

106TH CONGRESS
1ST SESSION

S. 1537

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

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1999

Mr. CHAFEE (for himself and Mr. SMITH of New Hampshire) introduced the
following bill; which was read twice and referred to the Committee on En-
vironment and Public Works

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Superfund Amendments and Reauthorization Act of
6 1999”.

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

Sec. 1. Short title; table of contents.

TITLE I—BROWNFIELDS REVITALIZATION

- Sec. 101. Brownfields.
- Sec. 102. Contiguous properties.
- Sec. 103. Prospective purchasers and windfall liens.
- Sec. 104. Safe harbor innocent landholders.

TITLE II—STATE RESPONSE PROGRAMS

- Sec. 201. State response programs.
- Sec. 202. National Priorities List completion.
- Sec. 203. Federal emergency removal authority.
- Sec. 204. State cost share.

TITLE III—FAIR SHARE LIABILITY ALLOCATIONS AND PROTECTIONS

- Sec. 301. Liability exemptions and limitations.
- Sec. 302. Expedited settlement for certain parties.
- Sec. 303. Fair share settlements and statutory orphan shares.
- Sec. 304. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.

TITLE IV—REMEDY SELECTION AND NATURAL RESOURCE DAMAGES

- Sec. 401. Selection and implementation of remedial actions.
- Sec. 402. Use of risk assessment in remedy selection.
- Sec. 403. Natural resource damages.
- Sec. 404. Double recovery.

TITLE V—FUNDING

- Sec. 501. Uses of Hazardous Substance Superfund.

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

3 **SEC. 101. BROWNFIELDS.**

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

8 **“SEC. 127. BROWNFIELDS.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) BROWNFIELD FACILITY.—

1 “(A) IN GENERAL.—The term ‘brownfield
2 facility’ means real property, the expansion or
3 redevelopment of which is complicated by the
4 presence or potential presence of a hazardous
5 substance.

6 “(B) INCLUSION.—The term ‘brownfield
7 facility’ includes real property that is contami-
8 nated with cocaine, heroin, methamphetamine,
9 or any other controlled substance (as defined in
10 section 102 of the Controlled Substances Act
11 (21 U.S.C. 802)), a precursor chemical to a
12 controlled substance, or a residual chemical
13 from the manufacture of a controlled substance.

14 “(C) EXCLUSIONS.—The term ‘brownfield
15 facility’ does not include—

16 “(i) any portion of real property that,
17 as of the date of submission of an applica-
18 tion for assistance under this section, is
19 the subject of an ongoing removal under
20 this title;

21 “(ii) any portion of real property that
22 has been listed on the National Priorities
23 List or is proposed for listing as of the
24 date of the submission of an application
25 for assistance under this section;

1 “(iii) any portion of real property with
2 respect to which cleanup work is pro-
3 ceeding in substantial compliance with the
4 requirements of an administrative order on
5 consent, or judicial consent decree that has
6 been entered into, or a permit issued by,
7 the United States or a duly authorized
8 State under this Act, the Solid Waste Dis-
9 posal Act (42 U.S.C. 6901 et seq.), section
10 311 of the Federal Water Pollution Con-
11 trol Act (33 U.S.C. 1321), the Toxic Sub-
12 stances Control Act (15 U.S.C. 2601 et
13 seq.), or the Safe Drinking Water Act (42
14 U.S.C. 300f et seq.);

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

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

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

1 “(v) a facility that is owned or oper-
2 ated by a department, agency, or instru-
3 mentality of the United States; or

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

12 “(C) FACILITIES OTHER THAN
13 BROWNFIELD FACILITIES.—That a facility may
14 not be a brownfield facility within the meaning
15 of subparagraph (A) has no effect on the eligi-
16 bility of the facility for assistance under any
17 provision of Federal law other than this section.

18 “(2) ELIGIBLE ENTITY.—

19 “(A) IN GENERAL.—The term ‘eligible en-
20 tity’ means—

21 “(i) a general purpose unit of local
22 government;

23 “(ii) a land clearance authority or
24 other quasi-governmental entity that oper-
25 ates under the supervision and control of

1 or as an agent of a general purpose unit
2 of local government;

3 “(iii) a government entity created by
4 a State legislature;

5 “(iv) a regional council or group of
6 general purpose units of local government;

7 “(v) a redevelopment agency that is
8 chartered or otherwise sanctioned by a
9 State;

10 “(vi) a State; and

11 “(vii) an Indian Tribe.

12 “(B) EXCLUSION.—The term ‘eligible enti-
13 ty’ does not include any entity that is not in
14 substantial compliance with the requirements of
15 an administrative order on consent, judicial
16 consent decree that has been entered into, or a
17 permit issued by, the United States or a duly
18 authorized State under this Act, the Solid
19 Waste Disposal Act (42 U.S.C. 6901 et seq.),
20 the Federal Water Pollution Control Act (33
21 U.S.C. 1251 et seq.), the Toxic Substances
22 Control Act (15 U.S.C. 2601 et seq.), or the
23 Safe Drinking Water Act (42 U.S.C. 300f et
24 seq.) with respect to any portion of real prop-
25 erty that is the subject of the administrative

1 order on consent, judicial consent decree, or
2 permit.

3 “(3) SECRETARY.—The term ‘Secretary’ means
4 the Secretary of Housing and Urban Development.

5 “(b) BROWNFIELD SITE CHARACTERIZATION AND
6 ASSESSMENT GRANT PROGRAM.—

7 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
8 ministrator shall establish a program to provide
9 grants for the site characterization and assessment
10 of brownfield facilities.

11 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
12 AND ASSESSMENT AND RESPONSE ACTIONS.—

13 “(A) IN GENERAL.—On approval of an ap-
14 plication made by an eligible entity, the Admin-
15 istrator may make grants to the eligible entity
16 to be used for the site characterization and as-
17 sessment of 1 or more brownfield facilities.

18 “(B) SITE CHARACTERIZATION AND AS-
19 SESSMENT.—A site characterization and assess-
20 ment carried out with the use of a grant under
21 subparagraph (A)—

22 “(i) shall be performed in accordance
23 with section 101(35)(B); and

1 “(ii) may include a process to identify
2 and inventory potential brownfield facili-
3 ties.

4 “(c) BROWNFIELD REMEDIATION GRANT PRO-
5 GRAM.—

6 “(1) ESTABLISHMENT OF PROGRAM.—In con-
7 sultation with the Secretary, the Administrator shall
8 establish a program to provide grants to be used for
9 response actions (excluding site characterization and
10 assessment) at 1 or more brownfield facilities.

11 “(2) ASSISTANCE FOR RESPONSE ACTIONS.—
12 On approval of an application made by an eligible
13 entity, the Administrator, in consultation with the
14 Secretary, may make grants to the eligible entity to
15 be used for response actions (excluding site charac-
16 terization and assessment) at 1 or more brownfield
17 facilities.

18 “(d) GENERAL PROVISIONS.—

19 “(1) MAXIMUM GRANT AMOUNT.—

20 “(A) IN GENERAL.—The total of all grants
21 under subsections (b) and (c) shall not exceed,
22 with respect to any individual brownfield facility
23 covered by the grants, \$350,000.

24 “(B) WAIVER.—The Administrator may
25 waive the \$350,000 limitation under subpara-

graph (A) based on the anticipated level of contamination, size, or status of ownership of the facility, so as to permit the facility to receive a grant of not to exceed \$600,000.

“(2) PROHIBITION.—

“(A) IN GENERAL.—No part of a grant under this section may be used for payment of penalties, fines, or administrative costs.

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

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

“(ii) design and performance of a response action; or

“(iii) monitoring of natural resources.

“(3) AUDITS.—The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants under this section as the Inspector General considers necessary to carry out the objectives of this section. Audits shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

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

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

9 “(A) requires the eligible entity to comply
10 with all applicable State laws (including regula-
11 tions);

12 “(B) requires that the eligible entity shall
13 use the grant exclusively for purposes specified
14 in subsection (b) or (c);

15 “(C) in the case of an application by an el-
16 igible entity under subsection (c), requires pay-
17 ment by the eligible entity of a matching share
18 (which may be in the form of a contribution of
19 labor, material, or services) of at least 20 per-
20 cent of the costs of the response action for
21 which the grant is made, is from non-Federal
22 sources of funding.

23 “(D) contains such other terms and condi-
24 tions as the Administrator determines to be
25 necessary to carry out this section.

1 “(e) GRANT APPLICATIONS.—

2 “(1) SUBMISSION.—

3 “(A) IN GENERAL.—Any eligible entity
4 may submit an application to the Adminis-
5 trator, through a regional office of the Environ-
6 mental Protection Agency and in such form as
7 the Administrator may require, for a grant
8 under this section for 1 or more brownfield fa-
9 cilities.

10 “(B) COORDINATION.—In developing ap-
11 plication requirements, the Administrator shall
12 coordinate with the Secretary and other Federal
13 agencies and departments, such that eligible en-
14 tities under this section are made aware of
15 other available Federal resources.

16 “(C) GUIDANCE.—The Administrator shall
17 publish guidance to assist eligible entities in ob-
18 taining grants under this section.

19 “(2) APPROVAL.—The Administrator, in con-
20 sultation with the Secretary, shall make an annual
21 evaluation of each application received during the
22 prior fiscal year and make grants under this section
23 to eligible entities that submit applications during
24 the prior year and that the Administrator, in con-
25 sultation with the Secretary, determines have the

1 highest rankings under the ranking criteria estab-
2 lished under paragraph (3).

3 “(3) RANKING CRITERIA.—The Administrator,
4 in consultation with the Secretary, shall establish a
5 system for ranking grant applications that includes
6 the following criteria:

7 “(A) The extent to which a grant will stim-
8 ulate the availability of other funds for environ-
9 mental remediation and subsequent redevelop-
10 ment of the area in which the brownfield facili-
11 ties are located.

12 “(B) The potential of the development plan
13 for the area in which the brownfield facilities
14 are located to stimulate economic development
15 of the area on completion of the cleanup, such
16 as the following:

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

20 “(ii) The demonstration by applicants
21 of the intent and ability to create new or
22 expand existing business, employment,
23 recreation, or conservation opportunities
24 on completion of any necessary response
25 action.

1 “(iii) If commercial redevelopment is
2 planned, the estimated additional full-time
3 employment opportunities and tax revenues
4 expected to be generated by economic rede-
5 velopment in the area in which a
6 brownfield facility is located.

7 “(iv) The estimated extent to which a
8 grant would facilitate the identification of
9 or facilitate a reduction of health and envi-
10 ronmental risks.

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

19 “(vi) The extent to which the site
20 characterization and assessment or re-
21 sponse action and subsequent development
22 of a brownfield facility involves the active
23 participation and support of the local com-
24 munity.

1 “(vii) Such other factors as the Ad-
 2 ministrators considers appropriate to carry
 3 out the purposes of this section.

4 “(C) The extent to which a grant will en-
 5 able the creation of or addition to parks, green-
 6 ways, or other recreational property.

7 “(D) The extent to which a grant will meet
 8 the needs of a community that has an inability
 9 to draw on other sources of funding for environ-
 10 mental remediation and subsequent redevelop-
 11 ment of the area in which a brownfield facility
 12 is located because of the small population or
 13 low income of the community.”.

14 **SEC. 102. CONTIGUOUS PROPERTIES.**

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

19 “(o) CONTIGUOUS PROPERTIES.—

20 “(1) NOT CONSIDERED TO BE AN OWNER OR
 21 OPERATOR.—

22 “(A) IN GENERAL.—A person that owns or
 23 operates real property that is contiguous to or
 24 otherwise similarly situated with respect to real
 25 property on which there has been a release or

1 threatened release of a hazardous substance
2 and that is or may be contaminated by the re-
3 lease shall not be considered to be an owner or
4 operator of a vessel or facility under paragraph
5 (1) or (2) of subsection (a) solely by reason of
6 the contamination if—

7 “(i) the person did not cause, con-
8 tribute, or consent to the release or threat-
9 ened release;

10 “(ii) the person is not affiliated
11 through any familial or corporate relation-
12 ship with any person that is or was a party
13 potentially responsible for response costs at
14 the facility;

15 “(iii) the person exercised appropriate
16 care with respect to each hazardous sub-
17 stance found at the facility by taking rea-
18 sonable steps to stop any continuing re-
19 lease, prevent any threatened future re-
20 lease and prevent or limit human or nat-
21 ural resource exposure to any previously
22 released hazardous substance;

23 “(iv) the person provides full coopera-
24 tion, assistance, and access to persons that
25 are responsible for response actions at the

1 vessel or facility from which there has been
2 a release or threatened release, including
3 the cooperation and access necessary for
4 the installation, integrity, operation, and
5 maintenance of any complete or partial re-
6 sponse actions at the vessel or facility;

7 “(v) the person does not impede the
8 effectiveness or integrity of any institu-
9 tional control employed at the vessel or fa-
10 cility; and

11 “(vi) the person complies with any re-
12 quest for information or administrative
13 subpoena issued by the President under
14 this Act.

15 “(B) GROUND WATER.—With respect to
16 hazardous substances in ground water beneath
17 a person’s property solely as a result of sub-
18 surface migration in an aquifer from a source
19 or sources outside the property, appropriate
20 care shall not require the person to conduct
21 ground water investigations or to install ground
22 water remediation systems.

23 “(2) ASSURANCES.—The Administrator may—

24 “(A) issue an assurance that no enforce-
25 ment action under this Act will be initiated

1 against a person described in paragraph (1);
2 and

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

6 (b) NATIONAL PRIORITIES LIST.—

7 (1) IN GENERAL.—Section 105 of the Com-
8 prehensive Environmental Response, Compensation,
9 and Liability Act of 1980 (42 U.S.C. 9605) is
10 amended—

11 (A) in subsection (a)(8)—

12 (i) in subparagraph (B), by inserting
13 “and” after the semicolon at the end; and

14 (ii) by adding at the end the fol-
15 lowing:

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

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

4 “(ii) the owner or operator of the facility
5 is liable, or is affiliated with any other person
6 that is liable, for any response costs at the fa-
7 cility, through any direct or indirect familial re-
8 lationship, or any contractual, corporate, or fi-
9 nancial relationship other than that created by
10 the instruments by which title to the facility is
11 conveyed or financed.”; and

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

13 “(h) LISTING OF PARTICULAR PARCELS.—

14 “(1) DEFINITION.—In subsection (a)(8)(C) and
15 paragraph (2) of this subsection, the term ‘parcel of
16 real property’ means a parcel, lot, or tract of land
17 that has a separate legal description from that of
18 any other parcel, lot, or tract of land the legal de-
19 scription and ownership of which has been recorded
20 in accordance with the law of the State in which it
21 is located.

22 “(2) STATUTORY CONSTRUCTION.—Nothing in
23 subsection (a)(8)(C) limits the Administrator’s au-
24 thority under section 104 to obtain access to and
25 undertake response actions at any parcel of real

property to which a released hazardous substance, pollutant, or contaminant has migrated in the ground water.”.

(2) REVISION OF NATIONAL PRIORITIES LIST.—

(A) IN GENERAL.—The President shall annually revise the National Priorities List to conform with the amendments made by paragraph (1), based on individual delisting recommendations made by each Regional Administrator of the Environmental Protection Agency.

(B) DELISTED PARCELS.—In complying with this paragraph, the President shall delist not more than 20 individual parcels of real property from the National Priorities List in any 1 calendar year.

