

107TH CONGRESS  
1ST SESSION

# S. 350

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IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2001

Referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## AN ACT

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Brownfields Revitalization and Environmental Restora-  
6 tion Act of 2001”.

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

Sec. 1. Short title; table of contents.

#### TITLE I—BROWNFIELDS REVITALIZATION FUNDING

Sec. 101. Brownfields revitalization funding.

#### TITLE II—BROWNFIELDS LIABILITY CLARIFICATIONS

Sec. 201. Contiguous properties.

Sec. 202. Prospective purchasers and windfall liens.

Sec. 203. Innocent landowners.

#### TITLE III—STATE RESPONSE PROGRAMS

Sec. 301. State response programs.

Sec. 302. Additions to National Priorities List.

## 3 **TITLE I—BROWNFIELDS** 4 **REVITALIZATION FUNDING**

### 5 **SEC. 101. BROWNFIELDS REVITALIZATION FUNDING.**

6 (a) DEFINITION OF BROWNFIELD SITE.—Section  
 7 101 of the Comprehensive Environmental Response, Com-  
 8 pensation, and Liability Act of 1980 (42 U.S.C. 9601) is  
 9 amended by adding at the end the following:

10 “(39) BROWNFIELD SITE.—

11 “(A) IN GENERAL.—The term ‘brownfield  
 12 site’ means real property, the expansion, rede-  
 13 velopment, or reuse of which may be com-  
 14 plicated by the presence or potential presence of  
 15 a hazardous substance, pollutant, or contami-  
 16 nant.

17 “(B) EXCLUSIONS.—The term ‘brownfield  
 18 site’ does not include—

1 “(i) a facility that is the subject of a  
2 planned or ongoing removal action under  
3 this title;

4 “(ii) a facility that is listed on the Na-  
5 tional Priorities List or is proposed for  
6 listing;

7 “(iii) a facility that is the subject of  
8 a unilateral administrative order, a court  
9 order, an administrative order on consent  
10 or judicial consent decree that has been  
11 issued to or entered into by the parties  
12 under this Act;

13 “(iv) a facility that is the subject of a  
14 unilateral administrative order, a court  
15 order, an administrative order on consent  
16 or judicial consent decree that has been  
17 issued to or entered into by the parties, or  
18 a facility to which a permit has been issued  
19 by the United States or an authorized  
20 State under the Solid Waste Disposal Act  
21 (42 U.S.C. 6901 et seq.), the Federal  
22 Water Pollution Control Act (33 U.S.C.  
23 1321), the Toxic Substances Control Act  
24 (15 U.S.C. 2601 et seq.), or the Safe

1 Drinking Water Act (42 U.S.C. 300f et  
2 seq.);

3 “(v) a facility that—

4 “(I) is subject to corrective ac-  
5 tion under section 3004(u) or 3008(h)  
6 of the Solid Waste Disposal Act (42  
7 U.S.C. 6924(u), 6928(h)); and

8 “(II) to which a corrective action  
9 permit or order has been issued or  
10 modified to require the implementa-  
11 tion of corrective measures;

12 “(vi) a land disposal unit with respect  
13 to which—

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

18 “(II) closure requirements have  
19 been specified in a closure plan or  
20 permit;

21 “(vii) a facility that is subject to the  
22 jurisdiction, custody, or control of a de-  
23 partment, agency, or instrumentality of the  
24 United States, except for land held in trust  
25 by the United States for an Indian tribe;

1 “(viii) a portion of a facility—

2 “(I) at which there has been a  
3 release of polychlorinated biphenyls;  
4 and

5 “(II) that is subject to remedi-  
6 ation under the Toxic Substances  
7 Control Act (15 U.S.C. 2601 et seq.);  
8 or

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

17 “(C) SITE-BY-SITE DETERMINATIONS.—  
18 Notwithstanding subparagraph (B) and on a  
19 site-by-site basis, the President may authorize  
20 financial assistance under section 128 to an eli-  
21 gible entity at a site included in clause (i), (iv),  
22 (v), (vi), (viii), or (ix) of subparagraph (B) if  
23 the President finds that financial assistance will  
24 protect human health and the environment, and  
25 either promote economic development or enable

1 the creation of, preservation of, or addition to  
2 parks, greenways, undeveloped property, other  
3 recreational property, or other property used  
4 for nonprofit purposes.

5 “(D) ADDITIONAL AREAS.—For the pur-  
6 poses of section 128, the term ‘brownfield site’  
7 includes a site that—

8 “(i) meets the definition of ‘brownfield  
9 site’ under subparagraphs (A) through (C);  
10 and

11 “(ii)(I) is contaminated by a con-  
12 trolled substance (as defined in section 102  
13 of the Controlled Substances Act (21  
14 U.S.C. 802));

15 “(II)(aa) is contaminated by petro-  
16 leum or a petroleum product excluded from  
17 the definition of ‘hazardous substance’  
18 under section 101; and

19 “(bb) is a site determined by the Ad-  
20 ministrator or the State, as appropriate, to  
21 be—

22 “(AA) of relatively low risk, as  
23 compared with other petroleum-only  
24 sites in the State; and

1 “(BB) a site for which there is  
 2 no viable responsible party and which  
 3 will be assessed, investigated, or  
 4 cleaned up by a person that is not po-  
 5 tentially liable for cleaning up the  
 6 site; and

7 “(cc) is not subject to any order  
 8 issued under section 9003(h) of the Solid  
 9 Waste Disposal Act (42 U.S.C. 6991b(h));  
 10 or

11 “(III) is mine-scarred land.”.

12 (b) BROWNFIELDS REVITALIZATION FUNDING.—  
 13 Title I of the Comprehensive Environmental Response,  
 14 Compensation, and Liability Act of 1980 (42 U.S.C. 9601  
 15 et seq.) is amended by adding at the end the following:

16 **“SEC. 128. BROWNFIELDS REVITALIZATION FUNDING.**

17 “(a) DEFINITION OF ELIGIBLE ENTITY.—In this sec-  
 18 tion, the term ‘eligible entity’ means—

19 “(1) a general purpose unit of local govern-  
 20 ment;

21 “(2) a land clearance authority or other quasi-  
 22 governmental entity that operates under the super-  
 23 vision and control of or as an agent of a general  
 24 purpose unit of local government;

1           “(3) a government entity created by a State  
2       legislature;

3           “(4) a regional council or group of general pur-  
4       pose units of local government;

5           “(5) a redevelopment agency that is chartered  
6       or otherwise sanctioned by a State;

7           “(6) a State; or

8           “(7) an Indian Tribe.

