—Section 106(a) of the
23 *Comprehensive Environmental Response, Compensa-*
24 *tion, and Liability Act of 1980 (42 U.S.C. 9606(a))*
25 *is amended—*

1 (A) by striking “(a) In addition” and in-
2 serting the following: “(a) ORDER.—”

3 “(1) IN GENERAL.—In addition”; and

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

5 “(2) CONTENTS OF ORDER.—An order under
6 paragraph (1) shall provide information concerning
7 the evidence that indicates that each element of liabil-
8 ity described in section 107(a)(1) (A), (B), (C), and
9 (D), as applicable, is present.”.

10 (2) SETTLEMENTS.—Section 122(e)(1) of the
11 Comprehensive Environmental Response, Compensa-
12 tion, and Liability Act of 1980 (42 U.S.C.
13 9622(e)(1)) is amended by inserting after subpara-
14 graph (C) the following:

15 “(D) For each potentially responsible party,
16 the evidence that indicates that each element of
17 liability contained in section 107(a)(1) (A), (B),
18 (C), and (D), as applicable, is present.”.

19 **SEC. 508. CONTRIBUTION PROTECTION.**

20 Section 113(f)(2) of the Comprehensive Environmental
21 Response, Compensation, and Liability Act of 1980 (42
22 U.S.C. 9613(f)(2)) is amended in the first sentence by in-
23 serting “or cost recovery” after “contribution”.

1 **SEC. 509. TREATMENT OF RELIGIOUS, CHARITABLE, SCI-**
 2 **ENTIFIC, AND EDUCATIONAL ORGANIZA-**
 3 **TIONS AS OWNERS OR OPERATORS.**

4 (a) *DEFINITION.*—Section 101(20) of the Comprehen-
 5 sive Environmental Response, Compensation, and Liability
 6 Act of 1980 (42 U.S.C. 9601(20)) (as amended by section
 7 502(a)) is amended by adding at the end the following:

8 “(I) *RELIGIOUS, CHARITABLE, SCIENTIFIC,*
 9 *AND EDUCATIONAL ORGANIZATIONS.*—The term
 10 ‘owner or operator’ includes an organization de-
 11 scribed in section 501(c)(3) of the Internal Reve-
 12 nue Code of 1986 that is organized and operated
 13 exclusively for religious, charitable, scientific, or
 14 educational purposes and that holds legal or eq-
 15uitable title to a vessel or facility.”

16 (b) *LIMITATION ON LIABILITY.*—Section 107 of the
 17 Comprehensive Environmental Response, Compensation,
 18 and Liability Act of 1980 (42 U.S.C. 9607) (as amended
 19 by section 504) is amended by adding at the end the follow-
 20ing:

21 “(v) *RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDU-*
 22 *CATIONAL ORGANIZATIONS.*—

23 “(1) *LIMITATION ON LIABILITY.*—Subject to
 24 paragraph (2), if an organization described in section
 25 101(20)(I) holds legal or equitable title to a vessel or
 26 facility as a result of a charitable gift that is allow-

1 *able as a deduction under section 170, 2055, or 2522*
2 *of the Internal Revenue Code of 1986 (determined*
3 *without regard to dollar limitations), the liability of*
4 *the organization shall be limited to the lesser of the*
5 *fair market value of the vessel or facility or the actual*
6 *proceeds of the sale of the vessel or facility received by*
7 *the organization.*

8 “(2) *CONDITIONS.—In order for an organization*
9 *described in section 101(20)(I) to be eligible for the*
10 *limited liability described in paragraph (1), the orga-*
11 *nization shall—*

12 “(A) *substantially comply with the require-*
13 *ment of subsection (y) with respect to the vessel*
14 *or facility;*

15 “(B) *provide full cooperation and assistance*
16 *to the United States in identifying and locating*
17 *persons who recently owned, operated, or other-*
18 *wise controlled activities at the vessel or facility;*

19 “(C) *establish by a preponderance of the*
20 *evidence that all active disposal of hazardous*
21 *substances at the vessel or facility occurred before*
22 *the organization acquired the vessel or facility;*
23 *and*

24 “(D) *establish by a preponderance of the*
25 *evidence that the organization did not cause or*

1 *contribute to a release or threatened release of*
 2 *hazardous substances at the vessel or facility.*

3 “(3) *LIMITATION.*—*Nothing in this subsection af-*
 4 *fects the liability of a person other than a person de-*
 5 *scribed in section 101(20)(I) that meets the conditions*
 6 *specified in paragraph (2).”.*

7 **SEC. 510. COMMON CARRIERS.**

8 *Section 107(b)(3) of the Comprehensive Environmental*
 9 *Response, Compensation, and Liability Act of 1980 (42*
 10 *U.S.C. 9607(b)(3)) is amended by striking “a published tar-*
 11 *iff and acceptance” and inserting “a contract”.*

12 **SEC. 511. LIMITATION ON LIABILITY OF RAILROAD OWNERS.**

13 *Section 107 of the Comprehensive Environmental Re-*
 14 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 15 *9607) (as amended by section 508(b)) is amended by adding*
 16 *at the end the following:*

17 “(w) *LIMITATION ON LIABILITY OF RAILROAD OWN-*
 18 *ERS.*—*Notwithstanding subsection (a)(1), a person that*
 19 *substantially complies with the requirement of subsection*
 20 *(y) with respect to a facility shall not be liable under this*
 21 *Act to the extent that liability is based solely on the status*
 22 *of the person as a railroad owner or operator of a spur*
 23 *track, including a spur track over land subject to an ease-*
 24 *ment, to a facility that is owned or operated by a person*

1 *that is not affiliated with the railroad owner or operator,*
 2 *if—*

3 “(1) *the spur track provides access to a main*
 4 *line or branch line track that is owned or operated*
 5 *by the railroad;*

6 “(2) *the spur track is 10 miles long or less; and*

7 “(3) *the railroad owner or operator does not*
 8 *cause or contribute to a release or threatened release*
 9 *at the spur track.”.*

10 **SEC. 512. LIABILITY OF RECYCLERS.**

11 (a) *DEFINITIONS.—Section 101 of the Comprehensive*
 12 *Environmental Response, Compensation, and Liability Act*
 13 *of 1980 (42 U.S.C. 9601) (as amended by section 501(a))*
 14 *is amended by adding at the end the following:*

15 “(48) *CONSUMING FACILITY.—The term ‘consum-*
 16 *ing facility’ means a facility at which recyclable ma-*
 17 *terial is handled, processed, reclaimed, or otherwise*
 18 *managed.*

19 “(49) *RECYCLABLE MATERIAL.—*

20 “(A) *IN GENERAL.—The term ‘recyclable*
 21 *material’ means—*

22 “(i) *scrap glass, paper, plastic, rubber,*
 23 *or textile;*

24 “(ii) *scrap metal; and*

25 “(iii) *spent batteries.*

1 “(B) *INCLUSIONS.*—*The term ‘recyclable*
2 *material’ includes small amounts of any type of*
3 *material that is incident to or adherent to mate-*
4 *rial described in subparagraph (A) as a result of*
5 *the normal and customary use of the material*
6 *before the material becomes scrap.*

7 “(C) *EXCLUSIONS.*—*The term ‘recyclable*
8 *material’ does not include—*

9 “(i) *a shipping container that—*

10 “(I) *has (or, when intact, had) a*
11 *capacity of not less than 30 and not*
12 *more than 3,000 liters; and*

13 “(II) *has any hazardous substance*
14 *contained in or adherent to it (not in-*
15 *cluding any small pieces of metal that*
16 *may remain after a hazardous sub-*
17 *stance has been removed from the con-*
18 *tainer or any alloy or other material*
19 *that may be chemically or metallurgi-*
20 *cally bonded in the container itself);*

21 “(ii) *any material described in sub-*
22 *paragraph (A) that the Administrator may*
23 *by regulation exclude from the meaning of*
24 *the term; or*

25 “(iii) *a whole tire.*

1 “(50) *SCRAP METAL*.—

2 “(A) *IN GENERAL*.—*The term ‘scrap metal’*
3 *means—*

4 “(i) *a bit or piece of a metal part*
5 *(such as a bar, turning, fine, rod, sheet, or*
6 *wire);*

7 “(ii) *material comprised of metal*
8 *pieces that may be combined with bolts or*
9 *soldering (such as a radiator, automobile,*
10 *or railroad boxcar); or*

11 “(iii) *a metal byproduct of copper and*
12 *a copper-based alloy that—*

13 “(I) *is not 1 of the primary prod-*
14 *ucts of a secondary production process;*

15 “(II) *is not solely or separately*
16 *produced by the production process;*

17 “(III) *is not stored in a pile or*
18 *surface impoundment; and*

19 “(IV) *is sold to another recycler*
20 *that is not speculatively accumulating*
21 *such metal byproducts;*

22 *which, when worn or superfluous, can be re-*
23 *cycled.*

24 “(B) *SPECULATIVE ACCUMULATION*.—*For*
25 *the purposes of a sale under subparagraph*

1 (A)(iii)(IV), a recycler to which a metal byprod-
2 uct described in subparagraph (A)(iii) is sold
3 shall be considered to be accumulating the metal
4 byproduct speculatively if 75 percent of more of
5 the mass of the metal byproducts purchased by
6 the recycler during the 12-month period begin-
7 ning on the date of the sale is not reprocessed.”.

8 (b) *LIABILITY OF RECYCLERS.*—

9 (1) *IN GENERAL.*—Section 107 of the Com-
10 prehensive Environmental Response, Compensation,
11 and Liability Act of 1980 (42 U.S.C. 9607) (as
12 amended by section 510) is amended by adding at the
13 end the following:

14 “(x) *LIABILITY OF RECYCLERS.*—

15 “(1) *RELIEF FROM LIABILITY.*—Except as pro-
16 vided in paragraph (6), a person that arranges for
17 the recycling of recyclable material at a consuming
18 facility shall not be liable for response costs under
19 subparagraph (C) or (D) of subsection (a)(1).