(c) CONFORMING AMENDMENT.—Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by striking “of this section” and inserting “and the exemptions and limitations stated in this section”.

SEC. 103. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION OF BONA FIDE PROSPECTIVE PURCHASER.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of

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

3 “(39) BONA FIDE PROSPECTIVE PURCHASER.—

4 The term ‘bona fide prospective purchaser’ means a
 5 person that acquires ownership of a facility after the
 6 date of enactment of this paragraph, or a tenant of
 7 such a person, that establishes each of the following
 8 by a preponderance of the evidence:

9 “(A) DISPOSAL PRIOR TO ACQUISITION.—

10 All deposition of hazardous substances at the
 11 facility occurred before the person acquired the
 12 facility.

13 “(B) INQUIRIES.—

14 “(i) IN GENERAL.—The person made
 15 all appropriate inquiries into the previous
 16 ownership and uses of the facility and the
 17 facility’s real property in accordance with
 18 generally accepted good commercial and
 19 customary standards and practices.

20 “(ii) STANDARDS AND PRACTICES.—

21 The standards and practices referred to in
 22 paragraph (35)(B)(ii) or those issued or
 23 adopted by the Administrator under that
 24 paragraph shall be considered to satisfy
 25 the requirements of this subparagraph.

1 “(iii) RESIDENTIAL USE.—In the case
2 of property for residential or other similar
3 use purchased by a nongovernmental or
4 noncommercial entity, a facility inspection
5 and title search that reveal no basis for
6 further investigation shall be considered to
7 satisfy the requirements of this subpara-
8 graph.

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

13 “(D) CARE.—The person exercised appro-
14 priate care with respect to each hazardous sub-
15 stance found at the facility by taking reasonable
16 steps to stop any continuing release, prevent
17 any threatened future release and prevent or
18 limit human or natural resource exposure to
19 any previously released hazardous substance.

20 “(E) COOPERATION, ASSISTANCE, AND AC-
21 CESS.—The person provides full cooperation,
22 assistance, and access to persons that are re-
23 sponsible for response actions at the vessel or
24 facility, including the cooperation and access
25 necessary for the installation, integrity, oper-

1 ation, and maintenance of any complete or par-
2 tial response actions at the vessel or facility.

3 “(F) INSTITUTIONAL CONTROL.—The per-
4 son does not impede the effectiveness or integ-
5 rity of any institutional control employed at the
6 vessel or facility.

7 “(G) REQUESTS; SUBPOENAS.—The person
8 complies with any request for information or
9 administrative subpoena issued by the President
10 under this Act.

11 “(H) NO AFFILIATION.—The person is not
12 affiliated through any familial or corporate rela-
13 tionship with any person that is or was a party
14 potentially responsible for response costs at the
15 facility.”.

16 (b) AMENDMENT.—Section 107 of the Comprehen-
17 sive Environmental Response, Compensation, and Liabil-
18 ity Act of 1980 (42 U.S.C. 9607) (as amended by section
19 102) is amended by adding at the end the following:

20 “(p) PROSPECTIVE PURCHASER AND WINDFALL
21 LIEN.—

22 “(1) LIMITATION ON LIABILITY.—Notwith-
23 standing subsection (a), a bona fide prospective pur-
24 chaser whose potential liability for a release or
25 threatened release is based solely on the purchaser’s

1 being considered to be an owner or operator of a fa-
2 cility shall not be liable as long as the bona fide pro-
3 spective purchaser does not impede the performance
4 of a response action or natural resource restoration.

5 “(2) LIEN.—If there are unrecovered response
6 costs at a facility for which an owner of the facility
7 is not liable by reason of subsection (n)(1) and each
8 of the conditions described in paragraph (3) is met,
9 the United States shall have a lien on the facility,
10 or may obtain from an appropriate responsible party
11 a lien on any other property or other assurances of
12 payment satisfactory to the Administrator, for such
13 unrecovered costs.

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

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

19 “(B) FAIR MARKET VALUE.—The response
20 action increases the fair market value of the fa-
21 cility above the fair market value of the facility
22 that existed 180 days before the response action
23 was initiated.

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

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

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

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

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

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

14 **SEC. 104. SAFE HARBOR INNOCENT LANDHOLDERS.**

15 (a) AMENDMENT.—Section 101(35) of the Com-
16 prehensive Environmental Response, Compensation, and
17 Liability Act of 1980 (42 U.S.C. 9601(35)) is amended—

18 (1) in subparagraph (A)—

19 (A) in the matter that precedes clause (i),
20 by striking “deeds or” and inserting “deeds,
21 easements, leases, or”; and

22 (B) in the matter that follows clause (iii)—

23 (i) by striking “he” and inserting “the
24 defendant”; and

1 (ii) by striking the period at the end
2 and inserting “, has provided full coopera-
3 tion, assistance, and facility access to the
4 persons that are responsible for response
5 actions at the facility, including the co-
6 operation and access necessary for the in-
7 stallation, integrity, operation, and mainte-
8 nance of any complete or partial response
9 action at the facility, and has taken no ac-
10 tion that impeded the effectiveness or in-
11 tegrity of any institutional control em-
12 ployed under section 121 at the facility.”;
13 and

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

16 “(B) REASON TO KNOW.—

17 “(i) ALL APPROPRIATE INQUIRIES.—
18 To establish that the defendant had no
19 reason to know of the matter described in
20 subparagraph (A)(i), the defendant must
21 show that—

22 “(I) at or prior to the date on
23 which the defendant acquired the fa-
24 cility, the defendant undertook all ap-
25 propriate inquiries into the previous

1 ownership and uses of the facility in
2 accordance with generally accepted
3 good commercial and customary
4 standards and practices; and

5 “(II) the defendant took reason-
6 able steps to stop any continuing re-
7 lease, prevent any threatened future
8 release, and prevent or limit human or
9 natural resource exposure to any pre-
10 viously released hazardous substance.

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

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

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

23 “(iii) ALTERNATIVE STANDARDS AND
24 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 fol-
16 lowing:

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;

(D) the degree of obviousness of the presence or likely presence of contamination at the property; and

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

TITLE II—STATE RESPONSE PROGRAMS

SEC. 201. STATE RESPONSE PROGRAMS.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 103(a)) is amended by adding at the end the following:

“(40) FACILITY SUBJECT TO STATE CLEANUP.—The term ‘facility subject to State cleanup’ means a facility that—

“(A) is not listed or proposed for listing on the National Priorities List; or

“(B) has been proposed for listing on the National Priorities List, but for which the Administrator has notified the State in writing that the Administrator has deferred final listing of the facility pending completion of a remedial action under State authority at the facility.

“(41) QUALIFYING STATE RESPONSE PROGRAM.—The term ‘qualifying State response program’ means

1 a State program that includes the elements de-
 2 scribed in section 128(b).”.

3 (b) QUALIFYING STATE RESPONSE PROGRAMS.—
 4 Title I of the Comprehensive Environmental Response,
 5 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
 6 et seq.) (as amended by section 101(a)) is amended by
 7 adding at the end the following:

8 **“SEC. 128. QUALIFYING STATE RESPONSE PROGRAMS.**

9 “(a) ASSISTANCE TO STATES.—The Administrator
 10 shall provide grants to States to establish and expand
 11 qualifying State response programs that include the ele-
 12 ments listed in subsection (b).

13 “(b) ELEMENTS.—The elements of a qualifying State
 14 response program are the following:

15 “(1) Oversight and enforcement authorities or
 16 other mechanisms that are adequate to ensure
 17 that—

18 “(A) response actions will protect human
 19 health and the environment and be conducted
 20 in accordance with applicable Federal and State
 21 law; and

22 “(B) in the case of a voluntary response
 23 action, if the person conducting the voluntary
 24 response action fails to complete the necessary
 25 response activities, including operation and

1 maintenance or long-term monitoring activities,
2 the necessary response activities are completed.

3 “(2) Adequate opportunities for public partici-
4 pation, including prior notice and opportunity for
5 comment in appropriate circumstances, in selecting
6 response actions.

7 “(3) Mechanisms for approval of a response ac-
8 tion plan, or a requirement for certification or simi-
9 lar documentation from the State to the person con-
10 ducting a response action indicating that the re-
11 sponse is complete.

12 “(c) ENFORCEMENT IN CASES OF A RELEASE SUB-
13 JECT TO A STATE PLAN.—

14 “(1) ENFORCEMENT.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), in the case of a release or
17 threatened release of a hazardous substance at
18 a facility subject to State cleanup, neither the
19 President nor any other person may use any
20 authority under this Act to take an enforcement
21 action against any person regarding any matter
22 that is within the scope of a response action
23 that is being conducted or has been completed
24 under State law.

1 “(B) EXCEPTIONS.—The President may
2 bring an enforcement action under this Act
3 with respect to a facility described in subpara-
4 graph (A) if—

5 “(i) the enforcement action is author-
6 ized under section 104;

7 “(ii) the State requests that the Presi-
8 dent provide assistance in the performance
9 of a response action and that the enforce-
10 ment bar in subparagraph (A) be lifted;

11 “(iii) at a facility at which response
12 activities are ongoing the Administrator—

13 “(I) makes a written determina-
14 tion that the State is unwilling or un-
15 able to take appropriate action, after
16 the Administrator has provided the
17 Governor notice and an opportunity to
18 cure; and

19 “(II) the Administrator deter-
20 mines that the release or threat of re-
21 lease constitutes a public health or en-
22 vironmental emergency under section
23 104(a)(4);

24 “(iv) the Administrator determines
25 that contamination has migrated across a

1 State line, resulting in the need for further
2 response action to protect human health or
3 the environment; or

4 “(v) in the case of a facility at which
5 all response actions have been completed,
6 the Administrator—

7 “(I) makes a written determina-
8 tion that the State is unwilling or un-
9 able to take appropriate action, after
10 the Administrator has provided the
11 Governor notice and an opportunity to
12 cure; and

13 “(II) makes a written determina-
14 tion that the facility presents a sub-
15 stantial risk that requires further re-
16 mediation to protect human health or
17 the environment, as evidenced by—

18 “(aa) newly discovered infor-
19 mation regarding contamination
20 at the facility;

21 “(bb) the discovery that
22 fraud was committed in dem-
23 onstrating attainment of stand-
24 ards at the facility; or

1 “(cc) a failure of the remedy
2 or a change in land use giving
3 rise to a clear threat of exposure.

4 “(C) EPA NOTIFICATION.—

5 “(i) IN GENERAL.—In the case of a
6 facility at which there is a release or
7 threatened release of a hazardous sub-
8 stance, pollutant, or contaminant and for
9 which the Administrator intends to under-
10 take an administrative or enforcement ac-
11 tion, the Administrator, prior to taking the
12 administrative or enforcement action, shall
13 notify the State of the action the Adminis-
14 trator intends to take and wait for an ac-
15 knowledgment from the State under clause
16 (ii).

17 “(ii) STATE RESPONSE.—Not later
18 than 48 hours after receiving a notice from
19 the Administrator under clause (i), the
20 State shall notify the Administrator if the
21 facility is currently or has been subject to
22 a cleanup conducted under State law.

23 “(iii) PUBLIC HEALTH OR ENVIRON-
24 MENTAL EMERGENCY.—If the Adminis-
25 trator finds that a release or threatened

1 release constitutes a public health or envi-
 2 ronmental emergency under section
 3 104(a)(4), the Administrator may take ap-
 4 propriate action immediately after giving
 5 notification under clause (i) without wait-
 6 ing for State acknowledgment.

7 “(2) COST OR DAMAGE RECOVERY ACTIONS.—
 8 Paragraph (1) shall not apply to an action brought
 9 by a State, Indian Tribe, or general purpose unit of
 10 local government for the recovery of costs or dam-
 11 ages under this Act.

12 “(3) SAVINGS PROVISION.—

13 “(A) EXISTING AGREEMENTS.—A memo-
 14 randum of agreement, memorandum of under-
 15 standing, or similar agreement between the
 16 President and a State or Indian tribe defining
 17 Federal and State or tribal response action re-
 18 sponsibilities that was in effect as of the date
 19 of enactment of this section with respect to a
 20 facility to which paragraph (1)(C) does not
 21 apply shall remain effective until the agreement
 22 expires in accordance with the terms of the
 23 agreement.

24 “(B) NEW AGREEMENTS.—Nothing in this
 25 subsection precludes the President from enter-

1 ing into an agreement with a State or Indian
2 tribe regarding responsibility at a facility to
3 which paragraph (1)(C) does not apply.

4 “(4) STATE REIMBURSEMENT AND CERTIFI-
5 CATION.—

6 “(A) IN GENERAL.—On making a finding
7 under this section that a State is unwilling or
8 unable to take appropriate action to address a
9 public health or environmental emergency, the
10 President may require that the State reimburse
11 the Hazardous Substance Superfund for re-
12 sponse costs incurred by the United States.

13 “(B) CERTIFICATION.—On making a find-
14 ing under this section that a State is unwilling
15 or unable to take appropriate action to address
16 a public health or environmental emergency at
17 3 separate facilities within any 1-year period,
18 the President may notify the Governor of the
19 State that this section shall not apply in the
20 State until the President certifies that the
21 State’s cleanup program is adequate to ensure
22 that response actions will protect human health
23 and the environment.”.

1 **SEC. 202. NATIONAL PRIORITIES LIST COMPLETION.**

2 (a) IN GENERAL.—Section 105 of the Comprehensive
3 Environmental Response, Compensation, and Liability Act
4 of 1980 (42 U.S.C. 9605) is amended by striking sub-
5 section (b) and inserting the following:

6 “(b) NATIONAL PRIORITIES LIST COMPLETION.—

7 “(1) IN GENERAL.—Not later than 2 years
8 after the date of enactment of this paragraph, the
9 President shall complete the evaluation of all facili-
10 ties classified as awaiting a National Priorities List
11 decision to determine the risk or danger to public
12 health or welfare or the environment posed by each
13 facility as compared with the other facilities.

14 “(2) REQUIREMENT OF REQUEST BY THE GOV-
15 ERNOR OF A STATE.—No facility shall be added to
16 the National Priorities List without the President
17 having first received the concurrence of the Governor
18 of the State in which the facility is located.”.

19 (b) INDEPENDENT CERCLA COST ANALYSIS.—

20 (1) IN GENERAL.—From amounts appropriated
21 under section 111(a) of the Comprehensive Environ-
22 mental Response, Compensation, and Liability Act
23 of 1980 (42 U.S.C. 9611(a)), the Administrator
24 shall fund a cooperative agreement for an inde-
25 pendent analysis of the projected 10-year costs for
26 the implementation of the program under that Act.

1 (2) COMPLETION.—The independent analysis
2 under paragraph (1) shall be completed not later
3 than 180 days after the date of enactment of this
4 Act.

5 **SEC. 203. FEDERAL EMERGENCY REMOVAL AUTHORITY.**

6 Section 104(c)(1) of the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9604(c)(1)) is amended—

9 (1) in subparagraph (C), by striking “consistent
10 with the remedial action to be taken” and inserting
11 “not inconsistent with any remedial action that has
12 been selected or is anticipated at the time of any re-
13 moval action at a facility,”;

14 (2) by striking “\$2,000,000” and inserting
15 “\$5,000,000”; and

16 (3) by striking “12 months” and inserting “3
17 years”.