9       “(b) BROWNFIELD SITE CHARACTERIZATION AND  
10   ASSESSMENT GRANT PROGRAM.—

11           “(1) ESTABLISHMENT OF PROGRAM.—The Ad-  
12       ministrators shall establish a program to—

13           “(A) provide grants to inventory, charac-  
14       terize, assess, and conduct planning related to  
15       brownfield sites under paragraph (2); and

16           “(B) perform targeted site assessments at  
17       brownfield sites.

18           “(2) ASSISTANCE FOR SITE CHARACTERIZATION  
19       AND ASSESSMENT.—

20           “(A) IN GENERAL.—On approval of an ap-  
21       plication made by an eligible entity, the Admin-  
22       istrator may make a grant to the eligible entity  
23       to be used for programs to inventory, charac-  
24       terize, assess, and conduct planning related to  
25       1 or more brownfield sites.



1           “(B) SITE CHARACTERIZATION AND AS-  
2           SESSMENT.—A site characterization and assess-  
3           ment carried out with the use of a grant under  
4           subparagraph (A) shall be performed in accord-  
5           ance with section 101(35)(B).

6           “(c) GRANTS AND LOANS FOR BROWNFIELD REME-  
7           DIATION.—

8           “(1) GRANTS PROVIDED BY THE PRESIDENT.—  
9           Subject to subsections (d) and (e), the President  
10          shall establish a program to provide grants to—

11               “(A) eligible entities, to be used for cap-  
12               italization of revolving loan funds; and

13               “(B) eligible entities or nonprofit organiza-  
14               tions, where warranted, as determined by the  
15               President based on considerations under para-  
16               graph (3), to be used directly for remediation of  
17               1 or more brownfield sites owned by the entity  
18               or organization that receives the grant and in  
19               amounts not to exceed \$200,000 for each site  
20               to be remediated.

21           “(2) LOANS AND GRANTS PROVIDED BY ELIGI-  
22           BLE ENTITIES.—An eligible entity that receives a  
23           grant under paragraph (1)(A) shall use the grant  
24           funds to provide assistance for the remediation of  
25           brownfield sites in the form of—

1           “(A) 1 or more loans to an eligible entity,  
2           a site owner, a site developer, or another per-  
3           son; or

4           “(B) 1 or more grants to an eligible entity  
5           or other nonprofit organization, where war-  
6           ranted, as determined by the eligible entity that  
7           is providing the assistance, based on consider-  
8           ations under paragraph (3), to remediate sites  
9           owned by the eligible entity or nonprofit organi-  
10          zation that receives the grant.

11          “(3) CONSIDERATIONS.—In determining wheth-  
12          er a grant under paragraph (1)(B) or (2)(B) is war-  
13          ranted, the President or the eligible entity, as the  
14          case may be, shall take into consideration—

15               “(A) the extent to which a grant will facili-  
16               tate the creation of, preservation of, or addition  
17               to a park, a greenway, undeveloped property,  
18               recreational property, or other property used  
19               for nonprofit purposes;

20               “(B) the extent to which a grant will meet  
21               the needs of a community that has an inability  
22               to draw on other sources of funding for environ-  
23               mental remediation and subsequent redevelop-  
24               ment of the area in which a brownfield site is

1 located because of the small population or low  
2 income of the community;

3 “(C) the extent to which a grant will facili-  
4 tate the use or reuse of existing infrastructure;

5 “(D) the benefit of promoting the long-  
6 term availability of funds from a revolving loan  
7 fund for brownfield remediation; and

8 “(E) such other similar factors as the Ad-  
9 ministrator considers appropriate to consider  
10 for the purposes of this section.

11 “(4) TRANSITION.—Revolving loan funds that  
12 have been established before the date of enactment  
13 of this section may be used in accordance with this  
14 subsection.

15 “(d) GENERAL PROVISIONS.—

16 “(1) MAXIMUM GRANT AMOUNT.—

17 “(A) BROWNFIELD SITE CHARACTERIZA-  
18 TION AND ASSESSMENT.—

19 “(i) IN GENERAL.—A grant under  
20 subsection (b)—

21 “(I) may be awarded to an eligi-  
22 ble entity on a community-wide or  
23 site-by-site basis; and

1 “(II) shall not exceed, for any in-  
2 dividual brownfield site covered by the  
3 grant, \$200,000.

4 “(ii) WAIVER.—The Administrator  
5 may waive the \$200,000 limitation under  
6 clause (i)(II) to permit the brownfield site  
7 to receive a grant of not to exceed  
8 \$350,000, based on the anticipated level of  
9 contamination, size, or status of ownership  
10 of the site.

11 “(B) BROWNFIELD REMEDIATION.—

12 “(i) GRANT AMOUNT.—A grant under  
13 subsection (c)(1)(A) may be awarded to an  
14 eligible entity on a community-wide or site-  
15 by-site basis, not to exceed \$1,000,000 per  
16 eligible entity.

17 “(ii) ADDITIONAL GRANT AMOUNT.—  
18 The Administrator may make an additional  
19 grant to an eligible entity described in  
20 clause (i) for any year after the year for  
21 which the initial grant is made, taking into  
22 consideration—

23 “(I) the number of sites and  
24 number of communities that are ad-  
25 dressed by the revolving loan fund;

1 “(II) the demand for funding by  
2 eligible entities that have not pre-  
3 viously received a grant under this  
4 section;

5 “(III) the demonstrated ability of  
6 the eligible entity to use the revolving  
7 loan fund to enhance remediation and  
8 provide funds on a continuing basis;  
9 and

10 “(IV) such other similar factors  
11 as the Administrator considers appro-  
12 priate to carry out this section.

13 “(2) PROHIBITION.—

14 “(A) IN GENERAL.—No part of a grant or  
15 loan under this section may be used for the  
16 payment of—

17 “(i) a penalty or fine;

18 “(ii) a Federal cost-share require-  
19 ment;

20 “(iii) an administrative cost;

21 “(iv) a response cost at a brownfield  
22 site for which the recipient of the grant or  
23 loan is potentially liable under section 107;  
24 or

1 “(v) a cost of compliance with any  
2 Federal law (including a Federal law speci-  
3 fied in section 101(39)(B)), excluding the  
4 cost of compliance with laws applicable to  
5 the cleanup.

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

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

11 “(ii) design and performance of a re-  
12 sponse action; or

13 “(iii) monitoring of a natural re-  
14 source.

15 “(3) ASSISTANCE FOR DEVELOPMENT OF  
16 LOCAL GOVERNMENT SITE REMEDIATION PRO-  
17 GRAMS.—A local government that receives a grant  
18 under this section may use not to exceed 10 percent  
19 of the grant funds to develop and implement a  
20 brownfields program that may include—

21 “(A) monitoring the health of populations  
22 exposed to 1 or more hazardous substances  
23 from a brownfield site; and

24 “(B) monitoring and enforcement of any  
25 institutional control used to prevent human ex-

1           posure to any hazardous substance from a  
2           brownfield site.