20 “(2) *SCRAP GLASS, PAPER, PLASTIC, RUBBER, OR*
21 *TEXTILE.*—For the purposes of paragraph (1), a per-
22 son shall be considered to arrange for the recycling of
23 scrap glass, paper, plastic, rubber, or textile if the
24 person that arranged for the transaction (by selling or
25 otherwise arranging for the recycling of the recyclable

1 *material) demonstrates by a preponderance of the evi-*
2 *dence that all of the following were met at the time*
3 *of the transaction—*

4 “(A) *the recyclable material meets a com-*
5 *mercial specification grade;*

6 “(B) *a market exists for the recyclable ma-*
7 *terial;*

8 “(C) *a substantial portion of the recyclable*
9 *material is made available for use as a feedstock*
10 *for the manufacture of a new saleable product;*

11 “(D)(i) *the recyclable material is a replace-*
12 *ment or substitute for a virgin raw material;*

13 “(ii) *the product to be made from the recy-*
14 *clable material is a replacement or substitute for*
15 *a product made, in whole or in part, from a vir-*
16 *gin raw material; and*

17 “(E) *in the case of a transaction that occurs*
18 *90 days or more after the date of enactment of*
19 *this section, the person exercises reasonable care*
20 *to determine that the consuming facility was in*
21 *compliance with the substantive (not procedural*
22 *or administrative) provisions of each Federal,*
23 *State, and local environmental law (including a*
24 *regulation and any compliance decree issued*
25 *pursuant to an environmental law) applicable to*

1 *the handling, storage, or other management ac-*
2 *tivities associated with recyclable material.*

3 “(3) *SCRAP METAL.*—*For the purposes of para-*
4 *graph (1), a person shall be considered to arrange for*
5 *the recycling of scrap metal if the person that ar-*
6 *ranges the transaction (by selling or otherwise ar-*
7 *ranging for the recycling of the scrap metal) dem-*
8 *onstrates by a preponderance of the evidence that at*
9 *the time of the transaction—*

10 “(A) *the conditions stated in subparagraphs*
11 (A) *through (E) of paragraph (2) are met; and*

12 “(B) *in the case of a transaction that occurs*
13 *after the effective date of a standard, established*
14 *by the Administrator by regulation under the*
15 *Solid Waste Disposal Act (42 U.S.C. 6901 et*
16 *seq.), regarding the storage, transport, manage-*
17 *ment, or other activity associated with the recy-*
18 *cling of scrap metal, the person is in compliance*
19 *with the standard.*

20 “(4) *SPENT BATTERIES.*—*For the purposes of*
21 *paragraph (1), a person shall be considered to ar-*
22 *range for the recycling of a spent lead-acid battery,*
23 *nickel-cadmium battery, or other battery if the person*
24 *that arranges the transaction (by selling or arranging*
25 *for the recycling of the battery) demonstrates by a*

1 *preponderance of the evidence that at the time of the*
2 *transaction—*

3 *“(A) the conditions stated in subparagraphs*
4 *(A) through (E) of paragraph (2) are met;*

5 *“(B) the person does not reclaim the valu-*
6 *able components of the battery; and*

7 *“(C) in the case of a transaction that occurs*
8 *after the effective date of a standard, established*
9 *by the Administrator by regulation under au-*
10 *thority of the Solid Waste Disposal Act (42*
11 *U.S.C. 6901 et seq.) or the Mercury-Containing*
12 *and Rechargeable Battery Management Act), re-*
13 *garding the storage, transport, management, or*
14 *other activity associated with the recycling of*
15 *batteries, the person is in compliance with the*
16 *standard.*

17 *“(5) EXCEPTIONS FROM LIABILITY RELIEF.—*

18 *“(A) IN GENERAL.—A person that arranges*
19 *for the recycling of recyclable material that, but*
20 *for paragraph (2), would be liable under sub-*
21 *paragraph (C) or (D) of subsection (a)(1) shall*
22 *be liable notwithstanding that paragraph if—*

23 *“(i) the person had an objectively rea-*
24 *sonable basis to believe at the time of the re-*
25 *cycling transaction that—*

1 “(I) the recyclable material will
2 not be recycled;

3 “(II) the recyclable material will
4 be burned as fuel, for energy recovery
5 or incineration;

6 “(III) in the case of a transaction
7 that occurs 90 days after the date of
8 enactment of this section, the consum-
9 ing facility is not in compliance with
10 a substantive (not procedural or ad-
11 ministrative) provision of any Federal,
12 State, or local environmental law (in-
13 cluding a regulation), or a compliance
14 order or decree issued under such a
15 law, applicable to the handling, proc-
16 essing, reclamation, or other manage-
17 ment activity associated with the recy-
18 clable material; or

19 “(IV) a hazardous substance has
20 been added to the recyclable material
21 for purposes other than processing for
22 recycling;

23 “(ii) the person fails to exercise reason-
24 able care with respect to the management or
25 handling of the recyclable material (includ-

1 *ing adhering to customary industry prac-*
2 *tice current at the time of the recycling*
3 *transaction); or*

4 *“(iii) any item of the recyclable mate-*
5 *rial contains—*

6 *“(I) polychlorinated biphenyls at*
7 *a concentration in excess of 50 parts*
8 *per million (or any different con-*
9 *centration specified in any applicable*
10 *standard that may be issued under*
11 *other Federal law after the date of en-*
12 *actment of this subsection); or*

13 *“(II) in the case of a transaction*
14 *involving scrap paper, any concentra-*
15 *tion of a hazardous substance that the*
16 *Administrator determines by regula-*
17 *tion, issued after the date of enactment*
18 *of this subsection and before the date of*
19 *the transaction, to present a signifi-*
20 *cant risk to human health or the envi-*
21 *ronment as a result of its inclusion in*
22 *the paper recycling process.*

23 *“(B) OBJECTIVELY REASONABLE BASIS FOR*
24 *BELIEF.—Whether a person has an objectively*
25 *reasonable basis for belief described in subpara-*

1 *graph (A)(i) shall be determined using criteria*
2 *that include—*

3 *“(i) the size of the person’s business;*

4 *“(ii) customary industry practices cur-*
5 *rent at the time of the recycling transaction*
6 *(including practices designed to minimize,*
7 *through source control, contamination of re-*
8 *cyclable material by hazardous substances);*

9 *“(iii) the price paid or received in the*
10 *recycling transaction; and*

11 *“(iv) the ability of the person to detect*
12 *the nature of the consuming facility’s oper-*
13 *ations concerning handling, processing, or*
14 *reclamation of the recyclable material or*
15 *other management activities associated with*
16 *the recyclable material.*

17 *“(C) REASONABLE CARE.—*

18 *“(i) IN GENERAL.—For the purposes of*
19 *subparagraph (A)(ii), whether a person ex-*
20 *ercised reasonable care shall be determined*
21 *using criteria that include—*

22 *“(I) the price paid in the recy-*
23 *cling transaction;*

24 *“(II) the ability of the person to*
25 *detect the nature of the consuming fa-*

1 *facility's operations concerning its han-*
2 *dling, processing, reclamation, or other*
3 *management activities associated with*
4 *recyclable material; and*

5 *“(III) the result of inquiries made*
6 *to the appropriate Federal, State, or*
7 *local agencies regarding the consuming*
8 *facility's past and current compliance*
9 *with substantive (not procedural or ad-*
10 *ministrative) provisions of any Fed-*
11 *eral, State, or local environmental law*
12 *applicable to the handling, processing,*
13 *reclamation, storage, or other manage-*
14 *ment activities associated with recycla-*
15 *ble material.*

16 *“(D) SUBSTANTIVE PROVISION.—For the*
17 *purposes of subparagraph (A), a requirement to*
18 *obtain a permit applicable to the handling, proc-*
19 *essing, reclamation, or other management activ-*
20 *ity associated with recyclable material con-*
21 *stitutes a substantive provision.*

22 *“(6) REGULATIONS.—The Administrator may*
23 *issue a regulation that clarifies the meaning of any*
24 *term used in this subsection or by any other means*

1 *makes clear the application of this subsection to any*
2 *person.*

3 “(7) *LIABILITY FOR ATTORNEY’S FEES FOR CER-*
4 *TAIN ACTIONS.—A person that, after the date of enact-*
5 *ment of this subsection, commences a civil action in*
6 *contribution against a person that is not liable by op-*
7 *eration of this subsection shall be liable to that person*
8 *for all reasonable costs of defending the action, in-*
9 *cluding all reasonable attorney’s fees and expert wit-*
10 *ness fees.*

11 “(8) *RELATIONSHIP TO LIABILITY UNDER OTHER*
12 *LAWS.—Nothing in this subsection shall affect—*

13 “(A) *liability under any other Federal,*
14 *State, or local law (including a regulation); or*

15 “(B) *the authority of the Administrator to*
16 *issue regulations under the Solid Waste Disposal*
17 *Act (42 U.S.C. 6901 et seq.) or any other law.*

18 “(C) *EFFECT ON NONRECYCLERS.—*

19 “(i) *COSTS BORNE BY THE UNITED*
20 *STATES.—The estimated contribution share*
21 *attributable to a person engaged in a recy-*
22 *cling transaction occurring before the date*
23 *of enactment of this section at a mandatory*
24 *allocation facility listed on the National*
25 *Priorities List before the date of enactment*