18 **SEC. 204. STATE COST SHARE.**

19 Section 104(c) of the Comprehensive Environmental
20 Response, Compensation, and Liability Act of 1980 (42
21 U.S.C. 9604(c)) is amended—

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

24 “(c) MISCELLANEOUS LIMITATIONS AND REQUIRE-
25 MENTS.—

1 “(1) CONTINUANCE OF OBLIGATIONS FROM
2 FUND.—Unless”;

3 (2) in paragraph (1), by striking “taken obliga-
4 tions” and inserting “taken, obligations”;

5 (3) by striking “(2) The President” and insert-
6 ing the following:

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

8 (4) by striking paragraph (3) and inserting the
9 following:

10 “(3) STATE COST SHARE.—

11 “(A) IN GENERAL.—The Administrator
12 shall not provide any funding for remedial ac-
13 tion under this section unless the State in
14 which the release occurs first enters into a con-
15 tract or cooperative agreement with the Admin-
16 istrator that provides assurances that the State
17 will pay, in cash or through in-kind contribu-
18 tions, 10 percent of the costs of—

19 “(i) the remedial action; and

20 “(ii) operation and maintenance costs.

21 “(B) STATE-OPERATED FACILITIES.—Not-
22 withstanding subparagraph (A), the Adminis-
23 trator may require a State contribution, in cash
24 or in-kind, of 50 percent of the costs of any
25 sums expended in response to a release at a fa-

1 cility that was operated by the State or a polit-
 2 ical subdivision of the State, either directly or
 3 through a contractual relationship or otherwise,
 4 at the time of any disposal of hazardous sub-
 5 stances therein.

6 “(C) ACTIVITIES WITH RESPECT TO WHICH
 7 STATE COST SHARE IS REQUIRED.—No State
 8 cost share shall be required except for remedial
 9 actions under this section.

10 “(D) INDIAN TRIBES.—The requirements
 11 of this paragraph shall not apply in the case of
 12 remedial action to be taken on land or water—

13 “(i) held by an Indian Tribe;

14 “(ii) held by the United States in
 15 trust for an Indian Tribe;

16 “(iii) held by a member of an Indian
 17 Tribe (if the land or water is subject to a
 18 trust restriction on alienation); or

19 “(iv) within the borders of an Indian
 20 reservation.”.

1 **TITLE III—FAIR SHARE LIABIL-**
 2 **ITY ALLOCATIONS AND PRO-**
 3 **TECTIONS**

4 **SEC. 301. LIABILITY EXEMPTIONS AND LIMITATIONS.**

5 (a) DEFINITIONS.—Section 101 of the Comprehen-
 6 sive Environmental Response, Liability, and Compensa-
 7 tion Act of 1980 (42 U.S.C. 9601) (as amended by section
 8 201(a)) is amended by adding at the end the following:

9 “(42) CODISPOSAL LANDFILL.—The term ‘co-
 10 disposal landfill’ means a landfill that—

11 “(A) was listed on the National Priorities
 12 List as of the date of enactment of this para-
 13 graph;

14 “(B) received for disposal municipal solid
 15 waste or sewage sludge; and

16 “(C) may also have received, before the ef-
 17 fective date of requirements under subtitle C of
 18 the Solid Waste Disposal Act (42 U.S.C. 6921
 19 et seq.), any hazardous waste, if the landfill
 20 contains predominantly municipal solid waste or
 21 sewage sludge that was transported to the land-
 22 fill from outside the facility.

23 “(43) MUNICIPAL SOLID WASTE.—

1 “(A) IN GENERAL.—The term ‘municipal
2 solid waste’ means waste material generated
3 by—

4 “(i) a household (such as a single- or
5 multi-family residence) or a public lodging
6 (such as a hotel or motel); or

7 “(ii) a commercial, institutional, or in-
8 dustrial source, to the extent that—

9 “(I) the waste material is sub-
10 stantially similar to waste normally
11 generated by a household or public
12 lodging (without regard to differences
13 in volume); or

14 “(II) the waste material is col-
15 lected and disposed of with other mu-
16 nicipal solid waste or municipal sew-
17 age sludge as part of normal munic-
18 ipal solid waste collection services,
19 and, with respect to each source from
20 which the waste material is collected,
21 qualifies for a de micromis exemption
22 under section 107(r).

23 “(B) INCLUSIONS.—The term ‘municipal
24 solid waste’ includes food and yard waste,
25 paper, clothing, appliances, consumer product

1 packaging, disposable diapers, office supplies,
 2 cosmetics, glass and metal food containers, ele-
 3 mentary or secondary school science laboratory
 4 waste, and household hazardous waste.

5 “(C) EXCLUSIONS.—The term ‘municipal
 6 solid waste’ does not include combustion ash
 7 generated by resource recovery facilities or mu-
 8 nicipal incinerators or waste from manufac-
 9 turing or processing (including pollution con-
 10 trol) operations.

11 “(44) MUNICIPALITY.—

12 “(A) IN GENERAL.—The term ‘munici-
 13 pality’ means a political subdivision of a State
 14 (including a city, county, village, town, town-
 15 ship, borough, parish, school district, sanitation
 16 district, water district, or other public entity
 17 performing local governmental functions).

18 “(B) INCLUSIONS.—The term ‘munici-
 19 pality’ includes a natural person acting in the
 20 capacity of an official, employee, or agent of
 21 any entity described in subparagraph (A) in the
 22 performance of a governmental function.

23 “(45) SEWAGE SLUDGE.—The term ‘sewage
 24 sludge’ means solid, semisolid, or liquid residue re-
 25 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) EXEMPTIONS AND LIMITATIONS.—

4 (1) IN GENERAL.—Section 107 of the Com-
 5 prehensive Environmental Response, Compensation,
 6 and Liability Act of 1980 (42 U.S.C. 9607) (as
 7 amended by section 103(b)) is amended by adding at
 8 the end the following:

9 “(q) LIABILITY EXEMPTION FOR MUNICIPAL SOLID
 10 WASTE AND SEWAGE SLUDGE.—No person shall be liable
 11 to the United States or to any other person (including li-
 12 ability for contribution) under this section for any re-
 13 sponse costs at a facility listed on the National Priorities
 14 List to the extent that—

15 “(1) the person is liable solely under paragraph
 16 (3) or (4) of subsection (a);

17 “(2) the person is liable based on an arrange-
 18 ment for disposal or treatment of, an arrangement
 19 with a transporter for transport for disposal or
 20 treatment of, or an acceptance for transport for dis-
 21 posal or treatment at a facility of, municipal solid
 22 waste;

23 “(3) the person provides full cooperation, assist-
 24 ance, and access to persons that are responsible for
 25 response actions at the vessel or facility, including

1 the cooperation and access necessary for the installa-
2 tion, integrity, operation, and maintenance of any
3 complete or partial response actions at the vessel or
4 facility;

5 “(4) the person does not impede the effective-
6 ness or integrity of any institutional control em-
7 ployed at the vessel or facility;

8 “(5) the person complies with any request for
9 information or administrative subpoena issued by
10 the President under this Act; and

11 “(6) the person is—

12 “(A) an owner, operator, or lessee of resi-
13 dential property from which all of the person’s
14 municipal solid waste was generated;

15 “(B) a business entity that, during the tax
16 year preceding the date of transmittal of writ-
17 ten notification that the business is potentially
18 liable, employs not more than 100 individuals;
19 or

20 “(C) a nonprofit organization described in
21 section 501(c)(3) of the Internal Revenue Code
22 of 1986 that employs not more than 100 indi-
23 viduals, from which all of the person’s munic-
24 ipal solid waste was generated.

25 “(r) DE MICROMIS CONTRIBUTOR EXEMPTION.—

1 “(1) IN GENERAL.—In the case of a vessel or
2 facility listed on the National Priorities List, no per-
3 son described in paragraph (3) or (4) of subsection
4 (a) 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 if the activity
7 specifically attributable to the person resulted in the
8 disposal or treatment of not more than 200 pounds
9 or 110 gallons of material containing a hazardous
10 substance at the vessel or facility before the date of
11 enactment of this subsection, or such greater
12 amount as the Administrator may determine by reg-
13 ulation.

14 “(2) EXCEPTION.—Paragraph (1) shall not
15 apply in a case in which the Administrator deter-
16 mines that material described in paragraph (1) has
17 contributed or may contribute significantly, individ-
18 ually, to the amount of response costs at the facility.

19 “(s) SMALL BUSINESS EXEMPTION.—

20 “(1) IN GENERAL.—No person shall be liable to
21 the United States or to any person (including liabil-
22 ity for contribution) under this section for any re-
23 sponse costs at a facility listed on the National Pri-
24 orities List if—

1 “(A) the person is liable solely under para-
2 graph (3) or (4) or subsection (a);

3 “(B) the person is a business that—

4 “(i) during the taxable year preceding
5 the date of transmittal of notification that
6 the business is a potentially responsible
7 party, had full- and part-time employees
8 whose combined time was equivalent to 75
9 or fewer full-time employees; or

10 “(ii) for that taxable year reported
11 \$3,000,000 or less in gross revenue;

12 “(C) the activity specifically attributable to
13 the person resulted in the disposal or treatment
14 of material containing a hazardous substance at
15 the vessel or facility before the date of enact-
16 ment of this subsection;

17 “(D) the person is not affiliated through
18 any familial or corporate relationship with any
19 person that is or was a party potentially re-
20 sponsible for response costs at the facility;

21 “(E) the person provides full cooperation,
22 assistance, and access to persons that are re-
23 sponsible for response actions at the vessel or
24 facility, including the cooperation and access
25 necessary for the installation, integrity, oper-

1 ation, and maintenance of any complete or par-
2 tial response actions at the vessel or facility;

3 “(F) the person does not impede the effec-
4 tiveness or integrity of any institutional control
5 employed at the vessel or facility; and

6 “(G) the person complies with any request
7 for information or administrative subpoena
8 issued by the President under this Act.

9 “(2) EXCEPTION.—Paragraph (1) shall not
10 apply in a case in which the material containing a
11 hazardous substance referred to in subparagraph
12 (A) contributed significantly or could contribute sig-
13 nificantly to the cost of the response action with re-
14 spect to the facility.

15 “(t) MUNICIPAL SOLID WASTE AND SEWAGE
16 SLUDGE EXEMPTION AND LIMITATIONS.—

17 “(1) CONTRIBUTION OF MUNICIPAL SOLID
18 WASTE AND MUNICIPAL SEWAGE SLUDGE.—

19 “(A) IN GENERAL.—The condition stated
20 in this subparagraph is that the liability of the
21 potentially responsible party is for response
22 costs based on paragraph (3) or (4) of sub-
23 section (a) and on the potentially responsible
24 party’s having arranged for disposal or treat-
25 ment of, arranged with a transporter for trans-

port for disposal or treatment of, or accepted
 for transport for disposal or treatment of, mu-
 nicipal solid waste or municipal sewage sludge
 at a facility listed on the National Priorities
 List.

“(B) SETTLEMENT AMOUNT.—

“(i) IN GENERAL.—The President
 shall offer a settlement to a party referred
 to in clause (i) with respect to liability
 under paragraph (3) or (4) of subsection
 (a) on the basis of a payment of \$5.30 per
 ton of municipal solid waste or municipal
 sewage sludge that the President estimates
 is attributable to the party.

“(ii) REVISION.—

“(I) IN GENERAL.—The Presi-
 dent may revise the settlement
 amount under clause (i) by regulation.

“(II) BASIS.—A revised settle-
 ment amount under subclause (I)
 shall reflect the estimated per-ton cost
 of closure and post-closure activities
 at a representative facility containing
 only municipal solid waste.

1 “(C) CONDITIONS.—The provisions for set-
 2 tlement described in this subparagraph shall
 3 not apply with respect to a facility where there
 4 is no waste except municipal solid waste or mu-
 5 nicipal sewage sludge.

6 “(D) ADJUSTMENT FOR INFLATION.—The
 7 Administrator may by guidance periodically ad-
 8 just the settlement amount under subparagraph
 9 (B) to reflect changes in the Consumer Price
 10 Index (or other appropriate index, as deter-
 11 mined by the Administrator).

12 “(2) MUNICIPAL OWNERS AND OPERATORS.—

13 “(A) AGGREGATE LIABILITY OF LARGE
 14 MUNICIPALITIES.—

15 “(i) IN GENERAL.—With respect to a
 16 codisposal landfill that is owned or oper-
 17 ated in whole or in part by municipalities
 18 with a population of 100,000 or more (ac-
 19 cording to the 1990 census), and that is
 20 not subject to the criteria for solid waste
 21 landfills published under subtitle D of the
 22 Solid Waste Disposal Act (42 U.S.C. 6941
 23 et seq.) at part 258 of title 40, Code of
 24 Federal Regulations (or a successor regula-
 25 tion), the aggregate amount of liability of

1 such municipal owners and operators for
2 response costs under this section shall be
3 not greater than 20 percent of such costs.

4 “(ii) INCREASED AMOUNT.—The
5 President may increase the percentage
6 under clause (i) to not more than 35 per-
7 cent with respect to a municipality if the
8 President determines that the municipality
9 committed specific acts that exacerbated
10 environmental contamination or exposure
11 with respect to the facility.

12 “(iii) DECREASED AMOUNT.—The
13 President may decrease the percentage
14 under clause (i) with respect to a munici-
15 pality to not less than 10 percent if the
16 President determines that the municipality
17 took specific acts of mitigation during the
18 operation of the facility to avoid environ-
19 mental contamination or exposure with re-
20 spect to the facility.

21 “(B) AGGREGATE LIABILITY OF SMALL
22 MUNICIPALITIES.—

23 “(i) IN GENERAL.—With respect to a
24 codisposal landfill that is owned or oper-
25 ated in whole or in part by municipalities

1 with a population of less than 100,000 (ac-
2 cording to the 1990 census), that is not
3 subject to the criteria for solid waste land-
4 fills published under subtitle D of the Solid
5 Waste Disposal Act (42 U.S.C. 6941 et
6 seq.) at part 258 of title 40, Code of Fed-
7 eral Regulations (or a successor regula-
8 tion), the aggregate amount of liability of
9 such municipal owners and operators for
10 response costs under this section shall be
11 not greater than 10 percent of such costs.

12 “(ii) INCREASED AMOUNT.—The
13 President may increase the percentage
14 under clause (i) to not more than 20 per-
15 cent with respect to a municipality if the
16 President determines that the municipality
17 committed specific acts that exacerbated
18 environmental contamination or exposure
19 with respect to the facility.

20 “(iii) DECREASED AMOUNT.—The
21 President may decrease the percentage
22 under clause (i) with respect to a munici-
23 pality to not less than 5 percent if the
24 President determines that the municipality
25 took specific acts of mitigation during the

1 operation of the facility to avoid environ-
2 mental contamination or exposure with re-
3 spect to the facility.

4 “(3) APPLICABILITY.—This subsection shall not
5 apply to—

6 “(A) a person that acted in violation of
7 subtitle C of the Solid Waste Disposal Act (42
8 U.S.C. 6921 et seq.) at a facility that is subject
9 to a response action under this title, if the vio-
10 lation pertains to a hazardous substance the re-
11 lease of threat of release of which caused the
12 incurrence of response costs at the facility;

13 “(B) a person that owned or operated a
14 codisposal landfill in violation of the applicable
15 requirements for municipal solid waste landfill
16 units under subtitle D of the Solid Waste Dis-
17 posal Act (42 U.S.C. 6941 et seq.) after Octo-
18 ber 9, 1991, if the violation pertains to a haz-
19 ardous substance the release of threat of release
20 of which caused the incurrence of response
21 costs at the facility; or

22 “(C) a person under section 122(p)(2)(G).