3           “(4) INSURANCE.—A recipient of a grant or  
4           loan awarded under subsection (b) or (c) that per-  
5           forms a characterization, assessment, or remediation  
6           of a brownfield site may use a portion of the grant  
7           or loan to purchase insurance for the characteriza-  
8           tion, assessment, or remediation of that site.

9           “(e) GRANT APPLICATIONS.—

10          “(1) SUBMISSION.—

11           “(A) IN GENERAL.—

12           “(i) APPLICATION.—An eligible entity  
13           may submit to the Administrator, through  
14           a regional office of the Environmental Pro-  
15           tection Agency and in such form as the  
16           Administrator may require, an application  
17           for a grant under this section for 1 or  
18           more brownfield sites (including informa-  
19           tion on the criteria used by the Adminis-  
20           trator to rank applications under para-  
21           graph (3), to the extent that the informa-  
22           tion is available).

23           “(ii) NCP REQUIREMENTS.—The Ad-  
24           ministrator may include in any require-  
25           ment for submission of an application

1 under clause (i) a requirement of the Na-  
2 tional Contingency Plan only to the extent  
3 that the requirement is relevant and appro-  
4 priate to the program under this section.

5 “(B) COORDINATION.—The Administrator  
6 shall coordinate with other Federal agencies to  
7 assist in making eligible entities aware of other  
8 available Federal resources.

9 “(C) GUIDANCE.—The Administrator shall  
10 publish guidance to assist eligible entities in ap-  
11 plying for grants under this section.

12 “(2) APPROVAL.—The Administrator shall—

13 “(A) at least annually, complete a review  
14 of applications for grants that are received from  
15 eligible entities under this section; and

16 “(B) award grants under this section to el-  
17 igible entities that the Administrator deter-  
18 mines have the highest rankings under the  
19 ranking criteria established under paragraph  
20 (3).

21 “(3) RANKING CRITERIA.—The Administrator  
22 shall establish a system for ranking grant applica-  
23 tions received under this subsection that includes the  
24 following criteria:



1           “(A) The extent to which a grant will stim-  
2           ulate the availability of other funds for environ-  
3           mental assessment or remediation, and subse-  
4           quent reuse, of an area in which 1 or more  
5           brownfield sites are located.

6           “(B) The potential of the proposed project  
7           or the development plan for an area in which 1  
8           or more brownfield sites are located to stimu-  
9           late economic development of the area on com-  
10          pletion of the cleanup.

11          “(C) The extent to which a grant would  
12          address or facilitate the identification and re-  
13          duction of threats to human health and the en-  
14          vironment, including threats in areas in which  
15          there is a greater-than-normal incidence of dis-  
16          eases or conditions (including cancer, asthma,  
17          or birth defects) that may be associated with  
18          exposure to hazardous substances, pollutants,  
19          or contaminants.

20          “(D) The extent to which a grant would  
21          facilitate the use or reuse of existing infrastruc-  
22          ture.

23          “(E) The extent to which a grant would  
24          facilitate the creation of, preservation of, or ad-  
25          dition to a park, a greenway, undeveloped prop-

erty, recreational property, or other property  
used for nonprofit purposes.

“(F) The extent to which a grant would  
meet the needs of a community that has an in-  
ability to draw on other sources of funding for  
environmental remediation and subsequent re-  
development of the area in which a brownfield  
site is located because of the small population  
or low income of the community.

“(G) The extent to which the applicant is  
eligible for funding from other sources.

“(H) The extent to which a grant will fur-  
ther the fair distribution of funding between  
urban and nonurban areas.

“(I) The extent to which the grant pro-  
vides for involvement of the local community in  
the process of making decisions relating to  
cleanup and future use of a brownfield site.

“(J) The extent to which a grant would  
address or facilitate the identification and re-  
duction of threats to the health or welfare of  
children, pregnant women, minority or low-in-  
come communities, or other sensitive popu-  
lations.

1       “(f) IMPLEMENTATION OF BROWNFIELDS PRO-  
2 GRAMS.—

3               “(1) ESTABLISHMENT OF PROGRAM.—The Ad-  
4 ministrator may provide, or fund eligible entities or  
5 nonprofit organizations to provide, training, re-  
6 search, and technical assistance to individuals and  
7 organizations, as appropriate, to facilitate the inven-  
8 tory of brownfield sites, site assessments, remedi-  
9 ation of brownfield sites, community involvement, or  
10 site preparation.

11              “(2) FUNDING RESTRICTIONS.—The total Fed-  
12 eral funds to be expended by the Administrator  
13 under this subsection shall not exceed 15 percent of  
14 the total amount appropriated to carry out this sec-  
15 tion in any fiscal year.

16       “(g) AUDITS.—

17              “(1) IN GENERAL.—The Inspector General of  
18 the Environmental Protection Agency shall conduct  
19 such reviews or audits of grants and loans under  
20 this section as the Inspector General considers nec-  
21 essary to carry out this section.

22              “(2) PROCEDURE.—An audit under this para-  
23 graph shall be conducted in accordance with the au-  
24 diting procedures of the General Accounting Office,  
25 including chapter 75 of title 31, United States Code.

1           “(3) VIOLATIONS.—If the Administrator deter-  
2           mines that a person that receives a grant or loan  
3           under this section has violated or is in violation of  
4           a condition of the grant, loan, or applicable Federal  
5           law, the Administrator may—

6                   “(A) terminate the grant or loan;

7                   “(B) require the person to repay any funds  
8           received; and

9                   “(C) seek any other legal remedies avail-  
10          able to the Administrator.

11          “(4) REPORT TO CONGRESS.—Not later than 3  
12          years after the date of enactment of this section, the  
13          Inspector General of the Environmental Protection  
14          Agency shall submit to Congress a report that pro-  
15          vides a description of the management of the pro-  
16          gram (including a description of the allocation of  
17          funds under this section).

18          “(h) LEVERAGING.—An eligible entity that receives  
19          a grant under this section may use the grant funds for  
20          a portion of a project at a brownfield site for which fund-  
21          ing is received from other sources if the grant funds are  
22          used only for the purposes described in subsection (b) or  
23          (c).

