

U.S.C. 3301 et seq.), reexamine the nature and quantity of defense articles and services that may be necessary to enable Taiwan to maintain a sufficient self-defense capability in light of the heightened military threat; and

"(5) that the Government of Taiwan should remain committed to the peaceful resolution of its future relations with the People's Republic of China by mutual decision."

Amend the preamble to read as follows:

"Whereas the People's Republic of China, in a clear attempt to intimidate the people and Government of Taiwan, has over the past 9 months conducted a series of military exercises, including missile tests, within alarmingly close proximity to Taiwan;

"Whereas from March 8 through March 15, 1996, the People's Republic of China conducted a series of missile tests within 25 to 35 miles of the 2 principal northern and southern ports of Taiwan, Kaohsiung and Keelung;

"Whereas on March 12, 1996, the People's Republic of China began an 8-day, live-ammunition, joint sea-and-air military exercise in a 2,390 square mile area in the southern Taiwan Strait;

"Whereas on March 18, 1996, the People's Republic of China began a 7-day, live-ammunition, joint sea-and-air military exercise between Taiwan's islands of Matsu and Wuchu;

"Whereas these tests and exercises are a clear escalation of the attempts by the People's Republic of China to intimidate Taiwan and influence the outcome of the upcoming democratic presidential election in Taiwan;

"Whereas through the administrations of Presidents Nixon, Ford, Carter, Reagan, and Bush, the United States has adhered to a "One China" policy and, during the administration of President Clinton, the United States continues to adhere to the "One China" policy based on the Shanghai Communiqué of February 27, 1972, the Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China of January 1, 1979, and the United States-China Joint Communiqué of August 17, 1982;

"Whereas through the administrations of Presidents Carter, Reagan, and Bush, the United States has adhered to the provisions of the Taiwan Relations Act of 1979, (22 U.S.C. 3301 et seq.) as the basis for continuing commercial, cultural, and other relations between the people of the United States and the people of Taiwan and, during the administration of President Clinton, the United States continues to adhere to the provisions of the Taiwan Relations Act of 1979;

"Whereas relations between the United States and the People's Republic of China rest upon the expectation that the future of Taiwan will be settled solely by peaceful means;

"Whereas the strong interest of the United States in the peaceful settlement of the Taiwan question is one of the central premises of the three United States-China Joint Communiqués and was codified in the Taiwan Relations Act of 1979;

"Whereas the Taiwan Relations Act of 1979 states that peace and stability in the western Pacific "are in the political, security, and economic interests of the United States, and are matters of international concern";

"Whereas the Taiwan Relations Act of 1979 states that the United States considers "any effort to determine the future of Taiwan by other than peaceful means, including by boycotts, or embargoes, a threat to the peace and security of the western Pacific area and of grave concern to the United States";

"Whereas the Taiwan Relations Act of 1979 directs the President to "inform Congress

promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom";

"Whereas the Taiwan Relations Act of 1979 further directs that "the President and the Congress shall determine, in accordance with constitutional process, appropriate action by the United States in response to any such danger";

"Whereas the United States, the People's Republic of China, and the Government of Taiwan have each previously expressed their commitment to the resolution of the Taiwan question through peaceful means; and

"Whereas these missile tests and military exercises, and the accompanying statements made by the Government of the People's Republic of China, call into serious question the commitment of China to the peaceful resolution of the Taiwan question: Now, therefore, be it,"

Amend the title so as to read: "Expressing the sense of Congress regarding missile tests and military exercises by the People's Republic of China."

THE ACCELERATED CLEANUP AND ENVIRONMENTAL RESTORATION ACT OF 1996

SMITH (AND CHAFEE) AMENDMENT NO. 3563

(Ordered to lie on the table.)

Mr. SMITH (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed by them to the bill (S. 1285) to reauthorize and amend the Comprehensive Environmental Recovery, Compensation, and Liability Act of 1980, and for other purpose; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Accelerated Cleanup and Environmental Restoration Act of 1996".

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

Sec. 1. Short title; table of contents.

TITLE I—COMMUNITY PARTICIPATION

Sec. 101. Community response organizations; technical assistance grants; improvement of public participation in the Superfund decision-making process.

TITLE II—STATE ROLE

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

TITLE III—VOLUNTARY CLEANUP

Sec. 301. Assistance for qualifying State voluntary response programs.

Sec. 302. Brownfield characterization program.