23 “(4) PERFORMANCE OF RESPONSE ACTIONS.—
24 As a condition of a settlement with a municipality
25 under this subsection, the President may require

1 that the municipality perform or participate in the
2 performance of the response actions at the facility.

3 “(5) NOTICE OF APPLICABILITY.—The Presi-
4 dent shall provide a potentially responsible party
5 with notice of the potential applicability of this sec-
6 tion in each written communication with the party
7 concerning the potential liability of the party.

8 “(u) RECYCLING TRANSACTIONS.—

9 “(1) LIABILITY CLARIFICATION.—As provided
10 in paragraphs (2), (3), (4), and (5) of this sub-
11 section, a person who arranged for the recycling of
12 recyclable material or transported such material
13 shall not be liable under paragraphs (3) or (4) of
14 subsection (a) with respect to such material. A de-
15 termination whether or not any person shall be liable
16 under paragraph (3) or (4) of subsection (a) for any
17 transaction not covered by paragraphs (2) and (3),
18 (4), or (5) of this subsection shall be made, without
19 regard to paragraphs (2), (3), (4) and (5) of this
20 subsection, on a case-by-case basis, based on the in-
21 dividual facts and circumstances of such transaction.

22 “(2) RECYCLABLE MATERIAL DEFINED.—For
23 purposes of this subsection, the term ‘recyclable ma-
24 terial’ means scrap paper, scrap plastic, scrap glass,
25 scrap textiles, scrap rubber (other than whole tires),

1 scrap metal, or spent lead-acid, spent nickel-cad-
2 mium, and other spent batteries, as well as minor
3 amounts of material incident to or adhering to the
4 scrap material as a result of its normal and cus-
5 tomary use prior to becoming scrap; except that
6 such term shall not include—

7 “(A) shipping containers with a capacity
8 from 30 liters to 3,000 liters, whether intact or
9 not, having any hazardous substance (but not
10 metal bits and pieces or hazardous substance
11 that form an integral part of the container)
12 contained in or adhering thereto; or

13 “(B) any item of material containing poly-
14 chlorinated biphenyls (PCBs) in excess of 50
15 parts per million (ppm) or any new standard
16 promulgated pursuant to applicable Federal
17 laws.

18 “(3) TRANSACTIONS INVOLVING SCRAP PAPER,
19 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Trans-
20 actions involving scrap paper, scrap plastic, scrap
21 glass, scrap textiles, or scrap rubber (other than
22 whole tires) shall be deemed to be arranging for re-
23 cycling if the person who arranged for the trans-
24 action (by selling recyclable material or otherwise ar-
25 ranging for the recycling of recyclable material) can

1 demonstrate by a preponderance of the evidence that
2 all of the following criteria were met at the time of
3 the transaction:

4 “(A) The recyclable material met a com-
5 mercial specification grade.

6 “(B) A market existed for the recyclable
7 material.

8 “(C) A substantial portion of the recyclable
9 material was made available for use as feed-
10 stock for the manufacture of a new saleable
11 product.

12 “(D) The recyclable material could have
13 been a replacement or substitute for a virgin
14 raw material, or the product to be made from
15 the recyclable material could have been a re-
16 placement or substitute for a product made, in
17 whole or in part, from a virgin raw material.

18 “(E) For transactions occurring 90 days
19 or more after the date of enactment of this sub-
20 section, the person exercised reasonable care to
21 determine that the facility where the recyclable
22 material was handled, processed, reclaimed, or
23 otherwise managed by another person (herein-
24 after in this subsection referred to as a ‘con-
25 suming facility’) was in compliance with sub-

1 stantive (not procedural or administrative) pro-
2 visions of any Federal, State, or local environ-
3 mental law or regulation, or compliance order
4 or decree issued pursuant thereto, applicable to
5 the handling, processing, reclamation, storage,
6 or other management activities associated with
7 recyclable material.

8 “(F) For purposes of this paragraph, ‘rea-
9 sonable care’ shall be determined using criteria
10 that include (but are not limited to)—

11 “(i) the price paid in the recycling
12 transaction;

13 “(ii) the ability of the person to detect
14 the nature of the consuming facility’s oper-
15 ations concerning its handling, processing,
16 reclamation, or other management activi-
17 ties associated with recyclable material;
18 and

19 “(iii) the result of inquiries made to
20 the appropriate Federal, State, or local en-
21 vironmental agency (or agencies) regarding
22 the consuming facility’s past and current
23 compliance with substantive (not proce-
24 dural or administrative) provisions of any
25 Federal, State, or local environmental law

1 or regulation, or compliance order or de-
 2 cree issued pursuant thereto, applicable to
 3 the handling, processing, reclamation, stor-
 4 age, or other management activities associ-
 5 ated with the recyclable material. For the
 6 purposes of this subparagraph, a require-
 7 ment to obtain a permit applicable to the
 8 handling, processing, reclamation, or other
 9 management activity associated with the
 10 recyclable materials shall be deemed to be
 11 a substantive provision.

12 “(4) TRANSACTIONS INVOLVING SCRAP
 13 METAL.—

14 “(A) Transactions involving scrap metal
 15 shall be deemed to be arranging for recycling if
 16 the person who arranged for the transaction (by
 17 selling recyclable material or otherwise arrang-
 18 ing for the recycling of recyclable material) can
 19 demonstrate by a preponderance of the evidence
 20 that at the time of the transaction—

21 “(i) the person met the criteria set
 22 forth in paragraph (3) with respect to the
 23 scrap metal;

24 “(ii) the person was in compliance
 25 with any applicable regulations or stand-

ards regarding the storage, transport,
management, or other activities associated
with the recycling of scrap metal that the
Administrator promulgates under the Solid
Waste Disposal Act subsequent to the en-
actment of this subsection and with regard
to transactions occurring after the effective
date of such regulations or standards; and

“(iii) the person did not melt the
scrap metal prior to the transaction.

“(B) For purposes of subparagraph
(A)(iii), melting of scrap metal does not include
the thermal separation of 2 or more materials
due to differences in their melting points (re-
ferred to as ‘sweating’).

“(C) For purposes of this paragraph, the
term ‘scrap metal’ means—

“(i) bits and pieces of metal parts
(e.g., bars, turnings, rods, sheets, wire) or
metal pieces that may be combined to-
gether with bolts or soldering (e.g., radi-
ators, scrap automobiles, railroad box
cars), which when worn or superfluous can
be recycled; and

1 “(ii) notwithstanding subparagraph
2 (A)(iii), metal byproducts from copper and
3 copper-based alloys that—

4 “(I) are not 1 of the primary
5 products of a secondary production
6 process;

7 “(II) are not solely or separately
8 produced by the production process;

9 “(III) are not stored in a pile or
10 surface impoundment; and

11 “(IV) are sold to another recycler
12 that is not speculatively accumulating
13 such metal byproducts;

14 except for scrap metals that the Administrator
15 excludes from this definition by regulation.

16 “(5) TRANSACTIONS INVOLVING BATTERIES.—
17 Transactions involving spent lead-acid batteries,
18 spent nickel-cadmium batteries, or other spent bat-
19 teries shall be deemed to be arranging for recycling
20 if the person who arranged for the transaction (by
21 selling recyclable material or otherwise arranging for
22 the recycling of recyclable material) can demonstrate
23 by a preponderance of the evidence that at the time
24 of the transaction—

1 “(A) the person met the criteria set forth
2 in paragraph (3) with respect to the spent lead-
3 acid batteries, spent nickel-cadmium batteries,
4 or other spent batteries, but the person did not
5 recover the valuable components of such bat-
6 teries; and

7 “(B)(i) with respect to transactions involv-
8 ing lead-acid batteries, the person was in com-
9 pliance with applicable Federal environmental
10 regulations or standards, and any amendments
11 thereto, regarding the storage, transport, man-
12 agement, or other activities associated with the
13 recycling of spent lead-acid batteries;

14 “(ii) with respect to transactions involving
15 nickel-cadmium batteries, Federal environ-
16 mental regulations or standards are in effect re-
17 garding the storage, transport, management, or
18 other activities associated with the recycling of
19 spent nickel-cadmium batteries, and the person
20 was in compliance with applicable regulations or
21 standards or any amendments thereto; or

22 “(iii) with respect to transactions involving
23 other spent batteries, Federal environmental
24 regulations or standards are in effect regarding
25 the storage, transport, management, or other

1 activities associated with the recycling of such
2 batteries, and the person was in compliance
3 with applicable regulations or standards or any
4 amendments thereto.

5 “(6) EXCLUSIONS.—

6 “(A) The exemptions set forth in para-
7 graphs (3), (4), and (5) shall not apply if—

8 “(i) the person had an objectively rea-
9 sonable basis to believe at the time of the
10 recycling transaction—

11 “(I) that the recyclable material
12 would not be recycled;

13 “(II) that the recyclable material
14 would be burned as fuel, or for energy
15 recovery or incineration; or

16 “(III) for transactions occurring
17 before 90 days after the date of the
18 enactment of this subsection, that the
19 consuming facility was not in compli-
20 ance with a substantive (not proce-
21 dural or administrative) provision of
22 any Federal, State, or local environ-
23 mental law or regulation, or compli-
24 ance order or decree issued pursuant
25 thereto, applicable to the handling,

1 processing, reclamation, or other man-
2 agement activities associated with the
3 recyclable material;

4 “(ii) the person had reason to believe
5 that hazardous substances had been added
6 to the recyclable material for purposes
7 other than processing for recycling; or

8 “(iii) the person failed to exercise rea-
9 sonable care with respect to the manage-
10 ment and handling of the recyclable mate-
11 rial (including adhering to customary in-
12 dustry practices current at the time of the
13 recycling transaction designed to minimize,
14 through source control, contamination of
15 the recyclable material by hazardous sub-
16 stances).

17 “(B) For purposes of this paragraph, an
18 objectively reasonable basis for belief shall be
19 determined using criteria that include (but are
20 not limited to) the size of the person’s business,
21 customary industry practices (including cus-
22 tomary industry practices current at the time of
23 the recycling transaction designed to minimize,
24 through source control, contamination of the re-
25 cyclable material by hazardous substances), the

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

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

“(D) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection—

“(i) affects any rights, defenses, or liabilities under section 107(a) of any person with respect to any transaction involving any material other than a recyclable material subject to paragraph (1) of this subsection; or

“(ii) relieves a plaintiff of the burden of proof that the elements of liability under section 107(a) are met under the particular circumstances of any transaction for which liability is alleged.

1 “(v) RECYCLING TRANSACTIONS INVOLVING USED
2 OIL.—

3 “(1) DEFINITION OF USED OIL.—In this sub-
4 section, the term ‘used oil’ has the meaning given
5 the term in section 1004 of the Solid Waste Dis-
6 posal Act (42 U.S.C. 6903), except that the term—

7 “(A) includes any synthetic oil; and

8 “(B) does not include an oil that is subject
9 to regulation under section 6(e)(10)(A) of the
10 Toxic Substances Control Act (15 U.S.C.
11 2605(e)(10)(A)).

12 “(2) TRANSACTIONS INVOLVING USED OIL.—
13 Transactions involving recyclable material that con-
14 sists of used oil shall be considered to be arranging
15 for recycling if the person that arranged for the
16 transaction (by selling recyclable material or other-
17 wise arranging for the recycling of recyclable mate-
18 rial)—

19 “(A) did not mix the recyclable material
20 with a hazardous substance following the re-
21 moval of the used oil from service; and

22 “(B) demonstrates by a preponderance of
23 the evidence that—

24 “(i) at the time of the transaction, the
25 recyclable material was sent to a facility

1 that recycled used oil by using it as a feed-
2 stock for the manufacture of a new sale-
3 able product; or

4 “(ii)(I) at the time of the transaction,
5 the recyclable material or the product to be
6 made from the recyclable material could
7 have been a replacement or substitute, in
8 whole or in part, for a virgin raw material;

9 “(II) in the case of a transaction oc-
10 ccurring on or after the date that is 90 days
11 after the date of enactment of this section,
12 the person exercised reasonable care to de-
13 termine that the facility where the recycla-
14 ble material would be handled, processed,
15 reclaimed, or otherwise managed by an-
16 other person was in compliance with sub-
17 stantive provisions of any Federal, State,
18 or local environmental law (including a
19 regulation promulgated or a compliance
20 order or decree issued under the law) that
21 is applicable to the handling, processing,
22 reclamation, storage, or other management
23 activities associated with the recyclable
24 material; and

1 “(III) the person was in compliance
2 with any regulations or standards for the
3 management of used oil promulgated under
4 the Solid Waste Disposal Act (42 U.S.C.
5 6901 et seq.) that were in effect on the
6 date of the transaction.

7 “(3) REASONABLE CARE.—For purposes of this
8 subsection, reasonable care shall be determined
9 using criteria that include—

10 “(A) the price paid in the recycling trans-
11 action;

12 “(B) the ability of the person to detect the
13 nature of the consuming facility’s operations
14 concerning its handling, processing, reclama-
15 tion, or other management activities associated
16 with the recyclable material; and

17 “(C) the result of inquiries made to the ap-
18 propriate Federal, State, or local environmental
19 agency (or agencies) regarding the consuming
20 facility’s past and current compliance with sub-
21 stantive provisions of any Federal, State, or
22 local environmental law (including a regulation
23 promulgated or a compliance order or decree
24 issued under the law), applicable to the han-
25 dling, processing, reclamation, storage, or other

1 management activities associated with recycla-
2 ble material.

3 “(w) LIMITATION OF LIABILITY OF RAILROAD OWN-
4 ERS.—

5 “(1) IN GENERAL.—Notwithstanding subsection
6 (a), a person that substantially complies with para-
7 graph (2) with respect to a facility shall not be liable
8 under this Act to the extent that liability is based
9 solely on the status of the person as a railroad
10 owner or operator of a spur track (including a spur
11 track over land subject to an easement), to a facility
12 that is owned or operated by a person that is not af-
13 filiated with the railroad owner or operator, if—

14 “(A) the spur track provides access to a
15 main line or branch line track that is owned or
16 operated by the railroad;

17 “(B) the spur track is not more than 10
18 miles long; and

19 “(C) the railroad owner or operator does
20 not cause or contribute to a release or threat-
21 ened release at the spur track.

22 “(2) REQUIREMENTS FOR LIMITATION OF LI-
23 ABILITY.—The requirement of this paragraph is
24 that—

1 “(A) to the extent that the person has
2 operational control over a facility—

3 “(i) the person provides full coopera-
4 tion to, assistance to, and access to the fa-
5 cility by, persons that are responsible for
6 response actions at the facility (including
7 the cooperation and access necessary for
8 the installation, integrity, operation, and
9 maintenance of any complete or partial re-
10 sponse action at the facility); and

11 “(ii) the person takes no action to im-
12 pede the effectiveness or integrity of any
13 institutional control employed under sec-
14 tion 121 at the facility; and

15 “(B) the person complies with any request
16 for information or administrative subpoena
17 issued by the President under this Act.

18 “(x) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND
19 EDUCATIONAL ORGANIZATIONS.—

20 “(1) LIMITATION ON LIABILITY.—Subject to
21 paragraph (2), if an organization described in sec-
22 tion 101(20)(I) holds legal or equitable title to a ves-
23 sel or facility as a result of a charitable gift that is
24 allowable as a deduction under section 170, 2055, or
25 2522 of the Internal Revenue Code of 1986 (deter-

1 mined without regard to dollar limitations), the li-
2 ability of the organization shall be limited to the
3 lesser of the fair market value of the vessel or facil-
4 ity or the actual proceeds of the sale of the vessel
5 or facility received by the organization.