24          “(i) AGREEMENTS.—Each grant or loan made under  
25          this section shall—

1           “(1) include a requirement of the National Con-  
2           tingency Plan only to the extent that the require-  
3           ment is relevant and appropriate to the program  
4           under this section, as determined by the Adminis-  
5           trator; and

6           “(2) be subject to an agreement that—

7                   “(A) requires the recipient to—

8                           “(i) comply with all applicable Federal  
9                           and State laws; and

10                          “(ii) ensure that the cleanup protects  
11                          human health and the environment;

12                          “(B) requires that the recipient use the  
13                          grant or loan exclusively for purposes specified  
14                          in subsection (b) or (c), as applicable;

15                          “(C) in the case of an application by an el-  
16                          igible entity under subsection (c)(1), requires  
17                          the eligible entity to pay 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, from non-Federal sources of funding, un-  
21                          less the Administrator determines that the  
22                          matching share would place an undue hardship  
23                          on the eligible entity; and

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

4           “(j) FACILITY OTHER THAN BROWNFIELD SITE.—  
5   The fact that a facility may not be a brownfield site within  
6   the meaning of section 101(39)(A) has no effect on the  
7   eligibility of the facility for assistance under any other pro-  
8   vision of Federal law.

9           “(k) EFFECT ON FEDERAL LAWS.—Nothing in this  
10   section affects any liability or response authority under  
11   any Federal law, including—

12                   “(1) this Act (including the last sentence of sec-  
13                   tion 101(14));

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

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

18                   “(4) the Toxic Substances Control Act (15  
19                   U.S.C. 2601 et seq.); and

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

22           “(l) FUNDING.—

23                   “(1) AUTHORIZATION OF APPROPRIATIONS.—  
24   There is authorized to be appropriated to carry out

1       this section \$200,000,000 for each of fiscal years  
2       2002 through 2006.

3               “(2) USE OF CERTAIN FUNDS.—Of the amount  
4       made available under paragraph (1), \$50,000,000,  
5       or, if the amount made available is less than  
6       \$200,000,000, 25 percent of the amount made avail-  
7       able, shall be used for site characterization, assess-  
8       ment, and remediation of facilities described in sec-  
9       tion 101(39)(D)(ii)(II).”.

## 10               **TITLE II—BROWNFIELDS** 11               **LIABILITY CLARIFICATIONS**

### 12       **SEC. 201. CONTIGUOUS PROPERTIES.**

13       Section 107 of the Comprehensive Environmental Re-  
14       sponse, Compensation, and Liability Act of 1980 (42  
15       U.S.C. 9607) is amended by adding at the end the fol-  
16       lowing:

17               “(o) CONTIGUOUS PROPERTIES.—

18                       “(1) NOT CONSIDERED TO BE AN OWNER OR  
19       OPERATOR.—

20                               “(A) IN GENERAL.—A person that owns  
21       real property that is contiguous to or otherwise  
22       similarly situated with respect to, and that is or  
23       may be contaminated by a release or threatened  
24       release of a hazardous substance from, real  
25       property that is not owned by that person shall

1 not be considered to be an owner or operator of  
2 a vessel or facility under paragraph (1) or (2)  
3 of subsection (a) solely by reason of the con-  
4 tamination if—

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

8 “(ii) the person is not—

9 “(I) potentially liable, or affili-  
10 ated with any other person that is po-  
11 tentially liable, for response costs at a  
12 facility through any direct or indirect  
13 familial relationship or any contrac-  
14 tual, corporate, or financial relation-  
15 ship (other than a contractual, cor-  
16 porate, or financial relationship that  
17 is created by a contract for the sale of  
18 goods or services); or

19 “(II) the result of a reorganiza-  
20 tion of a business entity that was po-  
21 tentially liable;

22 “(iii) the person takes reasonable  
23 steps to—

24 “(I) stop any continuing release;



1                   “(II) prevent any threatened fu-  
2                   ture release; and

3                   “(III) prevent or limit human,  
4                   environmental, or natural resource ex-  
5                   posure to any hazardous substance re-  
6                   leased on or from property owned by  
7                   that person;

8                   “(iv) the person provides full coopera-  
9                   tion, assistance, and access to persons that  
10                  are authorized to conduct response actions  
11                  or natural resource restoration at the ves-  
12                  sel or facility from which there has been a  
13                  release or threatened release (including the  
14                  cooperation and access necessary for the  
15                  installation, integrity, operation, and main-  
16                  tenance of any complete or partial re-  
17                  sponse action or natural resource restora-  
18                  tion at the vessel or facility);

19                  “(v) the person—

20                         “(I) is in compliance with any  
21                         land use restrictions established or re-  
22                         lied on in connection with the re-  
23                         sponse action at the facility; and

24                         “(II) does not impede the effec-  
25                         tiveness or integrity of any institu-

1           tional control employed in connection  
2           with a response action;

3           “(vi) the person is in compliance with  
4           any request for information or administra-  
5           tive subpoena issued by the President  
6           under this Act;

7           “(vii) the person provides all legally  
8           required notices with respect to the dis-  
9           covery or release of any hazardous sub-  
10          stances at the facility; and

11          “(viii) at the time at which the person  
12          acquired the property, the person—

13               “(I) conducted all appropriate in-  
14               quiry within the meaning of section  
15               101(35)(B) with respect to the prop-  
16               erty; and

17               “(II) did not know or have rea-  
18               son to know that the property was or  
19               could be contaminated by a release or  
20               threatened release of 1 or more haz-  
21               ardous substances from other real  
22               property not owned or operated by the  
23               person.

24          “(B) DEMONSTRATION.—To qualify as a  
25          person described in subparagraph (A), a person

1 must establish by a preponderance of the evi-  
2 dence that the conditions in clauses (i) through  
3 (viii) of subparagraph (A) have been met.

4 “(C) BONA FIDE PROSPECTIVE PUR-  
5 CHASER.—Any person that does not qualify as  
6 a person described in this paragraph because  
7 the person had, or had reason to have, knowl-  
8 edge specified in subparagraph (A)(viii) at the  
9 time of acquisition of the real property may  
10 qualify as a bona fide prospective purchaser  
11 under section 101(40) if the person is otherwise  
12 described in that section.

13 “(D) GROUND WATER.—With respect to a  
14 hazardous substance from 1 or more sources  
15 that are not on the property of a person that  
16 is a contiguous property owner that enters  
17 ground water beneath the property of the per-  
18 son solely as a result of subsurface migration in  
19 an aquifer, subparagraph (A)(iii) shall not re-  
20 quire the person to conduct ground water inves-  
21 tigations or to install ground water remediation  
22 systems, except in accordance with the policy of  
23 the Environmental Protection Agency con-  
24 cerning owners of property containing contami-  
25 nated aquifers, dated May 24, 1995.

1           “(2) EFFECT OF LAW.—With respect to a per-  
 2       son described in this subsection, nothing in this  
 3       subsection—

4           “(A) limits any defense to liability that  
 5       may be available to the person under any other  
 6       provision of law; or

7           “(B) imposes liability on the person that is  
 8       not otherwise imposed by subsection (a).