Sec. 303. Treatment of security interest holders and fiduciaries as owners or operators.

Sec. 304. Federal Deposit Insurance Act amendment.

Sec. 305. Contiguous properties.

Sec. 306. Prospective purchasers and windfall liens.

Sec. 307. Safe harbor innocent landholders.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

Sec. 401. Definitions.

Sec. 402. Selection and implementation of remedial actions.

Sec. 403. Remedy selection methodology.

Sec. 404. Remedy selection procedures.

Sec. 405. Completion of physical construction and delisting.

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

Sec. 407. Judicial review.

Sec. 408. National Priorities List.

TITLE V—LIABILITY

Sec. 501. Liability exceptions and limitations.

Sec. 502. Contribution from the Fund for certain retroactive liability.

Sec. 503. Allocation of liability for certain facilities.

Sec. 504. Liability of response action contractors.

Sec. 505. Release of evidence.

Sec. 506. Contribution protection.

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

Sec. 508. Common carriers.

Sec. 509. Limitation on liability for response costs.

TITLE VI—FEDERAL FACILITIES

Sec. 601. Transfer of authorities.

Sec. 602. Limitation on criminal liability of Federal officers, employees, and agents.

Sec. 603. Innovative technologies for remedial action at Federal facilities.

Sec. 604. Federal facility listing.

Sec. 605. Federal facility listing deferral.

Sec. 606. Transfers of uncontaminated property.

TITLE VII—NATURAL RESOURCE DAMAGES

Sec. 701. Restoration of natural resources.

Sec. 702. Assessment of damages.

Sec. 703. Consistency between response actions and resource restoration standards and alternatives.

Sec. 704. Miscellaneous amendments.

TITLE VIII—MISCELLANEOUS

Sec. 801. Result-oriented cleanups.

Sec. 802. National Priorities List.

Sec. 803. Obligations from the fund for response actions.

Sec. 804. Remediation waste.

TITLE IX—FUNDING

Subtitle A—General Provisions

Sec. 901. Authorization of appropriations from the Fund.

Sec. 902. Orphan share funding.

Sec. 903. Department of Health and Human Services.

Sec. 904. Limitations on research, development, and demonstration programs.

Sec. 905. Authorization of appropriations from general revenues.

Sec. 906. Additional limitations.

Sec. 907. Reimbursement of potentially responsible parties.

TITLE I—COMMUNITY PARTICIPATION

SEC. 101. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

"(e) COMMUNITY RESPONSE ORGANIZATIONS.—

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

"(A) if the Administrator determines that a representative public forum will be helpful

in promoting direct, regular, and meaningful consultation among persons interested in remedial action at the facility; or

“(B) at the request of—

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

“(ii) a representative group of the potentially responsible parties; or

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

“(2) RESPONSIBILITIES.—A community response organization shall—

“(A) solicit the views of the local community on various issues affecting the development and implementation of remedial actions at the facility;

“(B) serve as a conduit of information to and from the community to appropriate Federal, State, and local agencies and potentially responsible parties;

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

“(D) provide reasonable notice of and opportunities to participate in the meetings and other activities of the community response organization.

“(3) ACCESS TO DOCUMENTS.—The Administrator shall provide a community response organization access to documents in possession of the Federal Government regarding response actions at the facility that do not relate to liability and are not protected from disclosure as confidential business information.

“(4) COMMUNITY RESPONSE ORGANIZATION INPUT.—

“(A) CONSULTATION.—The Administrator (or if the remedial action plan is being prepared or implemented by a party other than the Administrator, the other party) shall—

“(i) consult with the community response organization in developing and implementing the remedial action plan; and

“(ii) keep the community response organization informed of progress in the development and implementation of the remedial action plan.

“(B) TIMELY SUBMISSION OF COMMENTS.—The community response organization shall provide its comments, information, and recommendations in a timely manner to the Administrator (and other party).

“(C) CONSENSUS.—The community response organization shall attempt to achieve consensus among its members before providing comments and recommendations to the Administrator (and other party), but if consensus cannot be reached, the community response organization shall report or allow presentation of divergent views.

“(5) TECHNICAL ASSISTANCE GRANTS.—

“(A) PREFERRED RECIPIENT.—If a community response organization exists for a facility, the community response organization shall be the preferred recipient of a technical assistance grant under subsection (f).