1 *of this section that, absent this subsection,*
2 *would be borne by a person that is relieved*
3 *of liability (in whole or in part) by this*
4 *subsection shall be borne by the United*
5 *States, to the extent that the person is re-*
6 *lieved of liability.*

7 “(i) *COSTS BORNE BY REMAINING PO-*
8 *TENTIALLY RESPONSIBLE PARTIES.—At a*
9 *facility not described in subparagraph*
10 *(C)(i), the liability of any party relieved of*
11 *liability (in whole or in part) by this sub-*
12 *section shall be borne by the parties remain-*
13 *ing liable under this section.”.*

14 (2) *EFFECTIVE DATE AND TRANSITION RULES.—*

15 *The amendments made by this subsection shall not af-*
16 *fect—*

17 (A) *a judicial or administrative action that*
18 *has become final before the date of enactment of*
19 *this section; or*

20 (B) *a judicial action commenced by the*
21 *United States before the date of enactment of this*
22 *Act.*

1 **SEC. 513. REQUIREMENT THAT COOPERATION, ASSISTANCE,**
2 **AND ACCESS BE PROVIDED.**

3 *Section 107 of the Comprehensive Environmental Re-*
4 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
5 *9607) (as amended by section 512(b)) is amended by adding*
6 *at the end the following:*

7 *“(y) REQUIREMENT THAT COOPERATION, ASSIST-*
8 *ANCE, AND ACCESS BE PROVIDED.—The requirement of*
9 *this subsection, applicable to a person or other entity de-*
10 *scribed in subsection (o), (p), (r), (s), (t), (u), (v), (w), or*
11 *(x) or section 112(g) is that—*

12 *“(1) to the extent that the person or entity has*
13 *operational control over a vessel or facility—*

14 *“(A) the person or entity provide full co-*
15 *operation to, assistance to, and access to the ves-*
16 *sel or facility by, persons that are responsible for*
17 *response actions at the vessel or facility (includ-*
18 *ing the cooperation and access necessary for the*
19 *installation, integrity, operation, and mainte-*
20 *nance of any complete or partial response action*
21 *at the vessel or facility); and*

22 *“(B) the person or entity take no action to*
23 *impede the effectiveness or integrity of any insti-*
24 *tutional control employed under section 121 at*
25 *the vessel or facility; and*

1 “(2) the person or entity comply with any re-
2 quest for information or administrative subpoena
3 issued by the President under this Act.”.

4 **TITLE VI—FEDERAL FACILITIES**

5 **SEC. 601. TRANSFER OF AUTHORITIES.**

6 Section 120 of the Comprehensive Environmental Re-
7 sponse, Compensation, and Liability Act of 1980 (42 U.S.C.
8 9620) is amended by striking subsection (g) and inserting
9 the following:

10 “(g) *TRANSFER OF AUTHORITIES.*—

11 “(1) *DEFINITIONS.*—In this section:

12 “(A) *INTERAGENCY AGREEMENT.*—The term
13 ‘interagency agreement’ means an interagency
14 agreement under this section.

15 “(B) *TRANSFER AGREEMENT.*—The term
16 ‘transfer agreement’ means a transfer agreement
17 under paragraph (3).

18 “(C) *TRANSFeree STATE.*—The term
19 ‘transferee State’ means a State to which au-
20 thorities have been transferred under a transfer
21 agreement.

22 “(2) *STATE APPLICATION FOR TRANSFER OF*
23 *FEDERAL AUTHORITIES.*—Subject to paragraph (3), a
24 State may apply to the Administrator to exercise the
25 authorities identified pursuant to section

1 130(d)(2)(A) at any facility located in the State that
2 is—

3 “(A) owned or operated by any department,
4 agency, or instrumentality of the United States
5 (including the executive, legislative, and judicial
6 branches of government); and

7 “(B) listed on the National Priorities List.

8 “(3) TRANSFER OF AUTHORITIES.—

9 “(A) DETERMINATIONS.—The Adminis-
10 trator shall enter into a transfer agreement to
11 transfer to a State the authorities described in
12 paragraph (2) with respect to a facility described
13 in paragraph (2) under the same conditions as
14 authority may be delegated to a State with re-
15 spect to a non-Federal listed facility under sec-
16 tion 130(d).

17 “(B) CONTENTS OF TRANSFER AGREE-
18 MENT.—In the case of a transfer agreement cov-
19 ering a facility with respect to which there is no
20 interagency agreement that specifies a dispute
21 resolution process, the transfer agreement shall
22 require that within 120 days after the effective
23 date of the transfer agreement, the State shall
24 agree with the head of the Federal department,
25 agency, or instrumentality that owns or operates

1 *the facility on a process for resolution of any*
2 *disputes between the State and the Federal de-*
3 *partment, agency, or instrumentality regarding*
4 *the selection of a remedial action for the facility.*

5 “(C) *CONDITIONS ON STATE EXERCISE OF*
6 *AUTHORITIES.—Subsections (e) and (f) of section*
7 *130 (other than section 130(f)(5)) shall apply to*
8 *any facility subject to a transfer agreement*
9 *under subparagraph (A).*

10 “(D) *COST RECOVERY.—The Administrator*
11 *retains the authority to take action under section*
12 *107 to recover response costs from a potentially*
13 *responsible party for any Federal listed facility*
14 *for which responsibility is transferred to a State.*

15 “(4) *EFFECT ON INTERAGENCY AGREEMENTS.—*
16 *Nothing in this subsection shall require, authorize, or*
17 *permit the modification or revision of an interagency*
18 *agreement covering a facility with respect to which*
19 *authorities have been transferred to a State under a*
20 *transfer agreement (except for the substitution of the*
21 *transferee State for the Administrator in the terms of*
22 *the interagency agreement, including terms stating*
23 *obligations intended to preserve the confidentiality of*
24 *information) without the written consent of the Gov-*

1 *ernor of the State and the head of the department,*
2 *agency, or instrumentality.*

3 “(5) *SELECTED REMEDIAL ACTION.*—*The reme-*
4 *dial action selected for a facility under section 121 by*
5 *a transferee State shall constitute the only remedial*
6 *action required to be conducted at the facility, and*
7 *the transferee State shall be precluded from enforcing*
8 *any other remedial action requirement under Federal*
9 *or State law, except for any corrective action under*
10 *the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)*
11 *that was initiated prior to the date of enactment of*
12 *this subsection.*

13 “(6) *DISPUTE RESOLUTION AND ENFORCE-*
14 *MENT.*—

15 “(A) *DISPUTE RESOLUTION.*—

16 “(i) *FACILITIES COVERED BY BOTH A*
17 *TRANSFER AGREEMENT AND AN INTER-*
18 *AGENCY AGREEMENT.*—*In the case of a fa-*
19 *cility with respect to which there is both a*
20 *transfer agreement and an interagency*
21 *agreement, if the State does not concur in*
22 *the remedial action proposed for selection by*
23 *the Federal department, agency, or instru-*
24 *mentality, the Federal department, agency,*
25 *or instrumentality and the State shall en-*

1 *gage in the dispute resolution process pro-*
2 *vided for in the interagency agreement, ex-*
3 *cept that the final level for resolution of the*
4 *dispute shall be the head of the Federal de-*
5 *partment, agency, or instrumentality and*
6 *the Governor of the State.*

7 “(ii) *FACILITIES COVERED BY A*
8 *TRANSFER AGREEMENT BUT NOT AN INTER-*
9 *AGENCY AGREEMENT.—In the case of a fa-*
10 *ility with respect to which there is a trans-*
11 *fer agreement but no interagency agreement,*
12 *if the State does not concur in the remedial*
13 *action proposed for selection by the Federal*
14 *department, agency, or instrumentality, the*
15 *Federal department, agency, or instrumen-*
16 *tality and the State shall engage in dispute*
17 *resolution as provided in paragraph (3)(B)*
18 *under which the final level for resolution of*
19 *the dispute shall be the head of the Federal*
20 *department, agency, or instrumentality and*
21 *the Governor of the State.*

22 “(iii) *FAILURE TO RESOLVE.—If no*
23 *agreement is reached between the head of the*
24 *Federal department, agency, or instrumen-*
25 *tality and the Governor in a dispute*

1 *resolution process under clause (i) or*
2 *(ii), the Governor of the State shall make*
3 *the final determination regarding selection*
4 *of a remedial action. To compel implemen-*
5 *tation of the State's selected remedy, the*
6 *State must bring a civil action in United*
7 *States district court.*

8 “(B) *ENFORCEMENT.*—

9 “(i) *AUTHORITY; JURISDICTION.*—*An*
10 *interagency agreement with respect to which*
11 *there is a transfer agreement or an order*
12 *issued by a transferee State shall be enforce-*
13 *able by a transferee State or by the Federal*
14 *department, agency, or instrumentality that*
15 *is a party to the interagency agreement*
16 *only in the United States district court for*
17 *the district in which the facility is located.*

18 “(ii) *TIMING.*—*In the case of a facility*
19 *with respect to a remedy is eligible for re-*
20 *view by a remedy review board under sec-*
21 *tion 134(e), an action for enforcement under*
22 *this paragraph may not be brought until*
23 *the remedy review board submits its rec-*
24 *ommendation to the Administrator.*

1 “(iii) *REMEDIES.*—*The district court*
2 *shall—*

3 “(I) *enforce compliance with any*
4 *provision, standard, regulation, condi-*
5 *tion, requirement, order, or final deter-*
6 *mination that has become effective*
7 *under the interagency agreement;*

8 “(II) *impose any appropriate*
9 *civil penalty provided for any viola-*
10 *tion of an interagency agreement, not*
11 *to exceed \$25,000 per day;*

12 “(III) *compel implementation of*
13 *the selected remedial action; and*

14 “(IV) *review a challenge by the*
15 *Federal department, agency, or instru-*
16 *mentality to the remedial action se-*
17 *lected by the State under this section,*
18 *in accordance with section 113(j).”.*