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

10          “(A) issue an assurance that no enforce-  
 11       ment action under this Act will be initiated  
 12       against a person described in paragraph (1);  
 13       and

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

17 **SEC. 202. PROSPECTIVE PURCHASERS AND WINDFALL**  
 18 **LIENS.**

19       (a) DEFINITION OF BONA FIDE PROSPECTIVE PUR-  
 20       CHASER.—Section 101 of the Comprehensive Environ-  
 21       mental Response, Compensation, and Liability Act of  
 22       1980 (42 U.S.C. 9601) (as amended by section 101(a))  
 23       is amended by adding at the end the following:

24           “(40) BONA FIDE PROSPECTIVE PURCHASER.—

25       The term ‘bona fide prospective purchaser’ means a

1 person (or a tenant of a person) that acquires own-  
 2 ership of a facility after the date of enactment of  
 3 this paragraph and that establishes each of the fol-  
 4 lowing by a preponderance of the evidence:

5 “(A) DISPOSAL PRIOR TO ACQUISITION.—

6 All disposal of hazardous substances at the fa-  
 7 cility occurred before the person acquired the  
 8 facility.

9 “(B) INQUIRIES.—

10 “(i) IN GENERAL.—The person made  
 11 all appropriate inquiries into the previous  
 12 ownership and uses of the facility in ac-  
 13 cordance with generally accepted good  
 14 commercial and customary standards and  
 15 practices in accordance with clauses (ii)  
 16 and (iii).

17 “(ii) STANDARDS AND PRACTICES.—

18 The standards and practices referred to in  
 19 clauses (ii) and (iv) of paragraph (35)(B)  
 20 shall be considered to satisfy the require-  
 21 ments of this subparagraph.

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

23 of property in residential or other similar  
 24 use at the time of purchase by a non-  
 25 governmental or noncommercial entity, a

1 facility inspection and title search that re-  
2 veal no basis for further investigation shall  
3 be considered to satisfy the requirements  
4 of this subparagraph.

5 “(C) NOTICES.—The person provides all  
6 legally required notices with respect to the dis-  
7 covery or release of any hazardous substances  
8 at the facility.

9 “(D) CARE.—The person exercises appro-  
10 priate care with respect to hazardous sub-  
11 stances found at the facility by taking reason-  
12 able steps to—

13 “(i) stop any continuing release;

14 “(ii) prevent any threatened future re-  
15 lease; and

16 “(iii) prevent or limit human, environ-  
17 mental, or natural resource exposure to  
18 any previously released hazardous sub-  
19 stance.

20 “(E) COOPERATION, ASSISTANCE, AND AC-  
21 CESS.—The person provides full cooperation,  
22 assistance, and access to persons that are au-  
23 thorized to conduct response actions or natural  
24 resource restoration at a vessel or facility (in-  
25 cluding the cooperation and access necessary

1 for the installation, integrity, operation, and  
2 maintenance of any complete or partial re-  
3 sponse actions or natural resource restoration  
4 at the vessel or facility).

5 “(F) INSTITUTIONAL CONTROL.—The  
6 person—

7 “(i) is in compliance with any land  
8 use restrictions established or relied on in  
9 connection with the response action at a  
10 vessel or facility; and

11 “(ii) does not impede the effectiveness  
12 or integrity of any institutional control em-  
13 ployed at the vessel or facility in connec-  
14 tion with a response action.

15 “(G) REQUESTS; SUBPOENAS.—The person  
16 complies with any request for information or  
17 administrative subpoena issued by the President  
18 under this Act.

19 “(H) NO AFFILIATION.—The person is  
20 not—

21 “(i) potentially liable, or affiliated  
22 with any other person that is potentially  
23 liable, for response costs at a facility  
24 through—

1                   “(I) any direct or indirect famil-  
2                   ial relationship; or

3                   “(II) any contractual, corporate,  
4                   or financial relationship (other than a  
5                   contractual, corporate, or financial re-  
6                   lationship that is created by the in-  
7                   struments by which title to the facility  
8                   is conveyed or financed or by a con-  
9                   tract for the sale of goods or services);  
10                  or

11                  “(ii) the result of a reorganization of  
12                  a business entity that was potentially lia-  
13                  ble.”.

14           (b) PROSPECTIVE PURCHASER AND WINDFALL  
15 LIEN.—Section 107 of the Comprehensive Environmental  
16 Response, Compensation, and Liability Act of 1980 (42  
17 U.S.C. 9607) (as amended by section 201) is amended by  
18 adding at the end the following:

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

21           “(1) LIMITATION ON LIABILITY.—Notwith-  
22           standing subsection (a)(1), a bona fide prospective  
23           purchaser whose potential liability for a release or  
24           threatened release is based solely on the purchaser’s  
25           being considered to be an owner or operator of a fa-



1 cility shall not be liable as long as the bona fide pro-  
2 spective purchaser does not impede the performance  
3 of a response action or natural resource restoration.

4 “(2) LIEN.—If there are unrecovered response  
5 costs incurred by the United States at a facility for  
6 which an owner of the facility is not liable by reason  
7 of paragraph (1), and if each of the conditions de-  
8 scribed in paragraph (3) is met, the United States  
9 shall have a lien on the facility, or may by agree-  
10 ment with the owner, obtain from the owner a lien  
11 on any other property or other assurance of payment  
12 satisfactory to the Administrator, for the unre-  
13 covered response 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 of  
18 the United States is 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 before the response action was ini-  
23 tiated.

24 “(4) AMOUNT; DURATION.—A lien under para-  
25 graph (2)—

1           “(A) shall be in an amount not to exceed  
 2           the increase in fair market value of the prop-  
 3           erty attributable to the response action at the  
 4           time of a sale or other disposition of the prop-  
 5           erty;

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—

12                 “(i) satisfaction of the lien by sale or  
 13                 other means; or

14                 “(ii) notwithstanding any statute of  
 15                 limitations under section 113, recovery of  
 16                 all response costs incurred at the facility.”.

17 **SEC. 203. INNOCENT LANDOWNERS.**

18          Section 101(35) of the Comprehensive Environmental  
 19          Response, Compensation, and Liability Act of 1980 (42  
 20          U.S.C. 9601(35)) is amended—

21                 (1) in subparagraph (A)—

22                         (A) in the first sentence, in the matter pre-  
 23                         ceding clause (i), by striking “deeds or” and in-  
 24                         serting “deeds, easements, leases, or”; and

25                         (B) in the second sentence—

1 (i) by striking “he” and inserting “the  
2 defendant”; and

3 (ii) by striking the period at the end  
4 and inserting “, provides full cooperation,  
5 assistance, and facility access to the per-  
6 sons that are authorized to conduct re-  
7 sponse actions at the facility (including the  
8 cooperation and access necessary for the  
9 installation, integrity, operation, and main-  
10 tenance of any complete or partial re-  
11 sponse action at the facility), is in compli-  
12 ance with any land use restrictions estab-  
13 lished or relied on in connection with the  
14 response action at a facility, and does not  
15 impede the effectiveness or integrity of any  
16 institutional control employed at the facil-  
17 ity in connection with a response action.”;  
18 and