“(B) PRIOR AWARD.—If a technical assistance grant concerning a facility has been awarded prior to establishment of a community response organization—

“(i) the recipient of the grant shall coordinate its activities and share information and technical expertise with the community response organization; and

“(ii) 1 person representing the grant recipient shall serve on the community response organization.

“(6) MEMBERSHIP.—

“(A) NUMBER.—The Administrator shall select not less than 15 nor more than 20 persons to serve on a community response organization.

“(B) NOTICE.—Before selecting members of the community response organization, the Administrator shall provide a notice of intent to establish a community response or-

ganization to persons who reside in the local community.

“(C) REPRESENTED GROUPS.—The Administrator shall, to the extent practicable, appoint members to the community response organization from each of the following groups of persons:

“(i) Persons who reside or own residential property near the facility;

“(ii) Persons who, although they may not reside or own property near the facility, may be adversely affected by a release from the facility.

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

“(iv) Representatives of Indian tribes or Indian communities that reside or own property near the facility or that may be adversely affected by a release from the facility.

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

“(vi) Representatives of local governments, such as city or county governments, or both, and any other governmental unit that regulates land use or land use planning in the vicinity of the facility.

“(vii) Members of the local business community.

“(D) PROPORTION.—Local residents shall comprise not less than 60 percent of the membership of a community response organization.

“(E) PAY.—Members of a community response organization shall serve without pay.

“(7) PARTICIPATION BY GOVERNMENT REPRESENTATIVES.—Representatives of the Administrator, the Administrator of the Agency for Toxic Substances and Disease Registry, other Federal agencies, and the State, as appropriate, shall participate in community response organization meetings to provide information and technical expertise, but shall not be members of the community response organization.

“(8) ADMINISTRATIVE SUPPORT.—The Administrator shall provide administrative services and meeting facilities for community response organizations.

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

“(f) TECHNICAL ASSISTANCE GRANTS.—

“(1) DEFINITIONS.—In this subsection:

“(A) AFFECTED CITIZEN GROUP.—The term ‘affected citizen group’ means a group of 2 or more individuals who may be affected by the release or threatened release of a hazardous substance, pollutant, or contaminant at any facility on the State Registry or the National Priorities List.

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

“(2) AUTHORITY.—

“(A) IN GENERAL.—In accordance with a regulation issued by the Administrator, the Administrator may make grants available to affected citizen groups.

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

“(3) SPECIAL RULES.—

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

“(B) AVAILABILITY IN ADVANCE.—The Administrator shall make all or a portion (but not less than \$5,000 or 10 percent of the grant amount, whichever is greater) of the grant amount available to a grant recipient in ad-

vance of the total expenditures to be covered by the grant.

“(4) LIMIT PER FACILITY.—

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

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

“(5) AVAILABILITY FOR FACILITIES NOT YET LISTED.—Subject to paragraph (6), 1 or more technical assistance grants shall be made available to affected citizen groups in communities containing facilities on the State Registry as of the date on which the grant is awarded.

“(6) FUNDING LIMIT.—

“(A) PERCENTAGE OF TOTAL APPROPRIATIONS.—Not more than 2 percent of the funds made available to carry out this Act for a fiscal year may be used to make technical assistance grants.

“(B) ALLOCATION BETWEEN LISTED AND UNLISTED FACILITIES.—Not more than the portion of funds equal to 1/3 of the total amount of funds used to make technical assistance grants for a fiscal year may be used for technical assistance grants with respect to facilities not listed on the National Priorities List.

“(7) FUNDING AMOUNT.—

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

“(B) INCREASE.—The Administrator may increase the amount of a technical assistance grant, or renew a previous technical assistance grant, up to a total grant amount not exceeding \$100,000, to reflect the complexity of the response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other non-Federal sources.

“(8) USE OF TECHNICAL ASSISTANCE GRANTS.—

“(A) PERMITTED USE.—A technical assistance grant may be used to obtain technical assistance in interpreting information with regard to—

“(i) the nature of the hazardous substances located at a facility;

“(ii) the work plan;

“(iii) the facility evaluation;

“(iv) a proposed remedial action plan, a remedial action plan, and a final remedial design for a facility;

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

“(vi) operation and maintenance activities at the facility.

“(B) PROHIBITED USE.—A technical assistance grant may not be used for the purpose of collecting field sampling data.

“(9) GRANT GUIDELINES.—

“(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Administrator shall develop and publish guidelines concerning the management of technical assistance grants by grant recipients.