19 **SEC. 602. INNOVATIVE TECHNOLOGIES FOR REMEDIAL**
20 **ACTION AT FEDERAL FACILITIES.**

21 (a) *IN GENERAL.*—*Section 311 of the Comprehensive*
22 *Environmental Response, Compensation, and Liability Act*
23 *of 1980 (42 U.S.C. 9660) is amended by adding at the end*
24 *the following:*

25 “(h) *FEDERAL FACILITIES.*—

1 “(1) *DESIGNATION.*—*The President may des-*
2 *ignate a facility that is owned or operated by any de-*
3 *partment, agency, or instrumentality of the United*
4 *States, and that is listed or proposed for listing on*
5 *the National Priorities List, to facilitate the research,*
6 *development, and application of innovative tech-*
7 *nologies for remedial action at the facility.*

8 “(2) *USE OF FACILITIES.*—

9 “(A) *IN GENERAL.*—*A facility designated*
10 *under paragraph (1) shall be made available to*
11 *Federal departments and agencies, State depart-*
12 *ments and agencies, and public and private in-*
13 *strumentalities, to carry out activities described*
14 *in paragraph (1).*

15 “(B) *COORDINATION.*—*The Adminis-*
16 *trator—*

17 *“(i) shall coordinate the use of the fa-*
18 *cilities with the departments, agencies, and*
19 *instrumentalities of the United States; and*

20 *“(ii) may approve or deny the use of*
21 *a particular innovative technology for reme-*
22 *dial action at any such facility.*

23 “(3) *CONSIDERATIONS.*—

24 “(A) *EVALUATION OF SCHEDULES AND PEN-*
25 *ALTIES.*—*In considering whether to permit the*

1 *application of a particular innovative technology*
 2 *for remedial action at a facility designated*
 3 *under paragraph (1), the Administrator shall*
 4 *evaluate the schedules and penalties applicable to*
 5 *the facility under any agreement or order en-*
 6 *tered into under section 120.*

7 “(B) *AMENDMENT OF AGREEMENT OR*
 8 *ORDER.—If, after an evaluation under subpara-*
 9 *graph (A), the Administrator determines that*
 10 *there is a need to amend any agreement or order*
 11 *entered into pursuant to section 120, the Admin-*
 12 *istrator shall comply with all provisions of the*
 13 *agreement or order, respectively, relating to the*
 14 *amendment of the agreement or order.”.*

15 (b) *REPORT TO CONGRESS.—Section 311(e) of the*
 16 *Comprehensive Environmental Response, Compensation,*
 17 *and Liability Act of 1980 (42 U.S.C. 9660(e)) is amend-*
 18 *ed—*

19 (1) *by striking “At the time” and inserting the*
 20 *following:*

21 “(1) *IN GENERAL.—At the time”;* and

22 (2) *by adding at the end the following:*

23 “(2) *ADDITIONAL INFORMATION.—A report*
 24 *under paragraph (1) shall include information on the*
 25 *use of facilities described in subsection (h)(1) for the*

1 “(III) inspection or monitoring of
2 a facility; and

3 “(ii) any other charge that is assessed
4 in connection with a State, interstate, or
5 local response program.

6 “(B) APPLICATION OF FEDERAL, STATE,
7 AND LOCAL LAW.—

8 “(i) IN GENERAL.—Each department,
9 agency, and instrumentality of the execu-
10 tive, legislative, or judicial branch of the
11 United States shall be subject to and shall
12 comply with this Act and all other Federal,
13 State, interstate, and local substantive and
14 procedural requirements and other provi-
15 sions of law relating to a response action or
16 restoration action or the management of a
17 hazardous waste, pollutant, or contaminant
18 in the same manner, and to the same ex-
19 tent, as any nongovernmental entity is sub-
20 ject to those provisions of law.

21 “(ii) PROVISIONS INCLUDED.—The re-
22 quirements and other provisions of law re-
23 ferred to in clause (i) include—

24 “(I) a permit requirement;

25 “(II) a reporting requirement;

1 “(III) a provision authorizing in-
2 junctive relief (including such sanc-
3 tions as a court may impose to enforce
4 injunctive relief);

5 “(IV) sections 106 and 107 and
6 similar provisions of Federal, State,
7 interstate, and local law relating to en-
8 forcement and liability for cleanup, re-
9 imbursement of response costs, (includ-
10 ing attorney’s fees) contribution, and
11 payment of damages;

12 “(V) a requirement to pay reason-
13 able service charges;

14 “(VI) a requirement to comply
15 with an administrative order; and

16 “(VII) a requirement to pay a
17 civil or administrative penalty, re-
18 gardless of whether the penalty is pu-
19 nitive or coercive in nature or is im-
20 posed for an isolated, intermittent, or
21 continuing violation.

22 “(C) WAIVER OF SOVEREIGN IMMUNITY.—

23 “(i) IN GENERAL.—The United States
24 waives any immunity applicable to the

1 *United States with respect to any provision*
2 *of law described in subparagraph (B).*

3 “(i) *LIMITATION.*—*The waiver of sov-*
4 *ereign immunity under clause (i) does not*
5 *apply to the extent that a State law would*
6 *apply any standard or requirement to a*
7 *Federal department, agency, or instrumen-*
8 *tality in a manner that is more stringent*
9 *than the manner in which the standard or*
10 *requirement would apply to any other per-*
11 *son.*

12 “(D) *CIVIL AND CRIMINAL LIABILITY.*—

13 “(i) *INJUNCTIVE RELIEF.*—*Neither the*
14 *United States nor any agent, employee, or*
15 *officer of the United States shall be immune*
16 *or exempt from any process or sanction of*
17 *any Federal or State court with respect to*
18 *the enforcement of injunctive relief referred*
19 *to in subparagraph (B)(i)(III).*

20 “(ii) *NO PERSONAL LIABILITY FOR*
21 *CIVIL PENALTY.*—*No agent, employee, or of-*
22 *ficer of the United States shall be personally*
23 *liable for any civil penalty under any Fed-*
24 *eral or State law relating to a response ac-*
25 *tion or to management of a hazardous sub-*

1 *stance, pollutant, or contaminant with re-*
2 *spect to any act or omission within the*
3 *scope of the official duties of the agent, em-*
4 *ployee, or officer.*

5 “(iii) *CRIMINAL LIABILITY.*—*An agent,*
6 *employee, or officer of the United States*
7 *shall be subject to any criminal sanction*
8 *(including a fine or imprisonment) under*
9 *any Federal or State law relating to a re-*
10 *sponse action or to management of a haz-*
11 *ardous substance, pollutant, or contami-*
12 *nant, but no department, agency, or instru-*
13 *mentality of the executive, legislative, or ju-*
14 *dicial branch of the United States shall be*
15 *subject to any such sanction.*

16 “(E) *ENFORCEMENT.*—

17 “(i) *ABATEMENT ACTIONS.*—*The Ad-*
18 *ministrator may issue an order under sec-*
19 *tion 106 to any department, agency, or in-*
20 *strumentality of the executive, legislative, or*
21 *judicial branch of the United States. The*
22 *Administrator shall initiate an administra-*
23 *tive enforcement action against such a de-*
24 *partment, agency, or instrumentality in the*
25 *same manner and under the same cir-*

1 *cumstances as an action would be initiated*
2 *against any other person.*

3 “(ii) *CONSULTATION.*—*No administra-*
4 *tive order issued to a department, agency,*
5 *or instrumentality of the United States*
6 *shall become final until the department,*
7 *agency, or instrumentality has had the op-*
8 *portunity to confer with the Administrator.*

9 “(iii) *USE OF PENALTIES AND*
10 *FINES.*—*Unless a State law in effect on the*
11 *date of enactment of this clause, or a State*
12 *constitution, requires the funds to be used*
13 *in a different manner, all funds collected by*
14 *a State from the Federal Government as a*
15 *penalty for violation of a provision of law*
16 *referred to in subparagraph (B) shall be*
17 *used by the State only for projects designed*
18 *to improve or protect the environment or to*
19 *defray the costs of environmental protection*
20 *or enforcement.*

21 “(F) *CONTRIBUTION.*—*A department, agen-*
22 *cy, or instrumentality of the United States shall*
23 *have the right to contribution under section 113*
24 *if the department, agency, or instrumentality re-*
25 *solves its liability under this Act.”;*

1 (B) in the second sentence of paragraph (3),
 2 by inserting “(other than the indemnification re-
 3 quirements of section 119)” after “responsibil-
 4 ity”; and

5 (C) by striking paragraph (4); and

6 (3) in subsection (e), by adding at the end the
 7 following:

8 “(7) *STATE REQUIREMENTS.*—Notwithstanding
 9 any other provision of this Act, an interagency agree-
 10 ment under this section shall not impair or diminish
 11 the authority of a State, political subdivision of a
 12 State, or any other person or the jurisdiction of any
 13 court to enforce compliance with requirements of
 14 State or Federal law, unless those requirements, with-
 15 out objection after notice to the State before or on the
 16 date on which the response action is selected, have
 17 been—

18 “(A) specifically addressed in the agree-
 19 ment; or

20 “(B) specifically waived.”.