6 “(2) CONDITIONS.—In order for an organiza-
7 tion described in section 101(20)(I) to be eligible for
8 the limited liability described in paragraph (1), the
9 organization shall—

10 “(A) substantially comply with the require-
11 ment of subsection (y) with respect to the vessel
12 or facility;

13 “(B) provide full cooperation and assist-
14 ance to the United States in identifying and lo-
15 cating persons who recently owned, operated, or
16 otherwise controlled activities at the vessel or
17 facility;

18 “(C) establish by a preponderance of the
19 evidence that all active disposal of hazardous
20 substances at the vessel or facility occurred be-
21 fore the organization acquired the vessel or fa-
22 cility; and

23 “(D) establish by a preponderance of the
24 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
4 affects the liability of a person other than a person
5 described in section 101(20)(I) that meets the condi-
6 tions specified in paragraph (2).”.

7 (2) TRANSITION RULES.—

8 (A) IN GENERAL.—The exemptions under
9 subsections (q), (r), (s), (v), and (w) of section
10 107 of the Comprehensive Environmental Re-
11 sponse, Compensation, and Liability Act of
12 1980 (42 U.S.C. 9607(q), 9607(r), 9607(s)) (as
13 added by paragraph (1)) shall not apply to any
14 administrative settlement or any settlement or
15 judgment approved by a United States Federal
16 District Court—

17 (i) before the date of enactment of
18 this Act; or

19 (ii) not later than 180 days after the
20 date of enactment of this Act.

21 (B) EFFECT ON PENDING OR CONCLUDED
22 ACTIONS.—The exemptions provided in sub-
23 section (u) of the Comprehensive Environ-
24 mental Response, Compensation, and Liability
25 Act of 1980 (42 U.S.C. 9607(u)) (as added by

1 paragraph (1)) shall not affect any concluded
2 judicial or administrative action or any pending
3 judicial action initiated by the United States
4 prior to the date of enactment of this Act.

5 (c) SERVICE STATION DEALERS.—Section 114(c) of
6 the Comprehensive Environmental Response, Compensa-
7 tion, and Liability Act of 1980 (42 U.S.C. 9614(c)) is
8 amended—

9 (1) in paragraph (1)—

10 (A) by striking “No person” and inserting
11 “A person”;

12 (B) by striking “may recover” and insert-
13 ing “may not recover”;

14 (C) by striking “if such recycled oil” and
15 inserting “unless the service station dealer”;
16 and

17 (D) by striking subparagraphs (A) and (B)
18 and inserting the following:

19 “(A) mixed the recycled oil with any other
20 hazardous substance; or

21 “(B) did not store, treat, transport, or oth-
22 erwise manage the recycled oil in compliance
23 with any applicable regulations or standards
24 promulgated under section 3014 of the Solid
25 Waste Disposal Act (42 U.S.C. 6935) and other

1 applicable authorities that were in effect on the
 2 date of such activity.”; and
 3 (2) by striking paragraph (4).

4 **SEC. 302. EXPEDITED SETTLEMENT FOR CERTAIN PARTIES.**

5 (a) PARTIES ELIGIBLE.—Section 122(g) of the Com-
 6 prehensive Environmental Response, Compensation, and
 7 Liability Act of 1980 (42 U.S.C. 9622(g)) is amended—

8 (1) by striking the subsection heading and in-
 9 serting the following:

10 “(g) EXPEDITED FINAL SETTLEMENT.—”;

11 (2) in paragraph (1)—

12 (A) by redesignating subparagraph (B) as
 13 subparagraph (C);

14 (B) by striking “(1)” and all that follows
 15 through subparagraph (A) and inserting the fol-
 16 lowing:

17 “(1) PARTIES ELIGIBLE.—

18 “(A) IN GENERAL.—As expeditiously as
 19 practicable, the President shall—

20 “(i) notify each potentially responsible
 21 party that meets 1 or more of the condi-
 22 tions stated in subparagraphs (B), (C),
 23 and (D) of the party’s eligibility for a set-
 24 tlement; and

1 “(ii) offer to reach a final administra-
2 tive or judicial settlement with the party.

3 “(B) DE MINIMIS CONTRIBUTION.—The
4 condition stated in this subparagraph is that
5 the liability is for response costs based on para-
6 graph (3) or (4) of section 107(a) and the par-
7 ty’s contribution of a hazardous substance at a
8 facility is de minimis. For the purposes of this
9 subparagraph, a potentially responsible party’s
10 contribution shall be considered to be de mini-
11 mis only if the President determines that both
12 of the following criteria are met:

13 “(i) MINIMAL AMOUNT OF MATE-
14 RIAL.—The amount of material containing
15 a hazardous substance contributed by the
16 potentially responsible party to the facility
17 is minimal relative to the total amount of
18 material containing hazardous substances
19 at the facility. The amount of a potentially
20 responsible party’s contribution shall be
21 presumed to be minimal if the amount is
22 1 percent or less of the total amount of
23 material containing a hazardous substance
24 at the facility, unless the Administrator

promptly identifies a greater threshold based on site-specific factors.

“(ii) HAZARDOUS EFFECTS.—The material containing a hazardous substance contributed by the potentially responsible party does not present toxic or other hazardous effects that are significantly greater than the toxic or other hazardous effects of other material containing a hazardous substance at the facility.”;

(C) in subparagraph (C) (as redesignated by subparagraph (A))—

(i) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and adjusting the margins appropriately;

(ii) by striking “(C) The potentially responsible party” and inserting the following:

“(C) OWNERS OF REAL PROPERTY.—

“(i) IN GENERAL.—The condition stated in this subparagraph is that the potentially responsible party”; and

(iii) by striking “This subparagraph (B)” and inserting the following:

1 “(ii) APPLICABILITY.—Clause (i)”;

2 and

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

4 “(D) REDUCTION IN SETTLEMENT
5 AMOUNT BASED ON LIMITED ABILITY TO PAY.—

6 “(i) IN GENERAL.—The condition
7 stated in this subparagraph is that—

8 “(I) the potentially responsible
9 party is—

10 “(aa) a natural person;

11 “(bb) a small business; or

12 “(cc) a municipality;

13 “(II) the potentially responsible
14 party demonstrates an inability to pay
15 or has only a limited ability to pay re-
16 sponse costs, as determined by the
17 Administrator under a regulation pro-
18 mulgated by the Administrator,
19 after—

20 “(aa) public notice and op-
21 portunity for comment; and

22 “(bb) consultation with the
23 Administrator of the Small Busi-
24 ness Administration and the Sec-

1 retary of Housing and Urban De-
2 velopment; and

3 “(III) in the case of a potentially
4 responsible party that is a small busi-
5 ness, the potentially responsible party
6 does not qualify for the small business
7 exemption under section 107(s) be-
8 cause of the application of section
9 107(s)(2).

10 “(ii) SMALL BUSINESSES.—

11 “(I) DEFINITION OF SMALL
12 BUSINESS.—In this subparagraph, the
13 term ‘small business’ means a busi-
14 ness entity that—

15 “(aa) during the taxable
16 year preceding the date of trans-
17 mittal of notification that the
18 business is a potentially respon-
19 sible party, had full- and part-
20 time employees whose combined
21 time was equivalent to that of 75
22 or fewer full-time employees or
23 for that taxable year reported
24 \$3,000,000 or less in gross rev-
25 enue; and

1 “(bb) is not affiliated
2 through any familial or corporate
3 relationship with any person that
4 is or was a party potentially re-
5 sponsible for response costs at
6 the facility.

7 “(II) CONSIDERATIONS.—At the
8 request of a small business, the Presi-
9 dent shall take into consideration the
10 ability of the small business to pay re-
11 sponse costs and still maintain its
12 basic business operations, including—

13 “(aa) consideration of the
14 overall financial condition of the
15 small business; and

16 “(bb) demonstrable con-
17 straints on the ability of the
18 small business to raise revenues.

19 “(III) INFORMATION.—A small
20 business requesting settlement under
21 this paragraph shall promptly provide
22 the President with all information
23 needed to determine the ability of the
24 small business to pay response costs.

1 “(IV) DETERMINATION.—A
2 small business shall demonstrate the
3 extent of its ability to pay response
4 costs, and the President shall perform
5 any analysis that the President deter-
6 mines may assist in demonstrating the
7 impact of a settlement on the ability
8 of the small business to maintain its
9 basic operations. The President, in
10 the discretion of the President, may
11 perform such an analysis for any
12 other party or request the other party
13 to perform the analysis.

14 “(V) ALTERNATIVE PAYMENT
15 METHODS.—If the President deter-
16 mines that a small business is unable
17 to pay its total settlement amount im-
18 mediately, the President shall consider
19 such alternative payment methods as
20 may be necessary or appropriate.

21 “(iii) MUNICIPALITIES.—

22 “(I) CONSIDERATIONS.—The
23 President shall consider the inability
24 or limited ability to pay of a munici-
25 pality to the extent that the munici-

1 pality provides information with re-
2 spect to—

3 “(aa) the general obligation
4 bond rating and information
5 about the most recent bond issue
6 for which the rating was pre-
7 pared;

8 “(bb) the amount of total
9 available funds (other than dedi-
10 cated funds or State assistance
11 payments for remediation of inac-
12 tive hazardous waste sites);

13 “(cc) the amount of total
14 operating revenues (other than
15 obligated or encumbered reve-
16 nues);

17 “(dd) the amount of total
18 expenses;

19 “(ee) the amounts of total
20 debt and debt service;

21 “(ff) per capita income and
22 cost of living;

23 “(gg) real property values;

24 “(hh) unemployment infor-
25 mation; and

1 “(ii) population information.

2 “(II) EVALUATION OF IMPACT.—

3 A municipality may submit for consid-
4 eration by the President an evaluation
5 of the potential impact of the settle-
6 ment on the provision of municipal
7 services and the feasibility of making
8 delayed payments or payments over
9 time.

10 “(III) RISK OF DEFAULT OR VIO-
11 LATION.—A municipality may estab-
12 lish an inability to pay for purposes of
13 this subparagraph by showing that
14 payment of its liability under this Act
15 would—

16 “(aa) create a substantial
17 demonstrable risk that the mu-
18 nicipality would default on debt
19 obligations existing as of the time
20 of the showing, go into bank-
21 ruptcy, be forced to dissolve, or
22 be forced to make budgetary cut-
23 backs that would substantially re-
24 duce the level of protection of
25 public health and safety; or

1 “(bb) necessitate a violation
2 of legal requirements or limita-
3 tions of general applicability con-
4 cerning the assumption and
5 maintenance of fiscal municipal
6 obligations.

7 “(IV) OTHER FACTORS REL-
8 EVANT TO SETTLEMENTS WITH MU-
9 NICIPALITIES.—In determining an ap-
10 propriate settlement amount with a
11 municipality under this subparagraph,
12 the President may consider other rel-
13 evant factors, including the fair mar-
14 ket value of any in-kind services that
15 the municipality may provide to sup-
16 port the response action at the facil-
17 ity.

18 “(iv) OTHER POTENTIALLY RESPON-
19 SIBLE PARTIES.—This subparagraph does
20 not affect the President’s authority to
21 evaluate the ability to pay of a potentially
22 responsible party other than a natural per-
23 son, small business, or municipality or to
24 enter into a settlement with such other
25 party based on that party’s ability to pay.

1 “(E) ADDITIONAL CONDITIONS FOR EXPE-
2 DITED SETTLEMENTS.—

3 “(i) BASIS OF DETERMINATION.—If
4 the President determines that a potentially
5 responsible party is not eligible for settle-
6 ment under this paragraph, the President
7 shall state the reasons for the determina-
8 tion in writing to any potentially respon-
9 sible party that requests a settlement
10 under this paragraph.”.

11 (b) SETTLEMENT OFFERS.—Section 122(g) of the
12 Comprehensive Environment Response, Compensation,
13 and Liability Act of 1980 (42 U.S.C. 9622(g)) is
14 amended—

15 (1) by redesignating paragraph (6) as para-
16 graph (7); and

17 (2) by inserting after paragraph (5) the fol-
18 lowing:

19 “(6) SETTLEMENT OFFERS.—

20 “(A) NOTIFICATION.—As soon as prac-
21 ticable after receipt of sufficient information to
22 make a determination, the Administrator shall
23 notify any person that the Administrator deter-
24 mines is eligible under paragraph (1) of the

1 person's eligibility for the expedited final settle-
 2 ment.

3 “(B) OFFERS.—As soon as practicable
 4 after receipt of sufficient information, the Ad-
 5 ministrator shall submit a written settlement
 6 offer to each person that the Administrator de-
 7 termines, based on information available to the
 8 Administrator at the time at which the deter-
 9 mination is made, to be eligible for a settlement
 10 under paragraph (1).

11 “(C) INFORMATION.—At the time at which
 12 the Administrator submits an offer under para-
 13 graph (1), the Administrator shall, at the re-
 14 quest of the recipient of the offer, make avail-
 15 able to the recipient any information available
 16 under section 552 of title 5, United States
 17 Code, on which the Administrator bases the set-
 18 tlement offer, and if the settlement offer is
 19 based in whole or in part on information not
 20 available under that section, so inform the re-
 21 cipient.”.

22 **SEC. 303. FAIR SHARE SETTLEMENTS AND STATUTORY OR-**
 23 **PHAN SHARES.**

24 (a) IN GENERAL.—Section 122 of the Comprehensive
 25 Environmental Response, Compensation, and Liability Act

1 of 1980 (42 U.S.C. 9622) is amended by adding at the
 2 end the following:

3 “(n) FAIR SHARE ALLOCATION.—

4 “(1) PROCESS.—The President shall initiate an
 5 impartial fare share allocation, conducted by a neu-
 6 tral third party, at National Priorities List facilities,
 7 if—

8 “(A) there is more than 1 potentially re-
 9 sponsible party that is not—

10 “(i) eligible for an exemption or limi-
 11 tation under subsection (q), (r), (s), (t),
 12 (u), (v), (w), or (x) of section 107;

13 “(ii) eligible for a settlement under
 14 subsection (g); or

15 “(iii) insolvent, bankrupt, or defunct;
 16 and

17 “(B) 1 or more of the potentially respon-
 18 sible parties agree to bear the costs of the allo-
 19 cation (which shall be considered to be response
 20 costs under this Act) under such conditions as
 21 the President may prescribe.

22 “(2) PRE-ALLOCATION SETTLEMENTS.—

23 “(A) IN GENERAL.—Before initiating the
 24 allocation, the President may—

1 “(i) provide a 90-day period of nego-
 2 tiation; and

3 “(ii) extend the period of negotiation
 4 described in clause (i) for an additional 90
 5 days.

6 “(B) ALTERNATIVE DISPUTE RESOLU-
 7 TION.—The President may use the services of
 8 an alternative dispute resolution neutral to as-
 9 sist in negotiations.

10 “(C) SETTLEMENT.—On expiration of a
 11 negotiation period described in subparagraph
 12 (A), the President may offer to settle the liabil-
 13 ity of 1 or more of the parties.

14 “(D) RESPONSE ACTION.—

15 “(i) IN GENERAL.—As a condition of
 16 a settlement under this subsection, the
 17 President may require 1 or more parties to
 18 conduct a response action at the facility.