“(B) HIRING OF EXPERTS.—A recipient of a technical assistance grant that hires technical experts and other experts shall act in accordance with the guidelines under subparagraph (A).

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

"(1) IN GENERAL.—

"(A) MEETINGS AND NOTICE.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the Administrator shall provide the opportunity for, and publish notice of, public meetings before or during performance of—

"(i) a facility evaluation, as appropriate;

"(ii) announcement of a proposed remedial action plan; and

"(iii) completion of a final remedial design.

"(B) INFORMATION.—A public meeting under subparagraph (A) shall be designed to obtain information from the community, and disseminate information to the community, with respect to a facility concerning the Administrator's facility activities and pending decisions.

"(2) PARTICIPANTS AND SUBJECT.—The Administrator shall provide reasonable notice of an opportunity for public participation in meetings in which—

"(A) the participants include Federal officials (or State officials, if the State is conducting response actions under a delegated or authorized program or through facility referral) with authority to make significant decisions affecting a response action, and other persons (unless all of such other persons are coregulators that are not potentially responsible parties or are government contractors); and

"(B) the subject of the meeting involves discussions directly affecting—

"(i) a legally enforceable work plan document, or any significant amendment to the document, for a removal, facility evaluation, proposed remedial action plan, final remedial design, or remedial action for a facility on the National Priorities List; or

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

"(3) LIMITATION.—Nothing in this subsection shall be construed—

"(A) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that concerns only the potential liability or settlement of potential liability of any person, whether prior to or following the commencement of litigation or administrative enforcement action;

"(B) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that is attended only by representatives of the United States (or of a department, agency, or instrumentality of the United States) with attorneys representing the United States (or of a department, agency, or instrumentality of the United States); or

"(C) to waive, compromise, or affect any privilege that may be applicable to a communication related to an activity described in subparagraph (A) or (B).

"(4) EVALUATION.—

"(A) IN GENERAL.—To the extent practicable, before and during the facility evaluation, the Administrator shall solicit and evaluate concerns, interests, and information from the community.

"(B) PROCEDURE.—An evaluation under subparagraph (A) shall include, as appropriate—

"(i) face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community;

"(ii) a public meeting;

"(iii) written responses to significant concerns; and

"(iv) other appropriate participatory activities.

"(5) VIEWS AND PREFERENCES.—

"(A) SOLICITATION.—During the facility evaluation, the Administrator (or other per-

son performing the facility evaluation) shall solicit the views and preferences of the community on the remediation and disposition of hazardous substances or pollutants or contaminants at the facility.

"(B) CONSIDERATION.—The views and preferences of the community shall be described in the facility evaluation and considered in the screening of remedial alternatives for the facility.

"(6) ALTERNATIVES.—Members of the community may propose remedial action alternatives, and the Administrator shall consider such alternatives in the same manner as the Administrator considers alternatives proposed by potentially responsible parties.

"(7) INFORMATION.—

"(A) THE COMMUNITY.—The Administrator, with the assistance of the community response organization under subsection (g) if there is one, shall provide information to the community and seek comment from the community throughout all significant phases of the response action at the facility.

"(B) TECHNICAL STAFF.—The Administrator shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff in a timely and effective manner.

"(C) RESPONSES.—The Administrator shall ensure that reasonable written or other appropriate responses will be made to such information.

"(8) NONPRIVILEGED INFORMATION.—Throughout all phases of response action at a facility, the Administrator shall make all nonprivileged information relating to a facility available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate.

"(9) PRESENTATION.—

"(A) DOCUMENTS.—

"(i) IN GENERAL.—The Administrator, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is complete and informative.

"(ii) RISK.—To the extent feasible, documents prepared by the Administrator and made available to the public that purport to describe the degree of risk to human health shall, at a minimum, state—

"(I) the distribution of risk, including upperbound and lowerbound estimates of the incremental risk;

"(II) the population or populations addressed by any estimates of the risk;

"(III) the expected risk or central estimate of the risk for the specific population;

"(IV) the reasonable range or other description of uncertainties in the assessment process; and

"(V) the assumptions that form the basis for any estimates of such risk posed by the facility and a brief explanation of the assumptions.

"(B) COMPARISONS.—The Administrator, in carrying out responsibilities under this Act, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels of risk from those hazardous substances ordinarily encountered by the general public through other sources of exposure.