21 **TITLE VII—NATURAL RESOURCE**
 22 **DAMAGES**

23 **SEC. 701. RESTORATION OF NATURAL RESOURCES.**

24 (a) *IN GENERAL.*—Section 107(f)(1) of the Com-
 25 prehensive Environmental Response, Compensation and Li-

1 ability Act of 1980 (42 U.S.C. 9607(f)(1)) is amended by
2 striking “(1) *NATURAL RESOURCES LIABILITY.—In the case*
3 *of” through the end of the paragraph and inserting the fol-*
4 *lowing:*

5 “(1) *NATURAL RESOURCES LIABILITY.—*

6 “(A) *GENERAL.—In the case of an injury*
7 *to, destruction of, or loss of natural resources*
8 *under subsection (a)(4)(C), liability shall be to*
9 *the United States Government and to any State*
10 *for natural resources within the State or belong-*
11 *ing to, managed by, controlled by, or appertain-*
12 *ing to such State and to any Indian Tribe for*
13 *natural resources belonging to, managed by, con-*
14 *trolled by, or appertaining to such Tribe, or held*
15 *in trust for the benefit of such Tribe if such re-*
16 *sources are subject to a trust restriction on alien-*
17 *ation.*

18 “(B) *ACTION AS TRUSTEE.—The President,*
19 *or the authorized representative of any State,*
20 *shall act on behalf of the public as trustee of such*
21 *natural resources to recover for such damages for*
22 *the natural resource injured, destroyed or lost by*
23 *the release of a hazardous substance.*

24 “(C) *MEASURE OF DAMAGES.—Any person*
25 *liable for an injury to, destruction of, or loss of*

1 *a natural resource caused by the release of a haz-*
2 *ardous substance shall be liable for—*

3 “(i) *the costs of restoring the natural*
4 *resource to the condition that would have*
5 *existed but for the release of the hazardous*
6 *substance, replacing or acquiring the equiv-*
7 *alent of the natural resource if the resource*
8 *will not be restored to that condition as a*
9 *result of any response action;*

10 “(ii) *replacement of the lost services*
11 *provided by the injured, destroyed, or lost*
12 *natural resource; and*

13 “(iii) *the reasonable costs of assessing*
14 *damages, including the costs associated with*
15 *the development and consideration of alter-*
16 *native restoration measures but not includ-*
17 *ing the costs of conducting any type of*
18 *study relying on the use of contingent valu-*
19 *ation methodology.*

20 “(D) *LIMITATIONS ON LIABILITY.—*

21 “(i) *COMMITMENT OF NATURAL RE-*
22 *SOURCES IN AN ENVIRONMENTAL IMPACT*
23 *STATEMENT.—No liability to the United*
24 *States or State or Indian Tribe shall be im-*
25 *posed under subsection (a)(4)(C) where the*

1 party sought to be charged has dem-
2 onstrated that the injury to, destruction of,
3 or loss of natural resources complained of
4 was specifically identified as an irreversible
5 and irretrievable commitment of natural re-
6 sources in an environmental impact state-
7 ment, or other comparable environmental
8 analysis, and the decision to grant a permit
9 or license authorizes such commitment of
10 natural resources, and the facility or project
11 was otherwise operating within the terms of
12 its permit or license, so long as, in the case
13 of damages to an Indian Tribe occurring
14 pursuant to a Federal permit or license, the
15 issuance of the permit or license was not in-
16 consistent with the fiduciary duty of the
17 United States with respect to such Indian
18 Tribe.

19 “(ii) *NO DOUBLE RECOVERY.*—A per-
20 son shall not be liable for damages, response
21 costs, assessment costs, or any other costs for
22 an injury to, destruction of, or loss of a nat-
23 ural resource, or a loss of the services pro-
24 vided by the natural resource, that have
25 been recovered under this Act or any other

1 *Federal, State or Tribal law for the same*
2 *injury to, destruction of or loss of the natu-*
3 *ral resource or loss of the services provided*
4 *by the natural resource.*

5 “(iii) *RELEASES BEFORE DECEMBER*
6 *11, 1980.—There shall be no recovery under*
7 *this section where the natural resource in-*
8 *jury, destruction, or loss for which restora-*
9 *tion, replacement or acquisition is sought*
10 *and the release of the hazardous substance*
11 *that caused the injury, destruction, or loss*
12 *occurred wholly before December 11, 1980.*

13 “(iv) *LOST USE DAMAGES BEFORE DE-*
14 *CEMBER 11, 1980.—There shall be no recov-*
15 *ery from any person under this section for*
16 *the value of the lost services provided by a*
17 *natural resource before December 11, 1980.*

18 “(E) *USE OF RECOVERED SUMS.—*

19 “(i) *UNITED STATES GOVERNMENT AS*
20 *TRUSTEE.—Sums recovered by the United*
21 *States Government as trustee under this*
22 *subsection shall be retained by the trustee,*
23 *without further appropriation, for use only*
24 *to restore, replace, or acquire the equivalent*
25 *of such natural resources.*

1 “(ii) *STATE AS TRUSTEE.*—Sums re-
2 covered by a State as trustee under this sub-
3 section shall be available for use only to re-
4 store, replace, or acquire the equivalent of
5 such natural resources by the State.

6 “(iii) *TRIBE AS TRUSTEE.*—Sums re-
7 covered by an Indian Tribe as trustee under
8 this subsection shall be available for use
9 only to restore, replace, or acquire the
10 equivalent of such natural resources by the
11 Indian Tribe.

12 “(F) *PAYMENT PERIOD.*—In entering into
13 an agreement regarding the payment of damages
14 for an injury to, destruction of or loss of a natu-
15 ral resource under this section, a trustee may
16 permit payment over a period of time that is ap-
17 propriate in view of the amount of the damages,
18 the financial ability of the responsible party to
19 pay the damages, and the time period over which
20 and the pace at which expenditures are expected
21 to be made for the restoration, replacement or ac-
22 quisition activities.”.

23 (b) *RESTORATION MEASURES.*—Section 107(f) of the
24 Comprehensive Environmental Response, Compensation,

1 *and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended*
2 *by adding at the end the following:*

3 “(3) *CONSIDERATION OF ALTERNATIVE RESTORA-*
4 *TION MEASURES.—*

5 “(A) *ALTERNATIVE MEASURES.—A trustee*
6 *seeking damages under this section for an injury*
7 *to, destruction of or loss of a natural resource*
8 *shall, on the basis of the best scientific informa-*
9 *tion available, consider alternative measures to*
10 *achieve the restoration of the natural resource,*
11 *including an alternative that relies on natural*
12 *restoration. The trustee shall select measures that*
13 *achieve an appropriate balance among the fol-*
14 *lowing factors:*

15 “(i) *Technical feasibility.*

16 “(ii) *Cost effectiveness.*

17 “(iii) *The period of time in which the*
18 *natural resource is likely to be restored.*

19 “(B) *CONSIDERATION OF INTRINSIC VAL-*
20 *UES.—In selecting measures to restore, replace or*
21 *acquire the equivalent of a natural resource in-*
22 *jured, destroyed, or lost by the release of a haz-*
23 *ardous substance pursuant to paragraph*
24 *(1)(C)(i), the trustee may take into consideration*
25 *unique intrinsic values associated with the natu-*

1 *ral resource to justify the selection of measures*
2 *that will provide for expedited or enhanced res-*
3 *toration of the natural resource to replace the in-*
4 *trinsic values lost, provided that the incremental*
5 *costs associated with the measures selected are*
6 *reasonable.”.*

7 *(c) REGULATIONS.—Section 301 of the Comprehensive*
8 *Environmental Response, Compensation, and Liability Act*
9 *of 1980 (42 U.S.C. 9651) is amended by striking subsection*
10 *(c) and inserting the following:*

11 “(c) *REGULATIONS FOR INJURY AND RESTORATION*
12 *ASSESSMENTS.—*

13 “(1) *GENERAL.—Not later than 2 years after the*
14 *date of enactment of the Superfund Cleanup Accelera-*
15 *tion Act of 1998, the President, acting through Fed-*
16 *eral officials designated by the National Contingency*
17 *Plan under section 107(f)(2), shall issue an amended*
18 *regulation for the assessment of injury to natural re-*
19 *sources and costs of restoration of natural resources*
20 *(including costs of assessment) for the purposes of this*
21 *Act.*

22 “(2) *CONTENTS.—The amended regulation*
23 *shall—*

24 “(A) *specify protocols for conducting assess-*
25 *ments based on scientifically valid principles in*

1 *individual cases to determine the injury, destruc-*
2 *tion, or loss of natural resources;*

3 “(B) *identify the best available procedures*
4 *to determine the costs of restoration and ensure*
5 *that assessment costs are reasonable;*

6 “(C) *take into consideration the ability of a*
7 *natural resource to recover naturally and the*
8 *availability of replacement or alternative re-*
9 *sources;*

10 “(D) *provide for the designation of a lead*
11 *administrative trustee for each facility at which*
12 *an injury to natural resources has occurred*
13 *within 180 days after the date of the first notice*
14 *to the responsible parties that an assessment of*
15 *injury and restoration alternatives will be made;*

16 “(E) *require that injury assessment, res-*
17 *toration planning and quantification of restora-*
18 *tion costs be based on facility-specific informa-*
19 *tion to the extent that such information is avail-*
20 *able; and*

21 “(F) *set forth procedures under which—*

22 “(i) *all pending and potential trustees*
23 *identify, as soon as practicable after the*
24 *date on which an assessment begins, the in-*
25 *jured natural resources within their respec-*

1 *tive trust responsibilities, and the authority*
2 *under which such responsibilities are estab-*
3 *lished;*

4 *“(ii) assessment of injury and restora-*
5 *tion alternatives will be coordinated to the*
6 *greatest extent practicable between the lead*
7 *administrative trustee and any present or*
8 *potential Federal, State or Tribal trustees;*
9 *and*

10 *“(iii) time periods for payment of*
11 *damages in accordance with section*
12 *107(f)(1)(F) shall be determined.*