19 “(ii) FUNDING AND COSTS.—An
 20 agreement for a required response action
 21 described in clause (i) may include mixed
 22 funding under this section, including the
 23 forgiveness of past costs.

24 “(3) EXPEDITED ALLOCATION.—

1 “(A) IN GENERAL.—At the request of any
 2 party subject to the allocation, the allocator
 3 may first accept the President’s estimate of the
 4 statutory orphan share specified under sub-
 5 section (o).

6 “(B) SETTLEMENT BASED ON STATUTORY
 7 ORPHAN SHARE.—The President may offer to
 8 settle the liability of any party based on—

9 “(i) the statutory orphan share as ac-
 10 cepted by the allocator;

11 “(ii) the party’s pro rata share of the
 12 statutory orphan; and

13 “(iii) other terms and conditions ac-
 14 ceptable to the United States.

15 “(4) FACTORS.—In conducting an allocation
 16 under this subsection, the allocator, without regard
 17 to any theory of joint and several liability, shall esti-
 18 mate the fair share of each potentially responsible
 19 party using principles of equity, the best information
 20 reasonably available to the President, and the fol-
 21 lowing factors:

22 “(A) the quantity of hazardous substances
 23 contributed by each party;

24 “(B) the degree of toxicity of hazardous
 25 substances contributed by each party;

1 “(C) the mobility of hazardous substances
2 contributed by each party;

3 “(D) the degree of involvement of each
4 party in the generation, transportation, treat-
5 ment, storage, or disposal of hazardous sub-
6 stances;

7 “(E) the degree of care exercised by each
8 party with respect to hazardous substances,
9 taking into account the characteristics of the
10 hazardous substances;

11 “(F) the cooperation of each party in con-
12 tributing to any response action and in pro-
13 viding complete and timely information to the
14 United States or the allocator; and

15 “(G) such other equitable factors as the
16 President considers appropriate.

17 “(5) SCOPE.—A fair share allocation under this
18 subsection shall include any response costs at a Na-
19 tional Priorities List facility that are not addressed
20 in an administrative settlement or a settlement or a
21 judgment approved by a United States Federal Dis-
22 trict Court.

23 “(6) SETTLEMENTS BASED ON ALLOCATIONS.—

24 “(A) IN GENERAL.—A party may settle
25 any liability to the United States for response

1 costs under this Act for its allocated fair share,
2 including a reasonable risk premium that re-
3 flects uncertainties existing at the time of set-
4 tlement.

5 “(B) COMPLETION OF OBLIGATIONS.—A
6 person that is undertaking a response action
7 under an administrative order issued under sec-
8 tion 106 or has entered into a settlement decree
9 with the United States of a State as of the date
10 of enactment of this subsection shall complete
11 the person’s obligations under the order or set-
12 tlement decree.

13 “(C) JOINT REJECTION.—The President
14 and the Attorney General may jointly reject an
15 allocation report, in writing, if—

16 “(i) the allocation does not provide a
17 basis for settlement that is fair, reason-
18 able, and consistent with the objectives of
19 this Act; or

20 “(ii) the allocation process was di-
21 rectly and substantially affected by bias,
22 procedural error, fraud, or unlawful con-
23 duct.

24 “(D) SUBSEQUENT ALLOCATION.—

1 “(i) IN GENERAL.—If the Adminis-
 2 trator and the Attorney General jointly re-
 3 ject an allocation report under subpara-
 4 graph (C), the President shall initiate an-
 5 other impartial fair share allocation.

6 “(ii) COSTS.—The United States shall
 7 bear 50 percent of the costs of a subse-
 8 quent allocation if an initial allocation is
 9 rejected under subparagraph (C)(i).

10 “(7) UNFUNDED AND UNATTRIBUTABLE
 11 SHARES.—Any share attributable to an insolvent,
 12 defunct, or bankrupt party, or a share that cannot
 13 be attributed to any particular party, shall be allo-
 14 cated among any responsible parties not described in
 15 subsection (q), (r), (s), (t), (u), (v), (w), or (x) of
 16 section 107 or subsection (g) of this section.

17 “(8) SAVINGS.—The President may use the au-
 18 thority under this section to enter into settlement
 19 agreements with respect to any response action that
 20 is the subject of an allocation at any time.

21 “(9) EFFECT ON PRINCIPLES OF LIABILITY.—
 22 Except as provided in paragraph (4), the authoriza-
 23 tion of an allocation process under this section shall
 24 not modify or affect the principles of liability under

1 this title as determined by the courts of the United
2 States.

3 “(o) STATUTORY ORPHAN SHARES.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the statutory orphan share is the difference
6 between—

7 “(A) the liability of a party described in
8 subsection (q), (s), (t), (u), (v), (w), or (x) of
9 section 107 or subsection (g) of this section;
10 and

11 “(B) the President’s estimate of the liabil-
12 ity of the party, notwithstanding any exemption
13 from or limitation on liability in this Act, for
14 response costs that are not addressed in an ad-
15 ministrative settlement or a settlement or judg-
16 ment approved by a United States district
17 court.

18 “(2) DETERMINATION OF STATUTORY ORPHAN
19 SHARES.—The President shall include an estimate of
20 the statutory orphan share of a party described in
21 section 107(t) or subsection (g) of this section,
22 based on the best information reasonably available
23 to the President, at any time at which the President
24 seeks judicial approval of a settlement with the
25 party.

1 “(3) TRANSITION RULE AND SUBSEQUENT SET-
2 TLEMENTS.—

3 “(A) IN GENERAL.—Each settlement pre-
4 sented for judicial approval on or after the date
5 that is 1 year after the date of enactment of
6 this subsection shall include an estimate of the
7 statutory orphan share for each party described
8 in subsections (q), (s), and (u) of section 107
9 that is otherwise liable at a facility for costs ad-
10 dressed in the settlement.

11 “(B) SUBSEQUENT SETTLEMENTS.—The
12 President shall include in a subsequent settle-
13 ment at the same facility a revised statutory or-
14 phan share estimate if the President—

15 “(i) determines that the subsequent
16 settlement includes a new statutory orphan
17 share; or

18 “(ii) has good cause to revise an ear-
19 lier statutory orphan share estimate.

20 “(4) FINAL SETTLEMENTS.—

21 “(A) IN GENERAL.—An administrative set-
22 tlement, or a judicially-approved consent decree
23 or settlement, shall identify the statutory or-
24 phan share owing if the consent decree or set-
25 tlement includes all funding necessary to com-

plete remedial project construction for the last operable unit at the facility.

“(B) FUNDING AND REIMBURSEMENT.—A consent decree or settlement described in subparagraph (A) shall include funding of statutory orphan shares in accordance with this section to the extent funds are available.

“(C) FACILITIES UNDER UNILATERAL ORDER ONLY.—

“(i) IN GENERAL.—At a facility proceeding under an order under section 106(a) that includes all funding necessary to complete remedial project construction for the last operable unit at the facility, if the order has been issued to 1 or more parties, and all other potentially responsible parties not subject to the order at the facility are described in subsection (q), (r), (s), (t), (u), (v), (w), or (x) of section 107 or subsection (g) of this section or are insolvent, bankrupt, or defunct, the Administrator shall, on petition by the party performing under section 106(b), calculate the statutory orphan share for the facility.

1 “(ii) PAYMENT.—Payment of any
 2 statutory orphan share under this subpara-
 3 graph shall be made in accordance with
 4 subsection (p)(2)(J), as if the parties had
 5 settled.

6 “(p) GENERAL PROVISIONS APPLICABLE TO STATU-
 7 TORY ORPHAN SHARES AND FAIR SHARE SETTLE-
 8 MENTS.—

9 “(1) IN GENERAL.—A fair share settlement
 10 under subsection (n) and a statutory orphan share
 11 under subsection (o) shall be subject to paragraph
 12 (2).

13 “(2) PROVISIONS APPLICABLE TO STATUTORY
 14 ORPHAN SHARES AND FAIR SHARE SETTLEMENTS.—

15 “(A) STAY OF LITIGATION AND ENFORCE-
 16 MENT.—

17 “(i) IN GENERAL.—All contribution
 18 and cost recovery actions under this Act
 19 against each party described in section
 20 107(t) and subsection (g) of this section
 21 are stayed until the Administrator offers
 22 those parties a settlement.

23 “(ii) SUSPENSION OF STATUTE OF
 24 LIMITATIONS.—Any statute of limitations
 25 applicable to an action described in clause

1 (i) is suspended during the period that a
 2 stay under this subparagraph is in effect.

3 “(B) FAILURE OR INABILITY TO COM-
 4 PLY.—If the President fails to fund a statutory
 5 orphan share, reimburse a party, or include a
 6 statutory orphan share estimate in any settle-
 7 ment when required to do so under this Act, the
 8 President shall not—

9 “(i) issue any new order under section
 10 106 at the facility to any non-Federal
 11 party; or

12 “(ii) commence or maintain any new
 13 or existing action to recover response costs
 14 at the facility.

15 “(C) AMOUNTS OWED.—

16 “(i) HAZARDOUS SUBSTANCE SUPER-
 17 FUND MANAGEMENT.—The President may
 18 provide partial statutory orphan share
 19 funding and partial reimbursement pay-
 20 ments to a party on a schedule that en-
 21 sures an equitable distribution of payments
 22 to all eligible parties on a timely basis.

23 “(ii) PRIORITY.—The priority for par-
 24 tial payments shall be based on the length

1 of time that has passed since the payment
2 obligation arose.

3 “(iii) PAYMENT FROM FUNDS MADE
4 AVAILABLE FOR SUBSEQUENT FISCAL
5 YEARS.—Any amounts payable in excess of
6 available appropriations in any fiscal year
7 shall be paid from amounts made available
8 for subsequent fiscal years, along with in-
9 terest on the unpaid balances at the rate
10 equal to that of the current average mar-
11 ket yield on outstanding marketable obliga-
12 tions of the United States with a maturity
13 of 1 year.

14 “(D) CONTRIBUTION PROTECTION.—

15 “(i) IN GENERAL.—A settlement
16 under this subsection, subsection (g), or
17 section 107(t) shall provide complete pro-
18 tection from all claims for contribution or
19 cost recovery for response costs that are
20 addressed in the settlement.

21 “(ii) COSTS BEYOND SCOPE OF ALLO-
22 CATION.—In the case of response costs at
23 a facility that, as a result of a prior, ad-
24 ministrative or judicially-approved settle-
25 ment at the facility, are not within the

1 scope of an allocation under subsection (n),
 2 a party shall retain the right to seek cost
 3 recovery or contribution from any other
 4 party in accordance with the prior settle-
 5 ment, except that no party may seek con-
 6 tribution for any response costs at the fa-
 7 cility from—

8 “(I) a party described in sub-
 9 section (q), (r), (s), (u), (v), (w), or
 10 (x) of section 107; or

11 “(II) a party that has settled its
 12 liability under section 107(t) or sub-
 13 section (g) of this section.

14 “(E) LIABILITY FOR ATTORNEY’S FEES
 15 FOR CERTAIN ACTIONS.—A person that, after
 16 the date of enactment of this subsection, com-
 17 mences a civil action for contribution under this
 18 Act against a person that is not liable by oper-
 19 ation of subsections (q), (r), (s), or (u) of sec-
 20 tion 107, or has resolved its liability to the
 21 United States under subsection (n), subsection
 22 (g), or section 107(t), shall be liable to that
 23 person for all reasonable costs of defending the
 24 action, including all reasonable attorney’s fees
 25 and expert witness fees.

“(F) ILLEGAL ACTIVITIES.—Subsections (q), (r), (s), (t), (u), (v), (w), and (x) of section 107 and subsection (g) of this section shall not apply to—

“(i) any person whose liability for response costs under section 107(a) is otherwise based on any act, omission, or status that is determined by a court or administrative body of competent jurisdiction, within the applicable statute of limitation, to have been a violation of any Federal or State law pertaining to the treatment, storage, disposal, or handling of hazardous substances if the violation pertains to a hazardous substance, the release or threat of release of which caused the incurrence of response costs at the vessel or facility;

“(ii) a person described in section 107(o); or

“(iii) a bona fide prospective purchaser.

“(G) EXCEPTION.—

“(i) IN GENERAL.—The President may decline to reimburse or offer a settlement to a potentially responsible party

1 under subsections (g) and (n) if the Presi-
2 dent makes a decision concerning a reim-
3 bursement or offer of a settlement under
4 clause (ii).

5 “(ii) REQUIREMENTS FOR REIM-
6 BURSEMENT OR OFFER OF A SETTLE-
7 MENT.—A potentially responsible party
8 may be denied a reimbursement or settle-
9 ment under clause (i)—

10 “(I) to the extent that the person
11 or entity has operational control over
12 a vessel or facility, if—

13 “(aa) the person or entity
14 fails to provide full cooperation
15 to, assistance to, and access to
16 the vessel or facility to persons
17 that are responsible for response
18 actions at the vessel or facility
19 (including the cooperation and
20 access necessary for the installa-
21 tion, integrity, operation, and
22 maintenance of any complete or
23 partial response actions at the
24 vessel or facility); or

1 “(bb) the person or entity
2 acts in such a way as to impede
3 the effectiveness or integrity of
4 any institutional control em-
5 ployed at the vessel or facility; or

6 “(II) if the person or entity fails
7 to comply with any request for infor-
8 mation or administrative subpoena
9 issued by the President under this
10 Act.

11 “(H) BASIS OF DETERMINATION.—If the
12 President determines that a potentially respon-
13 sible party is not eligible for settlement under
14 this paragraph, the President shall state the
15 reasons for the determination in writing to any
16 potentially responsible party that requests a
17 settlement under this paragraph.

18 “(I) WAIVER.—

19 “(i) RESPONSE COSTS IN ALLOCA-
20 TION.—A party that settles its liability
21 under this subsection waives the right to
22 seek cost recovery or contribution under
23 this Act for any response costs that are ad-
24 dressed in the allocation.

1 “(ii) RESPONSE COSTS OF FACIL-
 2 ITY.—A party that settles its liability
 3 under subsection (g) or section 107(t)
 4 waives its right to seek cost recovery or
 5 contribution under this Act for any re-
 6 sponse costs at the facility.

7 “(J) PERFORMANCE OF RESPONSE AC-
 8 TIONS.—

9 “(i) IN GENERAL.—Except as pro-
 10 vided in subparagraph (B), the President
 11 may require, as a condition of settlement
 12 under subsection (n) and section 107(t),
 13 that 1 or more parties conduct a response
 14 action at the facility.

15 “(ii) REIMBURSEMENT.—

16 “(I) IN GENERAL.—The Presi-
 17 dent shall reimburse a party that set-
 18 tles its liability under subsection (n)
 19 or section 107(t) for response costs
 20 incurred in performing a response ac-
 21 tion that exceed the amount of a set-
 22 tlement approved under subsection (n)
 23 or section 107(t).

24 “(II) PRO RATA REIMBURSE-
 25 MENT.—The President shall provide

1 equitable pro rata reimbursement to
 2 such parties on at least an annual
 3 basis.

4 “(iii) RESPONSE ACTIONS.—No party
 5 described in subsections (q), (r), (s), (u),
 6 (v), (w) or (x) of section 107 or subsection
 7 (g) of this section may be required to per-
 8 form a response action as a condition of
 9 settlement or ordered to conduct a re-
 10 sponse action under section 106.

11 “(K) JUDICIAL REVIEW.—

12 “(i) IN GENERAL.—A court shall not
 13 approve any settlement under this Act un-
 14 less the settlement includes an estimate of
 15 the statutory orphan share that is fair,
 16 reasonable and consistent with this Act.