"(10) REQUIREMENTS.—

"(A) LENGTHY REMOVAL ACTIONS.—Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 that is expected to require more than 180 days to complete, and in any case in which implementation of a removal action is expected to obviate or that in fact obviates the need to conduct a long-term remedial action—

"(i) the Administrator shall, to the maximum extent practicable, allow for public participation consistent with paragraph (1); and

"(ii) the removal action shall achieve the goals of protecting human health and the environment in accordance with section 121(a)(1).

"(B) OTHER REMOVAL ACTIONS.—In the case of all other removal actions, the Administrator may provide the community with notice of the anticipated removal action and a public comment period, as appropriate."

(b) ISSUANCE OF GUIDELINES.—The Administrator of the Environmental Protection Agency shall issue guidelines under section 117(e)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 90 days after the date of enactment of this Act.

TITLE II—STATE ROLE

SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 302, is amended by adding at the end the following:

"SEC. 135. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

"(a) DEFINITIONS.—In this section:

"(1) COMPREHENSIVE DELEGATION STATE.—The term 'comprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform all of the categories of delegable authority.

"(2) DELEGABLE AUTHORITY.—The term 'delegable authority' means authority to perform (or ensure performance of) all of the authorities included in any 1 or more of the categories of authority:

"(A) CATEGORY A.—All authorities necessary to perform technical investigations, evaluations, and risk analyses, including—

"(i) a preliminary assessment or facility evaluation under section 104;

"(ii) facility characterization under section 104;

"(iii) a remedial investigation under section 104;

"(iv) a facility-specific risk evaluation under section 129(b)(4); and

"(v) any other authority identified by the Administrator under subsection (b).

"(B) CATEGORY B.—All authorities necessary to perform alternatives development and remedy selection, including—

"(i) a feasibility study under section 104; and

"(ii) (I) remedial action selection under section 121 (including issuance of a record of decision); or

"(II) remedial action planning under section 129(b)(5); and

"(iii) any other authority identified by the Administrator under subsection (b).

"(C) CATEGORY C.—All authorities necessary to perform remedial design, including—

"(i) remedial design under section 121; and

"(ii) any other authority identified by the Administrator under subsection (b).

"(D) CATEGORY D.—All authorities necessary to perform remedial action and operation and maintenance, including—

"(i) a removal under section 104;

"(ii) a remedial action under section 104 or section 10 (a) or (b);

"(iii) operation and maintenance under section 104(c); and

"(iv) any other authority identified by the Administrator under subsection (b).

"(E) CATEGORY E.—All authorities necessary to perform information collection and allocation of liability, including—

"(i) information collection activity under section 104(e);

"(ii) allocation of liability under section 132;

"(iii) a search for potentially responsible parties under section 104 or 107;

"(iv) settlement under section 122; and

"(v) any other authority identified by the Administrator under subsection (b).

"(F) CATEGORY F.—All authorities necessary to perform enforcement, including—

"(i) issuance of an order under section 106(a);

"(ii) a response action cost recovery under section 107;

"(iii) imposition of a civil penalty or award under section 109 (a)(1)(D) or (b)(4);

"(iv) settlement under section 122; and

"(v) any other authority identified by the Administrator under subsection (b).

"(3) DELEGATED STATE.—The term 'delegated State' means a State to which delegable authority has been delegated under subsection (c), except as may be provided in a delegation agreement in the case of a limited delegation of authority under subsection (c)(5).

"(4) DELEGATED AUTHORITY.—The term 'delegated authority' means a delegable authority that has been delegated to a delegated State under this section.

"(5) DELEGATED FACILITY.—The term 'delegated facility' means a non-federal listed facility with respect to which a delegable authority has been delegated to a State under this section.

"(6) NONCOMPREHENSIVE DELEGATION STATE.—The term 'noncomprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform fewer than all of the categories of delegable authority.

"(7) NONDELEGABLE AUTHORITY.—The term 'nondelegable authority' means authority to—

"(A) make grants to community response organizations under section 117; and

"(B) conduct research and development activities under any provision of this Act.

"(8) NON-FEDERAL LISTED FACILITY.—The term 'non-federal listed facility' means a facility that—

"(A) is not owned or operated by a department, agency, or instrumentality of the United States in any branch of the Government; and

"(B) is listed on the National Priorities List.