13 *“(3) PERIOD IN WHICH ACTION MAY BE*
14 *BROUGHT.—Promulgation of the amended regulation*
15 *under this subsection shall not extend the period in*
16 *which an action must have been brought pursuant to*
17 *section 113(g)(1)(B) as in effect before the date of en-*
18 *actment of the Superfund Cleanup Acceleration Act of*
19 *1998.”.*

20 **SEC. 702. CONSISTENCY BETWEEN RESPONSE ACTIONS AND**
21 **RESOURCE RESTORATION STANDARDS.**

22 *(a) RESTORATION STANDARDS.—Section 107(f) of the*
23 *Comprehensive Environmental Response, Compensation,*
24 *and Liability Act of 1980 (42 U.S.C. 9607(f)) (as amended*

1 *by section 701(b)) is amended by adding at the end the fol-*
2 *lowing:*

3 “(4) *RELATIONSHIP TO RESPONSE ACTION.*—A
4 *natural resource trustee selecting a restoration alter-*
5 *native under this subsection shall take into account*
6 *what any removal or remedial action carried out or*
7 *planned for the facility under this Act or any other*
8 *Federal or State law has accomplished or will accom-*
9 *plish to restore, replace or acquire the equivalent of*
10 *the natural resource injured, destroyed or lost by the*
11 *release of a hazardous substance.”.*

12 *(b) CONSIDERATION OF NATURAL RESOURCES IN RE-*
13 *SPONSE ACTIONS.*—Section 121(a) of the *Comprehensive*
14 *Environmental Response, Compensation and Liability Act*
15 *of 1980 (42 U.S.C. 9621(a)) (as amended by section 402(1))*
16 *is amended by adding at the end the following:*

17 “(4) *COORDINATION.*—*In evaluating and select-*
18 *ing remedial actions, the President shall take into ac-*
19 *count the potential for injury to a natural resource*
20 *resulting from such actions.”.*

21 **SEC. 703. CONTRIBUTION.**

22 Section 113(f)(1) of the *Comprehensive Environmental*
23 *Response, Liability, and Compensation Act of 1980 (42*
24 *U.S.C. 9613(f)(1)) is amended in the third sentence by in-*
25 *serting “and natural resource damages” after “costs”.*

1 **SEC. 704. MEDIATION.**

2 *Section 137 of the Comprehensive Environmental Re-*
 3 *sponse, Liability, and Compensation Act of 1980 (as added*
 4 *by section 504) is amended by adding at the end the follow-*
 5 *ing:*

6 “(t) *USE OF MEDIATION.*—

7 “(1) *GENERAL.*—*A Federal natural resource*
 8 *trustee, State natural resource trustee, or Indian*
 9 *Tribe seeking damages for injury to, destruction of, or*
 10 *loss of a natural resource under subsection (a) or (f)*
 11 *of section 107 shall initiate mediation of the claim*
 12 *with any potentially responsible parties by means of*
 13 *the mediation procedure or other alternative dispute*
 14 *resolution method recognized by the United States*
 15 *district court for the district in which the action is*
 16 *filed.*

17 “(2) *TIME.*—*Mediation shall be initiated not*
 18 *later than 120 days after commencement of an action*
 19 *of damages.”.*

20 **SEC. 705. COEUR D’ALENE BASIN.**

21 (a) *DEFINITIONS.*—*In this section:*

22 (1) *BASIN ACTION.*—*The term ‘Basin Action’*
 23 *means an action or proceeding for response costs, re-*
 24 *sponse or other cleanup or other corrective action, ob-*
 25 *ligation, penalty, or natural resource damage within*
 26 *the Coeur d’Alene basin under section 106 or 107 of*

1 *the Comprehensive Environmental Response, Com-*
2 *ensation, and Liability Act of 1980 (42 U.S.C. 9606,*
3 *9607), the Federal Water Pollution Control Act (33*
4 *U.S.C. 1251 et seq.), or the Solid Waste Disposal Act*
5 *(42 U.S.C. 6901 et seq.) attributable to any release or*
6 *threatened release of a hazardous substance resulting*
7 *from a mining or mining-related activity undertaken*
8 *before the date of enactment of this Act.*

9 (2) *BASIN PLAN.*—*The term ‘Basin Plan’ means*
10 *the plan to restore, manage, and enhance the natural*
11 *recovery of the Coeur d’Alene basin developed under*
12 *subsection (b).*

13 (3) *COEUR D’ALENE BASIN.*—*The term “Coeur*
14 *d’Alene basin” means—*

15 (A) *the watersheds in Northern Idaho that*
16 *contain the South Fork, North Fork, and main*
17 *stem of the Coeur d’Alene River, their tribu-*
18 *taries, and the lateral lakes;*

19 (B) *Lake Coeur d’Alene; and*

20 (C) *any area downstream of Lake Coeur*
21 *d’Alene that is or has been affected by mining-*
22 *related activities.*

23 (4) *COMMISSION.*—*The term “Commission”*
24 *means the Coeur d’Alene Basin Commission, an advi-*

1 *sory group established by Idaho Code Section 39–3613*
 2 *that includes—*

3 *(A) Federal, State, Tribal, and local rep-*
 4 *resentatives;*

5 *(B) the Federal trustees;*

6 *(C) industry representatives; and*

7 *(D) citizens.*

8 *(5) FEDERAL TRUSTEE.—The term “Federal*
 9 *trustee” means—*

10 *(A) the Secretary of the Interior; and*

11 *(B) the Secretary of Agriculture.*

12 *(6) GOVERNOR.—The term “Governor” means*
 13 *the Governor of the State of Idaho.*

14 *(b) COEUR D’ALENE BASIN PLAN.—*

15 *(1) GOALS.—Not later than 2 years after the*
 16 *date of enactment of this Act, the Commission shall*
 17 *develop and submit to the Governor a plan to restore,*
 18 *manage, and enhance the natural recovery of the*
 19 *Coeur d’Alene basin, consistent with the objectives of*
 20 *the Comprehensive Environmental Response, Com-*
 21 *ensation, and Liability Act of 1980 (42 U.S.C. 9601*
 22 *et seq.), in a cost-effective manner.*

23 *(2) CONTENTS.—The Basin Plan shall—*

24 *(A) characterize and assess relevant data on*
 25 *environmental problems of the Coeur d’Alene*

1 basin, including assessment of trends in water
2 quality, natural resources, and use of Coeur
3 d'Alene basin resources;

4 (B) identify and prioritize programs, ac-
5 tivities, and projects to address historic mining
6 waste and discharges and other point and
7 nonpoint sources that contribute to elevated con-
8 centrations of metals in the Coeur d'Alene basin;

9 (C) identify funding sources for the pro-
10 grams, activities, and projects, including the use
11 of Federal and other sources of funds;

12 (D) provide for environmental improvement
13 of the Coeur d'Alene basin, in light of any final,
14 approved total maximum daily load for the
15 South Fork of the Coeur d'Alene drainage devel-
16 oped under section 303(d) of the Federal Water
17 Pollution Control Act (33 U.S.C. 1313(d));

18 (E) describe activities to reduce the quan-
19 tity of nutrient loading in the Coeur d'Alene
20 basin; and

21 (F) include procedures for public comment
22 on the contents and implementation of the Basin
23 Plan.

24 (3) SUBMISSION OF BASIN PLAN.—The Governor,
25 after receipt of the Basin Plan recommendation of the

1 *Commission, and after public comment to the Com-*
 2 *mission on the contents and implementation of the*
 3 *Basin Plan, shall finalize the Basin Plan and seek to*
 4 *negotiate enforceable agreements under subsection (c).*

5 *(c) ENFORCEABLE AGREEMENTS.—*

6 *(1) STAY OF ACTIONS.—On the motion of a per-*
 7 *son against whom a Basin Action is pending on the*
 8 *date of enactment of this Act, or is brought after that*
 9 *date, a court with jurisdiction may stay the proceed-*
 10 *ing with respect to that person to allow the restora-*
 11 *tion to proceed under an enforceable agreement.*

12 *(2) ENFORCEABLE AGREEMENTS.—*

13 *(A) IN GENERAL.—For purposes of this sub-*
 14 *section, an enforceable agreement is an agree-*
 15 *ment entered into not later than 2 years after the*
 16 *date on which the Basin Plan is submitted to the*
 17 *Governor under subsection (b) between the Gov-*
 18 *ernor and a person to further implementation of*
 19 *the Basin Plan that—*

20 *(i) requires the person to contribute a*
 21 *fair share of costs, which may include mon-*
 22 *ies or in-kind contributions of goods, serv-*
 23 *ices, or interests in property over a period*
 24 *of time and in an amount or value as deter-*

1 *mined by the Governor after consideration*
2 *of all relevant factors, including—*

3 *(I) the contributions, efforts, and*
4 *commitments of the person toward en-*
5 *vironmental improvement in the Coeur*
6 *d’Alene basin;*

7 *(II) the estimated cost to imple-*
8 *ment the action plan;*

9 *(III) any waiver, release, settle-*
10 *ment, or agreement relating to the*
11 *Coeur d’Alene basin; and*

12 *(IV) any control strategy required*
13 *by a final, approved total maximum*
14 *daily load for the South Fork of the*
15 *Coeur d’Alene River; and*

16 *(ii) requires the person to provide fi-*
17 *nancial assurances and pay stipulated pen-*
18 *alties adequate to guarantee performance*
19 *under the agreement.*

20 *(B) APPROVAL BY COURT.—Any enforceable*
21 *agreement shall be submitted to the United*
22 *States District Court for the District of Idaho for*
23 *a determination by the Court that the enforceable*
24 *agreement is fair, reasonable, and in the public*
25 *interest. The Court shall decide in its discretion*