19 (2) by striking subparagraph (B) and inserting  
20 the following:

21 “(B) REASON TO KNOW.—

22 “(i) ALL APPROPRIATE INQUIRIES.—

23 To establish that the defendant had no  
24 reason to know of the matter described in

1 subparagraph (A)(i), the defendant must  
2 demonstrate to a court that—

3 “(I) on or before the date on  
4 which the defendant acquired the fa-  
5 cility, the defendant carried out all  
6 appropriate inquiries, as provided in  
7 clauses (ii) and (iv), into the previous  
8 ownership and uses of the facility in  
9 accordance with generally accepted  
10 good commercial and customary  
11 standards and practices; and

12 “(II) the defendant took reason-  
13 able steps to—

14 “(aa) stop any continuing  
15 release;

16 “(bb) prevent any threat-  
17 ened future release; and

18 “(cc) prevent or limit any  
19 human, environmental, or natural  
20 resource exposure to any pre-  
21 viously released hazardous sub-  
22 stance.

23 “(ii) STANDARDS AND PRACTICES.—  
24 Not later than 2 years after the date of en-  
25 actment of the Brownfields Revitalization

1 and Environmental Restoration Act of  
2 2001, the Administrator shall by regula-  
3 tion establish standards and practices for  
4 the purpose of satisfying the requirement  
5 to carry out all appropriate inquiries under  
6 clause (i).

7 “(iii) CRITERIA.—In promulgating  
8 regulations that establish the standards  
9 and practices referred to in clause (ii), the  
10 Administrator shall include each of the fol-  
11 lowing:

12 “(I) The results of an inquiry by  
13 an environmental professional.

14 “(II) Interviews with past and  
15 present owners, operators, and occu-  
16 pants of the facility for the purpose of  
17 gathering information regarding the  
18 potential for contamination at the fa-  
19 cility.

20 “(III) Reviews of historical  
21 sources, such as chain of title docu-  
22 ments, aerial photographs, building  
23 department records, and land use  
24 records, to determine previous uses

1 and occupancies of the real property  
2 since the property was first developed.

3 “(IV) Searches for recorded envi-  
4 ronmental cleanup liens against the  
5 facility that are filed under Federal,  
6 State, or local law.

7 “(V) Reviews of Federal, State,  
8 and local government records, waste  
9 disposal records, underground storage  
10 tank records, and hazardous waste  
11 handling, generation, treatment, dis-  
12 posal, and spill records, concerning  
13 contamination at or near the facility.

14 “(VI) Visual inspections of the  
15 facility and of adjoining properties.

16 “(VII) Specialized knowledge or  
17 experience on the part of the defend-  
18 ant.

19 “(VIII) The relationship of the  
20 purchase price to the value of the  
21 property, if the property was not con-  
22 taminated.

23 “(IX) Commonly known or rea-  
24 sonably ascertainable information  
25 about the property.

1           “(X) The degree of obviousness  
2           of the presence or likely presence of  
3           contamination at the property, and  
4           the ability to detect the contamination  
5           by appropriate investigation.

6           “(iv) INTERIM STANDARDS AND PRAC-  
7           TICES.—

8           “(I) PROPERTY PURCHASED BE-  
9           FORE MAY 31, 1997.—With respect to  
10          property purchased before May 31,  
11          1997, in making a determination with  
12          respect to a defendant described of  
13          clause (i), a court shall take into  
14          account—

15               “(aa) any specialized knowl-  
16               edge or experience on the part of  
17               the defendant;

18               “(bb) the relationship of the  
19               purchase price to the value of the  
20               property, if the property was not  
21               contaminated;

22               “(cc) commonly known or  
23               reasonably ascertainable informa-  
24               tion about the property;

1                   “(dd) the obviousness of the  
2                   presence or likely presence of  
3                   contamination at the property;  
4                   and

5                   “(ee) the ability of the de-  
6                   fendant to detect the contamina-  
7                   tion by appropriate inspection.

8                   “(II) PROPERTY PURCHASED ON  
9                   OR AFTER MAY 31, 1997.—With re-  
10                  spect to property purchased on or  
11                  after May 31, 1997, and until the Ad-  
12                  ministrator promulgates the regula-  
13                  tions described in clause (ii), the pro-  
14                  cedures of the American Society for  
15                  Testing and Materials, including the  
16                  document known as ‘Standard  
17                  E1527–97’, entitled ‘Standard Prac-  
18                  tice for Environmental Site Assess-  
19                  ment: Phase 1 Environmental Site  
20                  Assessment Process’, shall satisfy the  
21                  requirements in clause (i).

22                  “(v) SITE INSPECTION AND TITLE  
23                  SEARCH.—In the case of property for resi-  
24                  dential use or other similar use purchased  
25                  by a nongovernmental or noncommercial



entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.”.

## **TITLE III—STATE RESPONSE PROGRAMS**

### **SEC. 301. 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 202) is amended by adding at the end the following:

“(41) ELIGIBLE RESPONSE SITE.—

“(A) IN GENERAL.—The term ‘eligible response site’ means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

“(B) INCLUSIONS.—The term ‘eligible response site’ includes—

“(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Under-

1 ground Storage Tank Trust Fund estab-  
2 lished under section 9508 of the Internal  
3 Revenue Code of 1986; or

4 “(ii) a site for which, notwithstanding  
5 the exclusions provided in subparagraph  
6 (C) or paragraph (39)(B), the President  
7 determines, on a site-by-site basis and  
8 after consultation with the State, that limi-  
9 tations on enforcement under section 129  
10 at sites specified in clause (iv), (v), (vi) or  
11 (viii) of paragraph (39)(B) would be ap-  
12 propriate and will—

13 “(I) protect human health and  
14 the environment; and

15 “(II) promote economic develop-  
16 ment or facilitate the creation of,  
17 preservation of, or addition to a park,  
18 a greenway, undeveloped property,  
19 recreational property, or other prop-  
20 erty used for nonprofit purposes.

21 “(C) EXCLUSIONS.—The term ‘eligible re-  
22 sponse site’ does not include—

23 “(i) a facility for which the  
24 President—

1 “(I) conducts or has conducted a  
2 preliminary assessment or site inspec-  
3 tion; and

4 “(II) after consultation with the  
5 State, determines or has determined  
6 that the site obtains a preliminary  
7 score sufficient for possible listing on  
8 the National Priorities List, or that  
9 the site otherwise qualifies for listing  
10 on the National Priorities List;

11 unless the President has made a deter-  
12 mination that no further Federal action  
13 will be taken; or

14 “(ii) facilities that the President de-  
15 termines warrant particular consideration  
16 as identified by regulation, such as sites  
17 posing a threat to a sole-source drinking  
18 water aquifer or a sensitive ecosystem.”.