17 “(ii) STATUTORY ORPHAN SHARE SET-
 18 TLEMENT.—If a court determines that an
 19 estimate of a statutory orphan share is not
 20 fair, reasonable, or consistent with this
 21 Act, the court may—

22 “(I) approve the settlement; and

23 “(II) disapprove and remand the
 24 estimate of the statutory orphan
 25 share.”.

1 (b) REGULATIONS.—The President shall issue regu-
2 lations to implement this title not later than 180 days
3 after the date of enactment of this Act.

4 (c) TECHNICAL AMENDMENT.—Section 106(b)(1) of
5 the Comprehensive Environmental Response, Compensa-
6 tion, and Liability Act of 1980 (42 U.S.C. 9706(b)(1))
7 is amended by adding at the end the following: ‘The con-
8 duct or approval of an allocation of liability under this
9 Act, including any settlement of liability with a party
10 based on the allocation, shall not constitute sufficient
11 cause for any party (including a party that settled its li-
12 ability based on the allocation) to willfully violate, or fail
13 or refuse to comply with, any order of the President under
14 subsection (a).’.

15 (d) LAW ENFORCEMENT AGENCIES NOT INCLUDED
16 AS OWNER OR OPERATOR.—Section 101(20)(D) of the
17 Comprehensive Environmental Response, Compensation,
18 and Liability Act of 1980 (42 U.S.C. 9601(20(D)) is
19 amended by inserting after “or control” the following:
20 “through seizure or otherwise in connection with law en-
21 forcement activity, or”.

22 (e) COMMON CARRIERS.—Section 107(b)(3) of the
23 Comprehensive Environmental Response, Compensation,
24 and Liability Act of 1980 (42 U.S.C. 9607(b)(3)) is

1 amended by striking “a published tariff and acceptance”
 2 and inserting “a contract”.

3 **SEC. 304. TREATMENT OF RELIGIOUS, CHARITABLE, SCI-**
 4 **ENTIFIC, AND EDUCATIONAL ORGANIZA-**
 5 **TIONS AS OWNERS OR OPERATORS.**

6 Section 101(20) of the Comprehensive Environmental
 7 Response, Compensation, and Liability Act of 1980 (42
 8 U.S.C. 9601(20)) is amended by adding at the end the
 9 following:

10 “(H) RELIGIOUS, CHARITABLE, SCI-
 11 ENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—
 12 The term ‘owner or operator’ includes an orga-
 13 nization described in section 501(c)(3) of the
 14 Internal Revenue Code of 1986 that is orga-
 15 nized and operated exclusively for religious,
 16 charitable, scientific, or educational purposes
 17 and that holds legal or equitable title to a vessel
 18 or facility.”.

19 **TITLE IV—REMEDY SELECTION**
 20 **AND NATURAL RESOURCE**
 21 **DAMAGES**

22 **SEC. 401. SELECTION AND IMPLEMENTATION OF REMEDIAL**
 23 **ACTIONS.**

24 (a) PREFERENCE FOR TREATMENT.—Section 121(b)
 25 of the Comprehensive Environmental Response Compensa-

1 tion, and Liability Act of 1980 (42 U.S.C. 9621(b)) is
2 amended by striking paragraph (1) and inserting the fol-
3 lowing:

4 “(1) PREFERENCE FOR TREATMENT.—

5 “(A) IN GENERAL.—For any discrete area
6 containing a principal hazardous constituent of
7 a hazardous substance, pollutant, or contami-
8 nant that, based on site specific factors, pre-
9 sents a substantial risk to human health or the
10 environment because of—

11 “(i) the high toxicity of the principal
12 hazardous constituent; or

13 “(ii) the high mobility of the principal
14 hazardous constituent;

15 the remedy selection process shall include a
16 preference for a remedial action that includes
17 treatment that reduces the risk posed by the
18 principal hazardous constituent over remedial
19 actions that do not include such treatment.

20 “(B) FINAL CONTAINMENT.—With respect
21 to a discrete area described in subparagraph
22 (A), the President may select a final contain-
23 ment remedy at a landfill or mining site or
24 similar facility if—

1 “(i)(I) the discrete area is small rel-
2 ative to the overall volume of waste or con-
3 tamination being addressed;

4 “(II) the discrete area is not readily
5 identifiable and accessible; and

6 “(III) without the presence of the dis-
7 crete area, containment would have been
8 selected as the appropriate remedy under
9 this subsection for the larger body of waste
10 or larger area of contamination in which
11 the discrete area is located; or

12 “(ii) the volume and size of the dis-
13 crete area is extraordinary compared to
14 other facilities listed on the National Prior-
15 ities List, and, because of the volume, size,
16 and other characteristics of the discrete
17 area, it is highly unlikely that any treat-
18 ment technology will be developed that
19 could be implemented at a reasonable
20 cost.”.

21 (b) COMPLIANCE WITH FEDERAL AND STATE
22 LAWS.—Section 121(d)(2) of the Comprehensive Environ-
23 mental Response, Compensation, and Liability Act of
24 1980 (42 U.S.C. 9621(d)(2)) is amended by striking sub-
25 paragraph (C) and inserting the following:

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

3 “(i) APPLICABLE REQUIREMENTS.—

4 “(I) IN GENERAL.—Subject to
5 clause (iii), a remedial action shall re-
6 quire, at the completion of the reme-
7 dial action, a level or standard of con-
8 trol for each hazardous substance,
9 pollutant, and contaminant that at
10 least attains the substantive require-
11 ments of all promulgated standards,
12 requirements, criteria, and limitations,
13 under—

14 “(aa) each Federal environ-
15 mental law, that are legally appli-
16 cable to the conduct or operation
17 of the remedial action or to the
18 level of cleanup for hazardous
19 substances, pollutants, or con-
20 taminants addressed by the re-
21 medial action;

22 “(bb) any State environ-
23 mental or facility siting law, that
24 are more stringent than any Fed-
25 eral standard, requirement, cri-

1 terion, or limitation and are le-
2 gally applicable to the conduct or
3 operation of the remedial action
4 or to the level of cleanup for haz-
5 ardous substances, pollutants, or
6 contaminants addressed by the
7 remedial action, and that the
8 State demonstrates are of general
9 applicability, publishes and iden-
10 tifies to the President in a timely
11 manner as being applicable to the
12 remedial action, and has consist-
13 ently applied to other remedial
14 actions in the State; and

15 “(cc) any more stringent
16 standard, requirement, criterion,
17 or limitation relating to an envi-
18 ronmental or facility siting law
19 promulgated by the State after
20 the date of enactment of the
21 Superfund Amendments and Re-
22 authorization Act of 1999 that
23 the State demonstrates is of gen-
24 eral applicability, publishes and
25 identifies to the President in a

1 timely manner as being applica-
2 ble to the remedial action, and
3 has consistently applied to other
4 remedial actions in the State.

5 “(II) CONTAMINATED MEDIA.—

6 Compliance with substantive provi-
7 sions of section 3004 of the Solid
8 Waste Disposal Act (42 U.S.C. 6924)
9 shall not be required with respect to
10 return, replacement, or disposal of
11 contaminated media (including residu-
12 als of contaminated media and other
13 solid wastes generated onsite in the
14 conduct of a remedial action) into the
15 same media in or very near then-exist-
16 ing areas of contamination onsite at a
17 facility.

18 “(ii) APPLICABILITY OF REQUIRE-

19 MENTS TO RESPONSE ACTIONS CON-
20 DUCTED ONSITE.—No procedural or ad-
21 ministrative requirement of any Federal,
22 State, or local law (including any require-
23 ment for a permit) shall apply to a re-
24 sponse action that is conducted onsite at a
25 facility if the response action is selected

1 and carried out in compliance with this
2 section.

3 “(iii) WAIVER PROVISIONS.—

4 “(I) IN GENERAL.—The Presi-
5 dent may select a remedial action at a
6 facility that meets the requirements of
7 subparagraph (B) that does not attain
8 a level or standard of control that is
9 at least equivalent to an applicable re-
10 quirement described in clause (i)(I) if
11 the President makes any of the fol-
12 lowing findings:

13 “(aa) PART OF REMEDIAL
14 ACTION.—The selected remedial
15 action is only part of a total re-
16 medial action that will attain the
17 applicable requirements of clause
18 (i)(I) when the total remedial ac-
19 tion is completed.

20 “(bb) GREATER RISK.—At-
21 tainment of the requirements of
22 clause (i)(I) will result in greater
23 risk to human health or the envi-
24 ronment than alternative options.

1 “(cc) TECHNICAL IMPRAC-
2 TICABILITY.—Attainment of the
3 requirements of clause (i)(I) is
4 technically impracticable.

5 “(dd) EQUIVALENT TO
6 STANDARD OF PERFORMANCE.—
7 The selected remedial action will
8 attain a standard of performance
9 that is equivalent to that re-
10 quired under clause (i)(I)
11 through use of another method
12 or approach.

13 “(ee) INCONSISTENT APPLI-
14 CATION.—With respect to a State
15 requirement made applicable
16 under clause (i)(I), the State has
17 not consistently applied (or dem-
18 onstrated the intention to apply
19 consistently) the requirement in
20 similar circumstances to other re-
21 medial actions in the State.

22 “(ff) BALANCE.—In the case
23 of a remedial action to be funded
24 predominantly under section 104
25 using amounts from the Fund, a

1 selection of a remedial action
2 that attains the level or standard
3 of control described in clause
4 (i)(I) will not provide a balance
5 between the need for protection
6 of public health and welfare and
7 the environment at the facility,
8 and the need to make amounts
9 from the Fund available to re-
10 spond to other facilities that may
11 present a threat to public health
12 or welfare or the environment,
13 taking into consideration the rel-
14 ative immediacy of the threats
15 presented by the various facili-
16 ties.

17 “(II) PUBLICATION.—The Presi-
18 dent shall publish any findings made
19 under subclause (I), including an ex-
20 planation and appropriate documenta-
21 tion and an explanation of how the se-
22 lected remedial action meets the re-
23 quirements of this section.

24 “(D) NO STANDARD.—If no applicable
25 Federal or State standard is established for a

1 specific hazardous substance, pollutant, or con-
2 taminant, a remedial action shall attain a
3 standard that the President determines to be
4 protective of human health and the environ-
5 ment.

6 **SEC. 402. USE OF RISK ASSESSMENT IN REMEDY SELEC-**
7 **TION.**

8 (a) IN GENERAL.—Section 121(a) of the Comprehen-
9 sive Environmental Response, Compensation, and Liabil-
10 ity Act of 1980 (42 U.S.C. 9621(a)) is amended by adding
11 at the end the following: “In selecting an appropriate re-
12 medial action, the President shall conduct and utilize a
13 facility-specific risk evaluation in accordance with section
14 129.”.

15 (b) FACILITY-SPECIFIC RISK EVALUATIONS.—Title I
16 of the Comprehensive Environmental Response, Com-
17 pensation, and Liability Act of 1980 (42 U.S.C. 9601 et
18 seq.) (as amended by section 201(b)) is amended by add-
19 ing at the end the following:

20 **“SEC. 129. FACILITY-SPECIFIC RISK EVALUATIONS.**

21 “(a) IN GENERAL.—The goal of a facility-specific
22 risk evaluation performed under this Act is to provide in-
23 formative and understandable estimates that neither mini-
24 mize nor exaggerate the current or potential risk posed
25 by a facility.

1 “(b) RISK EVALUATION PRINCIPLES.—

2 “(1) IN GENERAL.—A facility-specific risk eval-
3 uation shall—

4 “(A)(i) use chemical-specific and facility-
5 specific data in preference to default assump-
6 tions whenever it is practicable to obtain such
7 data; or

8 “(ii) if it is not practicable to obtain such
9 data, use a range and distribution of realistic
10 and scientifically supportable default assump-
11 tions;

12 “(B) ensure that the exposed population
13 and all current and potential pathways and pat-
14 terns of exposure are evaluated;

15 “(C) consider the current or reasonably
16 anticipated future use of the land and water re-
17 sources in estimating exposure; and

18 “(D) consider the use of institutional con-
19 trols that comply with the requirements of sec-
20 tion 121.

21 “(2) CRITERIA FOR USE OF SCIENCE.—Any
22 chemical-specific and facility-specific data or default
23 assumptions used in connection with a facility-spe-
24 cific risk evaluation shall be consistent with the cri-

1 teria for the use of science in decisionmaking stated
2 in subsection (e).

3 “(3) INSTITUTIONAL CONTROLS.—In con-
4 ducting a risk assessment to determine the need for
5 remedial action, the President may consider only in-
6 stitutional controls that are in place at the facility
7 at the time at which the risk assessment is con-
8 ducted.

9 “(c) USES.—A facility-specific risk evaluation shall
10 be used to—

11 “(1) determine the need for remedial action;

12 “(2) evaluate the current and potential hazards,
13 exposures, and risks at the facility;

14 “(3) screen out potential contaminants, areas,
15 or exposure pathways from further study at a facil-
16 ity;

17 “(4) evaluate the protectiveness of alternative
18 remedial actions proposed for a facility;

19 “(5) demonstrate that the remedial action se-
20 lected for a facility is capable of protecting human
21 health and the environment considering the current
22 and reasonably anticipated future use of the land
23 and water resources; and

24 “(6) establish protective concentration levels if
25 no applicable requirement under section 121(d)(2)(c)

1 exists or if an otherwise applicable requirement is
2 not sufficiently protective of human health and the
3 environment.

4 “(d) RISK COMMUNICATION PRINCIPLES.—In car-
5 rying out this section, the President shall ensure that the
6 presentation of information on public health effects is
7 comprehensive, informative, and understandable. The doc-
8 ument reporting the results of a facility-specific risk eval-
9 uation shall specify, to the extent practicable—

10 “(1) each population addressed by any estimate
11 of public health effects;

12 “(2) the expected risk or central estimate of
13 risk for the specific populations;

14 “(3) each appropriate upper-bound or lower-
15 bound estimate of risk;

16 “(4) each significant uncertainty identified in
17 the process of the assessment of public health effects
18 and research that would assist in resolving the un-
19 certainty; and

20 “(5) peer-reviewed studies known to the Presi-
21 dent that support, are directly relevant to, or fail to
22 support any estimate of public health effects and the
23 methodology used to reconcile inconsistencies in the
24 scientific data.

1 “(e) USE OF SCIENCE IN DECISIONMAKING.—In car-
 2 rying out this section, the President shall use—

3 “(1) the best available peer-reviewed science
 4 and supporting studies conducted in accordance with
 5 sound and objective scientific practices; and

6 “(2) data collected by accepted methods or best
 7 available methods (if the reliability of the method
 8 and the nature of the decision justifies use of the
 9 data).

10 “(f) REGULATIONS.—Not later than 18 months after
 11 the date of enactment of this section, the President shall
 12 issue a final regulation implementing this section.”.