1 *whether or not to take evidence or testimony on*
 2 *the matter.*

3 (C) *LIABILITY OF PERSONS THAT ENTER*
 4 *INTO ENFORCEABLE AGREEMENTS.—*

5 (i) *IN GENERAL.—Subject to clause*
 6 *(ii), a person that enters into an enforceable*
 7 *agreement shall not be subject to any Basin*
 8 *Action.*

9 (ii) *EFFECT.—Clause (i) shall not af-*
 10 *fect—*

11 (I) *the liability or obligations of*
 12 *any person for mining or mining-re-*
 13 *lated activities in the Coeur d'Alene*
 14 *basin undertaken before the date of en-*
 15 *actment of this Act and covered by a*
 16 *permit under any of the Acts referred*
 17 *to in subsection (a)(1); or*

18 (II) *the terms of, or the obliga-*
 19 *tions of any party under, a consent de-*
 20 *gree, settlement agreement, or similar*
 21 *agreement relating to the Coeur*
 22 *d'Alene basin.*

23 (3) *LIABILITY OF THE GOVERNOR, COMMISSION,*
 24 *AND STATE.—Unless otherwise specifically agreed to*
 25 *in an enforceable agreement, the Governor, the State*

1 *of Idaho, and the Commission shall have no liability*
2 *for—*

3 *(A) any activity conducted by any of them*
4 *in accordance with the Basin Plan; or*

5 *(B) any response cost, proposed response ac-*
6 *tion, or cleanup or corrective action undertaken*
7 *or incurred in connection with the Basin Plan*

8 *(d) AUTHORIZATION OF APPROPRIATIONS.—*

9 *(1) COMMISSION.—There is authorized to be ap-*
10 *propriated \$5,000,000 for the State of Idaho for use*
11 *by the Commission to develop and implement a Basin*
12 *Plan as specified in this section.*

13 *(2) FEDERAL TRUSTEES.—There is authorized to*
14 *be appropriated to the Federal trustees such sums as*
15 *are necessary to pay for the Federal costs associated*
16 *with implementation of the Basin Plan.*

17 **SEC. 706. EFFECTIVE DATE.**

18 *The amendments made by this title shall not apply*
19 *to an action to recover natural resource damages under sec-*
20 *tion 107(f) in which trial began before July 1, 1997, or*
21 *in which a judgment has become final before that date.*

1 **TITLE VIII—MISCELLANEOUS**

2 **SEC. 801. RESULT-ORIENTED CLEANUPS.**

3 (a) *AMENDMENT.*—Section 105(a) of the Comprehen-
4 *sive Environmental Response, Compensation, and Liability*
5 *Act of 1980 (42 U.S.C. 9605(a)) is amended—*

6 (1) *by striking “and” at the end of paragraph*
7 *(9);*

8 (2) *by striking the period at the end of para-*
9 *graph (10) and inserting “; and”; and*

10 (3) *by inserting after paragraph (10) the follow-*
11 *ing:*

12 “(11) *procedures for conducting response actions,*
13 *including facility evaluations, remedial investiga-*
14 *tions, feasibility studies, remedial action plans, reme-*
15 *dial designs, and remedial actions, which procedures*
16 *shall—*

17 “(A) *use a results-oriented approach to*
18 *minimize the time required to conduct response*
19 *measures and reduce the potential for exposure to*
20 *the hazardous substances, pollutants, and con-*
21 *taminants in an efficient, timely, and cost-effec-*
22 *tive manner;*

23 “(B) *require, at a minimum, expedited fa-*
24 *cility evaluations and risk assessments, timely*
25 *negotiation of response action goals, a single en-*

1 *gineering study, streamlined oversight of re-*
2 *sponse actions, and consultation with interested*
3 *parties throughout the response action process;*

4 *“(C) be subject to the requirements of sec-*
5 *tions 117, 120, 121, and 133 in the same man-*
6 *ner and to the same degree as those sections*
7 *apply to response actions; and*

8 *“(D) be required to be used for each reme-*
9 *dial action conducted under this Act unless the*
10 *Administrator determines that their use would*
11 *not be cost-effective or result in the selection of*
12 *a response action that achieves the goals of pro-*
13 *tecting human health and the environment stated*
14 *in section 121(a)(1)(B).”.*

15 *(b) AMENDMENT OF NATIONAL HAZARDOUS SUB-*
16 *STANCE RESPONSE PLAN.—Not later than 180 days after*
17 *the date of enactment of this Act, the Administrator, after*
18 *notice and opportunity for public comment, shall amend*
19 *the National Hazardous Substance Response Plan under*
20 *section 105(a) of the Comprehensive Environmental Re-*
21 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
22 *9605(a)) to include the procedures required by the amend-*
23 *ment made by subsection (a).*

1 **SEC. 802. OBLIGATIONS FROM THE FUND FOR RESPONSE**
2 **ACTIONS.**

3 *Section 104(c)(1) of the Comprehensive Environmental*
4 *Response, Compensation, and Liability Act of 1980 (42*
5 *U.S.C. 9604(c)(1)) is amended—*

6 *(1) in subparagraph (C) by striking “consistent*
7 *with the remedial action to be taken” and inserting*
8 *“not inconsistent with any remedial action that has*
9 *been selected or is anticipated at the time of any re-*
10 *moval action at a facility,”;*

11 *(2) by striking “\$2,000,000” and inserting*
12 *“\$5,000,000”; and*

13 *(3) by striking “12 months” and inserting “3*
14 *years”.*

15 **SEC. 803. RECYCLED OIL.**

16 *(a) DEFINITION.—Section 101(37) of the Comprehen-*
17 *sive Environmental Response, Compensation, and Liability*
18 *Act of 1980 (42 U.S.C. 9601(37)) is amended—*

19 *(1) in subparagraph (A)—*

20 *(A) by striking “service station dealer” and*
21 *inserting “service station or automobile dealer”;*
22 *and*

23 *(B) in clause (i)—*

24 *(i) by inserting “dealership,” after*
25 *“garage,”; and*

1 **“SEC. 138. LEAD IN SOIL.**

2 “(a) *IN GENERAL.*—Not later than 30 days after the
3 date of enactment of this section, the Administrator shall
4 enter into a contract with the Health Effects Institute (re-
5 ferred to in this section as the ‘Institute’) to establish and
6 administer an independent scientific review panel (referred
7 to in this section as the ‘review panel’) composed of univer-
8 sity-based scientists and statisticians and the principal in-
9 vestigators of the studies conducted under section 111(a)(6)
10 to review existing science (and any new science made avail-
11 able before completion of any review) on the relationship
12 between lead in residential soil and blood lead levels.

13 “(b) *MATTERS TO BE ADDRESSED.*—The review under
14 subsection (a) shall include—

15 “(1) an assessment of whether, and if so to what
16 extent, blood lead levels are affected by removing lead-
17 containing soil at varying levels;

18 “(2) an assessment of whether blood lead levels
19 are affected by variation in the type of lead com-
20 pound, soil type, and other site-specific factors; and

21 “(3) a review of the methodologies for modeling
22 the impact of soil lead levels on blood lead levels.

23 “(c) *PROCEDURE.*—

24 “(1) *TIME FOR COMPLETION.*—The review panel
25 shall complete the review under subsection (a) not

1 *later than 180 days after contracting with the Ad-*
2 *ministrator.*

3 “(2) *PEER REVIEW AND PUBLIC COMMENT.*—*The*
4 *review shall include an opportunity for peer review*
5 *and public comment and participation.*

6 “(3) *REPORT.*—*The review panel shall report its*
7 *findings to Congress and the Administrator not later*
8 *than 30 days after completing the review.*

9 “(d) *RULEMAKING.*—

10 “(1) *PROPOSED REGULATION.*—*Not later than*
11 *180 days after the date on which the report under*
12 *subsection (c)(3) is submitted, the Administrator shall*
13 *issue for public comment a proposed regulation gov-*
14 *erning the performance of risk assessments and select-*
15 *ing remedies at facilities where lead in soil is a con-*
16 *taminant of concern.*

17 “(2) *FINAL REGULATION.*—*Not later than 180*
18 *days after the proposed regulation is issued, the Ad-*
19 *ministrator shall promulgate a final regulation gov-*
20 *erning the performance of risk assessments and select-*
21 *ing remedies at facilities where lead in soil is a con-*
22 *taminant of concern.*

23 “(3) *BASIS.*—*The proposed regulation and final*
24 *regulation shall be based on, and shall be consistent*

1 *with, the findings of the report under subsection*
2 *(c)(3).*

3 *“(4) CONTENTS.—*

4 *“(A) IN GENERAL.—The regulation shall*
5 *address, at a minimum—*

6 *“(i) the role of biomonitoring data in*
7 *assessing risk assessments and the use of*
8 *site-specific data in risk assessments; and*

9 *“(ii) the reconciliation of data, which*
10 *shall include a process for the President, in*
11 *making estimates or projections of risks*
12 *based on models, methodologies, rules, or*
13 *guidance concerning the exposure, uptake,*
14 *bioavailability, and biokinetics of lead in*
15 *soil, to reconcile—*

16 *“(I) the estimates or projections;*

17 *with*

18 *“(II) any empirical data concern-*
19 *ing lead in blood from research, stud-*
20 *ies, or samples and any other relevant*
21 *research.*

22 *“(B) DEFINITION OF RECONCILE.—For the*
23 *purposes of this paragraph, the term ‘reconcile’*
24 *means to—*

1 “(i) compare all relevant information
2 on a technical basis; and

3 “(ii) if there is any difference between
4 empirical data and projections based on
5 any model, methodology, rule, or guid-
6 ance—

7 “(I) explain the difference in
8 writing; and

9 “(II) make a judgment based on
10 the weight of the scientific evidence.”.