19 (b) STATE RESPONSE PROGRAMS.—Title I of the  
20 Comprehensive Environmental Response, Compensation,  
21 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as  
22 amended by section 101(b)) is amended by adding at the  
23 end the following:

24 **“SEC. 129. STATE RESPONSE PROGRAMS.**

25 **“(a) ASSISTANCE TO STATES.—**

1 “(1) IN GENERAL.—

2 “(A) STATES.—The Administrator may  
3 award a grant to a State or Indian tribe that—

4 “(i) has a response program that in-  
5 cludes each of the elements, or is taking  
6 reasonable steps to include each of the ele-  
7 ments, listed in paragraph (2); or

8 “(ii) is a party to a memorandum of  
9 agreement with the Administrator for vol-  
10 untary response programs.

11 “(B) USE OF GRANTS BY STATES.—

12 “(i) IN GENERAL.—A State or Indian  
13 tribe may use a grant under this sub-  
14 section to establish or enhance the re-  
15 sponse program of the State or Indian  
16 tribe.

17 “(ii) ADDITIONAL USES.—In addition  
18 to the uses under clause (i), a State or In-  
19 dian tribe may use a grant under this sub-  
20 section to—

21 “(I) capitalize a revolving loan  
22 fund for brownfield remediation under  
23 section 128(c); or

24 “(II) purchase insurance or de-  
25 velop a risk sharing pool, an indem-

1 nity pool, or insurance mechanism to  
2 provide financing for response actions  
3 under a State response program.

4 “(2) ELEMENTS.—The elements of a State or  
5 Indian tribe response program referred to in para-  
6 graph (1)(A)(i) are the following:

7 “(A) Timely survey and inventory of  
8 brownfield sites in the State.

9 “(B) Oversight and enforcement authori-  
10 ties or other mechanisms, and resources, that  
11 are adequate to ensure that—

12 “(i) a response action will—

13 “(I) protect human health and  
14 the environment; and

15 “(II) be conducted in accordance  
16 with applicable Federal and State law;  
17 and

18 “(ii) if the person conducting the re-  
19 sponse action fails to complete the nec-  
20 essary response activities, including oper-  
21 ation and maintenance or long-term moni-  
22 toring activities, the necessary response ac-  
23 tivities are completed.

1           “(C) Mechanisms and resources to provide  
2           meaningful opportunities for public participa-  
3           tion, including—

4               “(i) public access to documents that  
5               the State, Indian tribe, or party con-  
6               ducting the cleanup is relying on or devel-  
7               oping in making cleanup decisions or con-  
8               ducting site activities;

9               “(ii) prior notice and opportunity for  
10              comment on proposed cleanup plans and  
11              site activities; and

12              “(iii) a mechanism by which—

13                   “(I) a person that is or may be  
14                   affected by a release or threatened re-  
15                   lease of a hazardous substance, pollut-  
16                   ant, or contaminant at a brownfield  
17                   site located in the community in which  
18                   the person works or resides may re-  
19                   quest the conduct of a site assess-  
20                   ment; and

21                   “(II) an appropriate State offi-  
22                   cial shall consider and appropriately  
23                   respond to a request under subclause  
24                   (I).

1           “(D) Mechanisms for approval of a clean-  
 2           up plan, and a requirement for verification by  
 3           and certification or similar documentation from  
 4           the State, an Indian tribe, or a licensed site  
 5           professional to the person conducting a re-  
 6           sponse action indicating that the response is  
 7           complete.

8           “(3) FUNDING.—There is authorized to be ap-  
 9           propriated to carry out this subsection \$50,000,000  
 10          for each of fiscal years 2002 through 2006.

11          “(b) ENFORCEMENT IN CASES OF A RELEASE SUB-  
 12          JECT TO STATE PROGRAM.—

13           “(1) ENFORCEMENT.—

14           “(A) IN GENERAL.— Except as provided in  
 15           subparagraph (B) and subject to subparagraph  
 16           (C), in the case of an eligible response site at  
 17           which—

18                   “(i) there is a release or threatened  
 19                   release of a hazardous substance, pollut-  
 20                   ant, or contaminant; and

21                   “(ii) a person is conducting or has  
 22                   completed a response action regarding the  
 23                   specific release that is addressed by the re-  
 24                   sponse action that is in compliance with  
 25                   the State program that specifically governs

1           response actions for the protection of pub-  
2           lic health and the environment;  
3           the President may not use authority under this  
4           Act to take an administrative or judicial en-  
5           forcement action under section 106(a) or to  
6           take a judicial enforcement action to recover re-  
7           sponse costs under section 107(a) against the  
8           person regarding the specific release that is ad-  
9           dressed by the response action.

10           “(B) EXCEPTIONS.—The President may  
11           bring an administrative or judicial enforcement  
12           action under this Act during or after completion  
13           of a response action described in subparagraph  
14           (A) with respect to a release or threatened re-  
15           lease at an eligible response site described in  
16           that subparagraph if—

17           “(i) the State requests that the Presi-  
18           dent provide assistance in the performance  
19           of a response action;

20           “(ii) the Administrator determines  
21           that contamination has migrated or will  
22           migrate across a State line, resulting in  
23           the need for further response action to  
24           protect human health or the environment,  
25           or the President determines that contami-



1 nation has migrated or is likely to migrate  
2 onto property subject to the jurisdiction,  
3 custody, or control of a department, agen-  
4 cy, or instrumentality of the United States  
5 and may impact the authorized purposes of  
6 the Federal property;

7 “(iii) after taking into consideration  
8 the response activities already taken, the  
9 Administrator determines that—

10 “(I) a release or threatened re-  
11 lease may present an imminent and  
12 substantial endangerment to public  
13 health or welfare or the environment;  
14 and

15 “(II) additional response actions  
16 are likely to be necessary to address,  
17 prevent, limit, or mitigate the release  
18 or threatened release; or

19 “(iv) the Administrator, after con-  
20 sultation with the State, determines that  
21 information, that on the earlier of the date  
22 on which cleanup was approved or com-  
23 pleted, was not known by the State, as re-  
24 corded in documents prepared or relied on  
25 in selecting or conducting the cleanup, has

1           been discovered regarding the contamina-  
2           tion or conditions at a facility such that  
3           the contamination or conditions at the fa-  
4           cility present a threat requiring further re-  
5           mediation to protect public health or wel-  
6           fare or the environment. Consultation with  
7           the State shall not limit the ability of the  
8           Administrator to make this determination.