13 **SEC. 403. NATURAL RESOURCE DAMAGES.**

14 Section 107(f)(1) of the Comprehensive Environ-
 15 mental Response, Compensation, and Liability Act of
 16 1980 (42 U.S.C. 9607(f)(1)), is amended by striking the
 17 fifth sentence (beginning “The measure of damages”) and
 18 inserting the following: “The measure of damages in any
 19 action under subsection (a)(4)(C) may include only the
 20 reasonable costs of: (i) restoring, replacing or acquiring
 21 the equivalent (referred to collectively as “restoration”) of
 22 an injured, destroyed or lost natural resource to reinstate
 23 the human uses and environmental functions of the nat-
 24 ural resource; (ii) providing a substantially equivalent re-
 25 source during the period of any interim lost use of the

1 injured, destroyed or lost resource to the extent that a
 2 substitute resource providing the uses is not otherwise rea-
 3 sonably available; and (iii) assessing the damages. Where
 4 a unique resource has been destroyed, lost, or cannot be
 5 restored, the measure of damages may include the reason-
 6 able costs of expediting or enhancing the restoration of
 7 appropriate substitute resources. For purposes of this
 8 paragraph, reasonable costs of alternative restoration
 9 measures shall be determined based on the following fac-
 10 tors: technical feasibility; cost effectiveness; the period of
 11 time required for restoration; and whether a response ac-
 12 tion or natural recovery will reinstate the uses provided
 13 by a natural resource within a reasonable period of time.”.

14 **SEC. 404. DOUBLE RECOVERY.**

15 Section 107(f)(1) of the Comprehensive Environ-
 16 mental Response, Compensation, and Liability Act of
 17 1980 (42 U.S.C. 9607(f)(1)) is amended by striking the
 18 sixth sentence (beginning “There shall be no”) and insert-
 19 ing the following: “A person shall not be liable for dam-
 20 ages under this paragraph for an injury to, destruction
 21 of, or loss of a natural resource, or a loss of the uses pro-
 22 vided by the natural resource, that have been recovered
 23 under this Act or any other Federal, State or Tribal law
 24 for the same injury to, destruction of, or loss of the nat-

1 ural resource or loss of the uses provided by the natural
 2 resource.”.

3 **TITLE V—FUNDING**

4 **SEC. 501. USES OF HAZARDOUS SUBSTANCE SUPERFUND.**

5 The Comprehensive Environmental Response, Com-
 6 pensation, and Liability Act of 1980 is amended by strik-
 7 ing sections 111 and 112 (9611, 9612) and inserting the
 8 following:

9 **“SEC. 111. USES OF HAZARDOUS SUBSTANCE SUPERFUND.**

10 “(a) IN GENERAL.—

11 “(1) SPECIFIC USES.—The President shall use
 12 amounts appropriated out of the Hazardous Sub-
 13 stance Superfund only—

14 “(A) for the performance of response ac-
 15 tions;

16 “(B) to enter into mixed funding agree-
 17 ments in accordance with section 122; and

18 “(C) to reimburse a party for response
 19 costs incurred in excess of the allocated share
 20 of the party as described in a final settlement
 21 under section 122.

22 “(2) AUTHORIZATION OF APPROPRIATIONS.—

23 There are authorized to be appropriated from the
 24 Hazardous Substances Superfund for the purposes

1 specified in paragraph (1), not more than the fol-
2 lowing amounts:

3 “(A) For fiscal year 2000,
4 \$1,165,000,000, of which not more than
5 \$200,000,000 shall be used for the purposes set
6 forth in subparagraphs (B) and (C) of para-
7 graph (1);

8 “(B) For fiscal year 2001,
9 \$1,165,000,000, of which not more than
10 \$200,000,000 shall be used for the purposes set
11 forth in subparagraphs (B) and (C) of para-
12 graph (1);

13 “(C) For fiscal year 2002, \$1,120,000,000,
14 of which not more than \$200,000,000 shall be
15 used for the purposes set forth in subpara-
16 graphs (B) and (C) of paragraph (1);

17 “(D) For fiscal year 2003,
18 \$1,075,000,000, of which not more than
19 \$200,000,000 shall be used for the purposes set
20 forth in subparagraphs (B) and (C) of para-
21 graph (1); and

22 “(E) For fiscal year 2004,
23 \$1,025,000,000, of which not more than
24 \$200,000,000 shall be used for the purposes set

1 forth in subparagraphs (B) and (C) of para-
2 graph (1).

3 “(b) CLAIMS AGAINST HAZARDOUS SUBSTANCE
4 SUPERFUND.—Claims against the Hazardous Substance
5 Superfund shall not be valid or paid in excess of the total
6 amount in the Hazardous Substance Superfund at any 1
7 time.

8 “(c) REGULATIONS.—

9 “(1) OBLIGATION OF FUNDS.—The President
10 may promulgate regulations designating 1 or more
11 Federal officials that may obligate amounts in the
12 Hazardous Substance Superfund in accordance with
13 this section.

14 “(2) NOTICE TO POTENTIAL INJURED PAR-
15 TIES.—

16 “(A) IN GENERAL.—The President shall
17 promulgate regulations with respect to the no-
18 tice that shall be provided to potential injured
19 parties by an owner and operator of any vessel
20 or facility from which a hazardous substance
21 has been released.

22 “(B) SUBSTANCE.—The regulations under
23 subparagraph (A) shall describe the notice that
24 would be appropriate to carry out this title.

25 “(C) COMPLIANCE.—

1 “(i) IN GENERAL.—On promulgation
 2 of regulations under subparagraph (A), an
 3 owner and operator described in that sub-
 4 paragraph shall provide notice in accord-
 5 ance with the regulations.

6 “(ii) PRE-PROMULGATION RE-
 7 LEASES.—In the case of a release of a haz-
 8 ardous substance that occurs before regu-
 9 lations under subparagraph (A) are pro-
 10 mulgated, an owner and operator described
 11 in that subparagraph shall provide reason-
 12 able notice of any release to potential in-
 13 jured parties by publication in local news-
 14 papers serving the affected area.

15 “(iii) RELEASES FROM PUBLIC VES-
 16 SELS.—The President shall provide such
 17 notification as is appropriate to potential
 18 injured parties with respect to releases
 19 from public vessels.

20 “(d) NATURAL RESOURCES.—

21 “(1) IN GENERAL.—Except as provided in para-
 22 graph (2), funds may not be used under this Act for
 23 the restoration, rehabilitation, or replacement or ac-
 24 quisition of the equivalent of any natural resource
 25 until a plan for the use of the funds for those pur-

poses has been developed and adopted, after adequate public notice and opportunity for hearing and consideration of all public comment, by—

“(A) affected Federal agencies;

“(B) the Governor of each State that sustained damage to natural resources that are within the borders of, belong to, are managed by, or appertain to the State; and

“(C) the governing body of any Indian tribe that sustained damage to natural resources that—

“(i) are within the borders of, belong to, are managed by, appertain to, or are held in trust for the benefit of the tribe; or

“(ii) belong to a member of the tribe, if those resources are subject to a trust restriction on alienation.

“(2) EMERGENCY ACTION EXEMPTION.—Funds may be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resource only in circumstances requiring action to—

“(A) avoid an irreversible loss of a natural resource;

1 “(B) prevent or reduce any continuing
2 danger to a natural resource; or

3 “(C) prevent the loss of a natural resource
4 in an emergency situation similar to those de-
5 scribed in subparagraphs (A) and (B).

6 “(e) POST-CLOSURE LIABILITY FUND.—The Presi-
7 dent shall use the amounts in the Post-closure Liability
8 Fund for—

9 “(1) any of the purposes specified in subsection
10 (a) with respect to a hazardous waste disposal facil-
11 ity for which liability has been transferred to the
12 Post-closure Liability Fund under section 107(k);
13 and

14 “(2) payment of any claim or appropriate re-
15 quest for costs of a response, damages, or other
16 compensation for injury or loss resulting from a re-
17 lease of a hazardous substance from a facility de-
18 scribed in paragraph (1) under—

19 “(A) section 107; or

20 “(B) any other Federal or State law.

21 “(f) INSPECTOR GENERAL.—

22 “(1) AUDIT.—In each fiscal year, the Inspector
23 General of the Environmental Protection Agency
24 shall conduct an annual audit of—

1 “(A) all agreements and reimbursements
2 under subsection (a); and

3 “(B) all other activities of the Environ-
4 mental Protection Agency under this Act.

5 “(2) REPORT.—The Inspector General of the
6 Environmental Protection Agency shall submit to
7 Congress an annual report that—

8 “(A) describes the results of the audit
9 under paragraph (1); and

10 “(B) contains such recommendations as
11 the Inspector General considers to be appro-
12 priate.

13 “(g) FOREIGN CLAIMS.—To the extent that this Act
14 permits, a foreign claimant may assert a claim to the same
15 extent that a United States claimant may assert a claim
16 if—

17 “(1) the release of a hazardous substance
18 occurred—

19 “(A) in the navigable waters of a foreign
20 country of which the claimant is a resident; or

21 “(B) in or on the territorial sea or adja-
22 cent shoreline of a foreign country described in
23 subparagraph (A);

24 “(2) the claimant is not otherwise compensated
25 for the loss of the claimant;

1 “(3) the hazardous substance was released from
 2 a facility or vessel located adjacent to or within the
 3 navigable waters under the jurisdiction of, or was
 4 discharged in connection with activities conducted
 5 under—

6 “(A) section 20(a)(2) of the Outer Conti-
 7 nental Shelf Lands Act (43 U.S.C. 1346(a)(2));
 8 or

9 “(B) the Deepwater Port Act of 1974 (33
 10 U.S.C. 1501 et seq.); and

11 “(4)(A) recovery is authorized by a treaty or an
 12 executive agreement between the United States and
 13 the foreign country; or

14 “(B) the Secretary of State, in consultation
 15 with the Attorney General and other appropriate of-
 16 ficials, certifies that the foreign country provides a
 17 comparable remedy for United States claimants.

18 “(h) AUTHORIZATION OF APPROPRIATIONS OUT OF
 19 THE GENERAL FUND.—

20 “(1) HEALTH ASSESSMENTS AND HEALTH CON-
 21 SULTATIONS.—There are authorized to be appro-
 22 priated to the Agency for Toxic Substances and Dis-
 23 ease Registry to conduct health assessments and
 24 health consultations under this Act, and for epi-
 25 demiologic and laboratory studies, preparation of

1 toxicologic profiles, development and maintenance of
 2 a registry of persons exposed to hazardous sub-
 3 stances to allow long-term health effects studies, and
 4 diagnostic services not otherwise available to deter-
 5 mine whether persons in populations exposed to haz-
 6 ardous substances in connection with a release or
 7 suspected release are suffering from long-latency dis-
 8 eases:

9 “(A) For fiscal year 2000, \$60,000,000.

10 “(B) For fiscal year 2001, \$55,000,000.

11 “(C) For fiscal year 2002, \$55,000,000.

12 “(D) For fiscal year 2003, \$50,000,000.

13 “(E) For fiscal year 2004, \$50,000,000.

14 “(2) HAZARDOUS SUBSTANCE RESEARCH, DEM-
 15 ONSTRATION, AND TRAINING.—

16 “(A) IN GENERAL.—There are authorized
 17 to be appropriated not more than the following
 18 amounts for the purposes of section 311(a):

19 “(i) For fiscal year 2000,
 20 \$40,000,000.

21 “(ii) For fiscal year 2001,
 22 \$40,000,000.

23 “(iii) For fiscal year 2002,
 24 \$40,000,000.

1 “(iv) For each of fiscal years 2003
2 and 2004, \$40,000,000.

3 “(B) TRAINING LIMITATION.—Not more
4 than 15 percent of the amounts appropriated
5 under subparagraph (A) shall be used for train-
6 ing under section 311(a) for any fiscal year.

7 “(C) UNIVERSITY HAZARDOUS SUBSTANCE
8 RESEARCH CENTERS.—Not more than
9 \$5,000,000 of the amounts available in the
10 Hazardous Substance Superfund may be used
11 in any of fiscal years 2000 through 2004 for
12 the purposes of section 311(d).

13 “(3) BROWNFIELD GRANT PROGRAMS.—There
14 are authorized to be appropriated to carry out sec-
15 tion 127 \$100,000,000 for each of fiscal years 2000
16 through 2004.

17 “(4) QUALIFYING STATE RESPONSE PRO-
18 GRAMS.—There are authorized to be appropriated to
19 maintain, establish, and administer qualifying State
20 response programs during the first 5 full fiscal years
21 following the date of enactment of this paragraph
22 under a formula established by the Administrator,
23 \$100,000,000 for each of fiscal years 2000 through
24 2004.

1 “(5) DEPARTMENT OF JUSTICE.—There is au-
 2 thorized to be appropriated to the Attorney General,
 3 for enforcement of this Act, \$30,000,000 for each
 4 of fiscal years 2000 through 2004.

5 “(6) PROHIBITION OF TRANSFER.—None of the
 6 funds authorized to be appropriated under this sub-
 7 section may be transferred to any other Federal
 8 agency.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) RESPONSE ACTIONS.—Section 104(c) of the
 11 Comprehensive Environmental Response Compensa-
 12 tion, and Liability Act of 1980 (42 U.S.C. 9604(c))
 13 is amended—

14 (A) in paragraph (1), by striking “obliga-
 15 tions from the Fund, other than those author-
 16 ized by subsection (b) of this section,” and in-
 17 serting “, such response actions”; and

18 (B) in paragraph (7), by striking “shall be
 19 from funds received by the Fund from amounts
 20 recovered on behalf of such fund under this
 21 Act” and inserting “shall be from appropria-
 22 tions out of the general fund of the Treasury”.

23 (2) INFORMATION GATHERING AND ANAL-
 24 YSIS.—Section 105(g)(4) of the Comprehensive En-
 25 vironmental Response Compensation, and Liability

1 Act of 1980 (42 U.S.C. 9605(g)(4)) is amended by
 2 striking “expenditure of monies from the Fund for”.

3 (3) PRESIDENT.—Section 107(c)(3) of the
 4 Comprehensive Environmental Response Compensa-
 5 tion, and Liability Act of 1980 (42 U.S.C.
 6 9607(c)(3)) is amended in the first sentence by
 7 striking “Fund” and inserting “President”.

8 (4) OTHER LIABILITY.—Section 109(d) of the
 9 Comprehensive Environmental Response Compensa-
 10 tion, and Liability Act of 1980 (42 U.S.C. 9609(d))
 11 is amended by striking the second sentence.

12 (5) SOURCE OF FUNDING.—Section 119(c)(3)
 13 of the Comprehensive Environmental Response Com-
 14 pensation, and Liability Act of 1980 (42 U.S.C.
 15 9619(c)(3)) is amended—

16 (A) in the second sentence, by striking
 17 “For purposes of section 111, amounts” and in-
 18 serting “Amounts”; and

19 (B) in the third sentence—

20 (i) by striking “If sufficient funds are
 21 unavailable in the Hazardous Substance
 22 Superfund established under subchapter A
 23 of chapter 98 of the Internal Revenue
 24 Code of 1954 to make payments pursuant
 25 to such indemnification or if the Fund is

1 repealed, there” and inserting “There“;
2 and

3 (ii) by striking “payments” and in-
4 serting “expenditures”.

5 (6) REMEDIAL ACTION USING HAZARDOUS SUB-
6 STANCE SUPERFUND.—Section 121(d)(4)(F) of the
7 Comprehensive Environmental Response Compensa-
8 tion, and Liability Act of 1980 (42 U.S.C.
9 9621(d)(4)(F)) is amended—

10 (A) by striking “ using the Fund”; and

11 (B) by striking “amounts from the Fund”
12 and inserting “funds”.

13 (7) AVAILABILITY OF FUNDING.—Section
14 122(f)(4)(F) of the Comprehensive Environmental
15 Response Compensation, and Liability Act of 1980
16 (42 U.S.C. 9622(f)(4)(F)) is amended by striking
17 “the Fund or other sources of”.

○