11 **SEC. 806. PESTICIDES APPLIED IN COMPLIANCE WITH LAW.**

12 Section 107(i) of the Comprehensive Environmental
13 Response, Compensation, and Liability Act of 1980 (42
14 U.S.C. 9607(i)) is amended—

15 (1) by striking “(i) No person” and inserting the
16 following:

17 “(i) PESTICIDES.—

18 “(1) IN GENERAL.—No person”; and

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

20 “(2) APPLICATION IN COMPLIANCE WITH LAW.—

21 For the purposes of paragraph (1), the term ‘applica-
22 tion of a pesticide product registered under the Fed-
23 eral Insecticide, Fungicide, and Rodenticide Act’ in-
24 cludes a release of a hazardous substance resulting
25 from the application, before the date of enactment of

1 *this subsection, of any pesticide, insecticide, or simi-*
2 *lar product in compliance with a Federal or State*
3 *law (including a regulation) requiring the treatment*
4 *of livestock to prevent, suppress, control, or eradicate*
5 *any dangerous, contagious, or infectious disease or*
6 *any vector organism for such a disease.”.*

7 **SEC. 807. TECHNICAL CORRECTIONS.**

8 *(a) IN GENERAL.—Section 107(a) of the Comprehen-*
9 *sive Environmental Response Compensation, and Liability*
10 *Act of 1980 (42 U.S.C. 9607(a)) is amended—*

11 *(1) by striking “LIABILITY” and all that follows*
12 *through “Notwithstanding” and inserting the follow-*
13 *ing:*

14 **“SEC. 107. LIABILITY.**

15 *“(a) IN GENERAL.—*

16 *“(1) PERSONS LIABLE.—Notwithstanding”;*

17 *(2) by redesignating paragraphs (1), (2), (3),*
18 *and (4) (as designated before the date of enactment of*
19 *this Act) as subparagraphs (A), (B), (C), and (D), re-*
20 *spectively, and adjusting the margins appropriately;*

21 *(3) by striking “hazardous substance, shall be*
22 *liable for—” and inserting the following: “hazardous*
23 *substance;*

24 *shall be liable for the costs and damages described in*
25 *paragraph (2).*

1 *and ending September 30, 1994” and inserting “a total of*
 2 *\$7,500,000,000 for fiscal years 1999 through 2003”.*

3 **SEC. 902. ORPHAN SHARE FUNDING.**

4 *Section 111(a) of the Comprehensive Environmental*
 5 *Response, Compensation, and Liability Act of 1980 (42*
 6 *U.S.C. 9611(a)) (as amended by section 201(c)), is amended*
 7 *by inserting after paragraph (7) the following:*

8 *“(8) ORPHAN SHARE FUNDING.—Payment of or-*
 9 *phan shares under section 137, which shall be manda-*
 10 *tory direct spending to the extent of—*

11 *“(A) for fiscal year 1999, \$200,000,000;*

12 *“(B) for fiscal year 2000, \$350,000,000;*

13 *“(C) for fiscal year 2001, \$300,000,000;*

14 *“(D) for fiscal year 2002, \$300,000,000;*

15 *“(E) for fiscal year 2003, \$300,000,000;*

16 *and*

17 *“(F) for fiscal year 2004 and each fiscal*
 18 *year thereafter, \$250,000,000.”.*

19 **SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERVICES.**

20 *Section 111 of the Comprehensive Environmental Re-*
 21 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 22 *9611) is amended by striking subsection (m) and inserting*
 23 *the following:*

24 *“(m) HEALTH AUTHORITIES.—*

1 “(1) *IN GENERAL.*—*There are authorized to be*
 2 *appropriated from the Fund to the Secretary of*
 3 *Health and Human Services to be used for the pur-*
 4 *poses of carrying out the activities described in sub-*
 5 *section (c)(4) and the activities described in section*
 6 *104(i), \$50,000,000 for each of fiscal years 1999*
 7 *through 2003.*”

8 “(2) *RETURN OF UNOBLIGATED FUNDS.*—*Funds*
 9 *appropriated under this subsection for a fiscal year,*
 10 *but not obligated by the end of the fiscal year, shall*
 11 *be returned to the Fund.*”

12 **SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND**
 13 **DEMONSTRATION PROGRAMS.**

14 *Section 111 of the Comprehensive Environmental Re-*
 15 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 16 *9611) is amended by striking subsection (n) and inserting*
 17 *the following:*

18 “(n) *LIMITATIONS ON RESEARCH, DEVELOPMENT, AND*
 19 *DEMONSTRATION PROGRAMS.*—

20 “(1) *ALTERNATIVE OR INNOVATIVE TECH-*
 21 *NOLOGIES RESEARCH, DEVELOPMENT, AND DEM-*
 22 *ONSTRATION PROGRAMS.*—

23 “(A) *LIMITATION.*—*For each of fiscal years*
 24 *1999 through 2003, not more than \$30,000,000*
 25 *of the amounts available in the Fund may be*

1 *used for the purposes of carrying out the applied*
2 *research, development, and demonstration pro-*
3 *gram for alternative or innovative technologies*
4 *and training program authorized under section*
5 *311(b) other than basic research.*

6 “(B) *CONTINUING AVAILABILITY.*—*Amounts*
7 *under subparagraph (A) shall remain available*
8 *until expended.*

9 “(2) *HAZARDOUS SUBSTANCE RESEARCH, DEM-*
10 *ONSTRATION, AND TRAINING.*—

11 “(A) *LIMITATION.*—*From the amounts*
12 *available in the Fund, not more than the follow-*
13 *ing amounts may be used for the purposes of sec-*
14 *tion 311(a):*

15 “(i) *For fiscal year 1999, \$37,000,000.*

16 “(ii) *For fiscal year 2000, \$39,000,000.*

17 “(iii) *For fiscal year 2001,*
18 *\$41,000,000.*

19 “(iv) *For each of fiscal years 2002 and*
20 *2003, \$43,000,000.*

21 “(B) *FURTHER LIMITATION.*—*No more than*
22 *15 percent of such amounts shall be used for*
23 *training under section 311(a) for any fiscal*
24 *year.*

1 “(3) *UNIVERSITY HAZARDOUS SUBSTANCE RE-*
 2 *SEARCH CENTERS.—For each of fiscal years 1999*
 3 *through 2003, not more than \$5,000,000 of the*
 4 *amounts available in the Fund may be used for the*
 5 *purposes of section 311(d).”.*

6 **SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM**
 7 **GENERAL REVENUES.**

8 *Section 111(p) of the Comprehensive Environmental*
 9 *Response, Compensation, and Liability Act of 1980 (42*
 10 *U.S.C. 9611(p)) is amended by striking paragraph (1) and*
 11 *inserting the following:*

12 “(1) *AUTHORIZATION OF APPROPRIATIONS.—*

13 “(A) *IN GENERAL.—There are authorized to*
 14 *be appropriated, out of any money in the Treas-*
 15 *ury not otherwise appropriated, to the Hazard-*
 16 *ous Substance Superfund—*

17 “(i) *for fiscal year 1999, \$250,000,000;*

18 “(ii) *for fiscal year 2000,*
 19 *\$250,000,000;*

20 “(iii) *for fiscal year 2001,*
 21 *\$250,000,000;*

22 “(iv) *for fiscal year 2002,*
 23 *\$250,000,000; and*

24 “(v) *for fiscal year 2003, \$250,000,000.*

1 “(B) *ADDITIONAL AMOUNTS.*—*There is au-*
 2 *thorized to be appropriated to the Hazardous*
 3 *Substance Superfund for each such fiscal year an*
 4 *amount, in addition to the amount authorized*
 5 *by subparagraph (A), equal to so much of the ag-*
 6 *gregate amount authorized to be appropriated*
 7 *under this subsection and section 9507(b) of the*
 8 *Internal Revenue Code of 1986 as has not been*
 9 *appropriated before the beginning of the fiscal*
 10 *year.”.*

11 **SEC. 906. ADDITIONAL LIMITATIONS.**

12 *Section 111 of the Comprehensive Environmental Re-*
 13 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 14 *9611) (as amended by section 102(c)) is amended by adding*
 15 *at the end the following:*

16 “(s) *COMMUNITY ACTION GROUPS.*—*For the period*
 17 *commencing January 1, 1998, and ending September 30,*
 18 *2003, not more than \$15,000,000 of the amounts available*
 19 *in the Fund may be used to make grants under section*
 20 *117(i).*

21 “(t) *RECOVERIES.*—*Effective beginning January 1,*
 22 *1997, any response cost recoveries collected by the United*
 23 *States under this Act shall be credited as offsetting collec-*
 24 *tions to the Superfund appropriations account.”.*

1 **SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPONSIBLE**
2 **PARTIES.**

3 *Section 111(a) of the Comprehensive Environmental*
4 *Response, Compensation, and Liability Act of 1980 (42*
5 *U.S.C. 9611(a)) (as amended by section 902) is amended*
6 *by inserting after paragraph (8) the following:*

7 “(9) *REIMBURSEMENT OF POTENTIALLY RESPON-*
8 *SIBLE PARTIES.—If—*

9 *“(A) a potentially responsible party and the*
10 *Administrator enter into a settlement under this*
11 *Act under which the Administrator is reim-*
12 *bursed for the response costs of the Adminis-*
13 *trator; and*

14 *“(B) the Administrator determines, through*
15 *a Federal audit of response costs, that the costs*
16 *for which the Administrator is reimbursed—*

17 *“(i) are unallowable due to contractor*
18 *fraud;*

19 *“(ii) are unallowable under the Federal*
20 *Acquisition Regulation; or*

21 *“(iii) should be adjusted due to routine*
22 *contract and Environmental Protection*
23 *Agency response cost audit procedures,*

24 *a potentially responsible party may be reimbursed for*
25 *those costs.”.*