9           “(C) PUBLIC RECORD.—The limitations on  
10          the authority of the President under subpara-  
11          graph (A) apply only at sites in States that  
12          maintain, update not less than annually, and  
13          make available to the public a record of sites,  
14          by name and location, at which response actions  
15          have been completed in the previous year and  
16          are planned to be addressed under the State  
17          program that specifically governs response ac-  
18          tions for the protection of public health and the  
19          environment in the upcoming year. The public  
20          record shall identify whether or not the site, on  
21          completion of the response action, will be suit-  
22          able for unrestricted use and, if not, shall iden-  
23          tify the institutional controls relied on in the  
24          remedy. Each State and tribe receiving finan-  
25          cial assistance under subsection (a) shall main-

tain and make available to the public a record of sites as provided in this paragraph.

“(D) EPA NOTIFICATION.—

“(i) IN GENERAL.—In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall—

“(I) notify the State of the action the Administrator intends to take; and

“(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

“(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

“(ii) STATE REPLY.—Not later than 48 hours after a State receives notice from

1 the Administrator under clause (i), the  
2 State shall notify the Administrator if—

3 “(I) the release at the eligible re-  
4 sponse site is or has been subject to  
5 a cleanup conducted under a State  
6 program; and

7 “(II) the State is planning to  
8 abate the release or threatened re-  
9 lease, any actions that are planned.

10 “(iii) IMMEDIATE FEDERAL ACTION.—  
11 The Administrator may take action imme-  
12 diately after giving notification under  
13 clause (i) without waiting for a State reply  
14 under clause (ii) if the Administrator de-  
15 termines that 1 or more exceptions under  
16 subparagraph (B) are met.

17 “(E) REPORT TO CONGRESS.—Not later  
18 than 90 days after the date of initiation of any  
19 enforcement action by the President under  
20 clause (ii), (iii), or (iv) of subparagraph (B),  
21 the President shall submit to Congress a report  
22 describing the basis for the enforcement action,  
23 including specific references to the facts dem-  
24 onstrating that enforcement action is permitted  
25 under subparagraph (B).

1 “(2) SAVINGS PROVISION.—

2 “(A) COSTS INCURRED PRIOR TO LIMITA-  
3 TIONS.—Nothing in paragraph (1) precludes  
4 the President from seeking to recover costs in-  
5 curred prior to the date of enactment of this  
6 section or during a period in which the limita-  
7 tions of paragraph (1)(A) were not applicable.

8 “(B) EFFECT ON AGREEMENTS BETWEEN  
9 STATES AND EPA.—Nothing in paragraph (1)—

10 “(i) modifies or otherwise affects a  
11 memorandum of agreement, memorandum  
12 of understanding, or any similar agreement  
13 relating to this Act between a State agency  
14 or an Indian tribe and the Administrator  
15 that is in effect on or before the date of  
16 enactment of this section (which agreement  
17 shall remain in effect, subject to the terms  
18 of the agreement); or

19 “(ii) limits the discretionary authority  
20 of the President to enter into or modify an  
21 agreement with a State, an Indian tribe, or  
22 any other person relating to the implemen-  
23 tation by the President of statutory au-  
24 thorities.

1           “(3) EFFECTIVE DATE.—This subsection ap-  
 2           plies only to response actions conducted after Feb-  
 3           ruary 15, 2001.

4           “(c) EFFECT ON FEDERAL LAWS.—Nothing in this  
 5           section affects any liability or response authority under  
 6           any Federal law, including—

7                   “(1) this Act, except as provided in subsection  
 8           (b);

9                   “(2) the Solid Waste Disposal Act (42 U.S.C.  
 10           6901 et seq.);

11                   “(3) the Federal Water Pollution Control Act  
 12           (33 U.S.C. 1251 et seq.);

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

15                   “(5) the Safe Drinking Water Act (42 U.S.C.  
 16           300f et seq.).”.

17   **SEC. 302. ADDITIONS TO NATIONAL PRIORITIES LIST.**

18           Section 105 of the Comprehensive Environmental Re-  
 19           sponse, Compensation, and Liability Act of 1980 (42  
 20           U.S.C. 9605) is amended by adding at the end the fol-  
 21           lowing:

22           “(h) NPL DEFERRAL.—

23                   “(1) DEFERRAL TO STATE VOLUNTARY CLEAN-  
 24           UPS.—At the request of a State and subject to para-  
 25           graphs (2) and (3), the President generally shall

1 defer final listing of an eligible response site on the  
2 National Priorities List if the President determines  
3 that—

4 “(A) the State, or another party under an  
5 agreement with or order from the State, is con-  
6 ducting a response action at the eligible re-  
7 sponse site—

8 “(i) in compliance with a State pro-  
9 gram that specifically governs response ac-  
10 tions for the protection of public health  
11 and the environment; and

12 “(ii) that will provide long-term pro-  
13 tection of human health and the environ-  
14 ment; or

15 “(B) the State is actively pursuing an  
16 agreement to perform a response action de-  
17 scribed in subparagraph (A) at the site with a  
18 person that the State has reason to believe is  
19 capable of conducting a response action that  
20 meets the requirements of subparagraph (A).

21 “(2) PROGRESS TOWARD CLEANUP.—If, after  
22 the last day of the 1-year period beginning on the  
23 date on which the President proposes to list an eligi-  
24 ble response site on the National Priorities List, the  
25 President determines that the State or other party

1 is not making reasonable progress toward com-  
2 pleting a response action at the eligible response  
3 site, the President may list the eligible response site  
4 on the National Priorities List.

5 “(3) CLEANUP AGREEMENTS.—With respect to  
6 an eligible response site under paragraph (1)(B), if,  
7 after the last day of the 1-year period beginning on  
8 the date on which the President proposes to list the  
9 eligible response site on the National Priorities List,  
10 an agreement described in paragraph (1)(B) has not  
11 been reached, the President may defer the listing of  
12 the eligible response site on the National Priorities  
13 List for an additional period of not to exceed 180  
14 days if the President determines deferring the listing  
15 would be appropriate based on—

16 “(A) the complexity of the site;

17 “(B) substantial progress made in negotia-  
18 tions; and

19 “(C) other appropriate factors, as deter-  
20 mined by the President.

21 “(4) EXCEPTIONS.—The President may decline  
22 to defer, or elect to discontinue a deferral of, a list-  
23 ing of an eligible response site on the National Pri-  
24 orities List if the President determines that—



1           “(A) deferral would not be appropriate be-  
2           cause the State, as an owner or operator or a  
3           significant contributor of hazardous substances  
4           to the facility, is a potentially responsible party;

5           “(B) the criteria under the National Con-  
6           tingency Plan for issuance of a health advisory  
7           have been met; or

8           “(C) the conditions in paragraphs (1)  
9           through (3), as applicable, are no longer being  
10          met.”.

Passed the Senate April 25, 2001.

Attest:

GARY SISCO,  
*Secretary.*