"(b) IDENTIFICATION OF DELEGABLE AUTHORITIES.—

"(1) IN GENERAL.—The President shall by regulation identify all of the authorities of the Administrator that shall be included in a delegation of any category of delegable authority described in subsection (a)(2).

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

"(c) DELEGATION OF AUTHORITY.—

"(1) IN GENERAL.—Pursuant to an approved State application, the Administrator shall delegate authority to perform 1 or more delegable authorities with respect to 1 or more non-Federal listed facilities in the State.

"(2) APPLICATION.—An application under paragraph (1) shall—

"(A) identify each non-Federal listed facility for which delegation is requested;

"(B) identify each delegable authority that is requested to be delegated for each non-Federal listed facility for which delegation is requested; and

"(C) certify that the State, supported by such documentation as the State, in consultation with the Administrator, considers to be appropriate, has—

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

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

"(iii) procedures to ensure public notice and, as appropriate, opportunity for comment on remedial action plans, consistent with sections 117 and 129.

"(3) APPROVAL OF APPLICATION.—

"(A) IN GENERAL.—Not later than 60 days after receiving an application under paragraph (2) by a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), and not later than 120 days after receiving an application from a State that is not authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), unless the State agrees to a greater length of time for the Administrator to make a determination, the Administrator shall—

"(i) issue a notice of approval of the application (including approval or disapproval regarding any or all of the facilities with respect to which a delegation of authority is requested or with respect to any or all of the authorities that are requested to be delegated); or

"(ii) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the determination.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of all or any portion of an application within the applicable time period under subparagraph (A), the application shall be deemed to have been granted.

"(C) RESUBMISSION OF APPLICATION.—

"(i) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

"(ii) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the applicable time period under subparagraph (A), the resubmitted application shall be deemed to have been granted.

"(D) NO ADDITIONAL TERMS OR CONDITIONS.—The Administrator shall not impose any term or condition on the approval of an application that meets the requirements stated in paragraph (2) (except that any technical deficiencies in the application be corrected).

"(E) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

"(4) DELEGATION AGREEMENT.—On approval of a delegation of authority under this section, the Administrator and the delegated State shall enter into a delegation agreement that identifies each category of delegable authority that is delegated with respect to each delegated facility.

"(5) LIMITED DELEGATION.—

"(A) IN GENERAL.—In the case of a State that does not meet the requirements of paragraph (2)(C) the Administrator may delegate to the State limited authority to perform, ensure the performance of, or supervise or otherwise participate in the performance of 1 or more delegable authorities, as appropriate in view of the extent to which the State has the required legal authority, financial and

personnel resources, organization, and expertise.

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

"(d) PERFORMANCE OF DELEGATED AUTHORITIES.—

"(1) IN GENERAL.—A delegated State shall have sole authority (except as provided in paragraph (6)(B), subsection (e)(4), and subsection (g)) to perform a delegated authority with respect to a delegated facility.

"(2) AGREEMENTS FOR PERFORMANCE OF DELEGATED AUTHORITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a delegated State may enter into an agreement with a political subdivision of the State, an interstate body comprised of that State and another delegated State or States, or a combination of such subdivisions or interstate bodies, providing for the performance of any category of delegated authority with respect to a delegated facility in the State if the parties to the agreement agree in the agreement to undertake response actions that are consistent with this Act.

"(B) NO AGREEMENT WITH POTENTIALLY RESPONSIBLE PARTY.—A delegated State shall not enter into an agreement under subparagraph (A) with a political subdivision or interstate body that is, or includes as a component an entity that is, a potentially responsible party with respect to a delegated facility covered by the agreement.

"(C) CONTINUING RESPONSIBILITY.—A delegated State that enters into an agreement under subparagraph (A)—

"(i) shall exercise supervision over and approve the activities of the parties to the agreement; and

"(ii) shall remain responsible for ensuring performance of the delegated authority.

"(3) COMPLIANCE WITH ACT.—

"(A) NONCOMPREHENSIVE DELEGATION STATES.—A noncomprehensive delegation State shall implement each applicable provision of this Act (including regulations and guidance issued by the Administrator) so as to perform each delegated authority with respect to a delegated facility in the same manner as would the Administrator with respect to a facility that is not a delegated facility.

"(B) COMPREHENSIVE DELEGATION STATES.—

"(i) IN GENERAL.—A comprehensive delegation State shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121.

"(ii) COSTLIER REMEDIAL ACTION.—

"(1) IN GENERAL.—A delegated State may select a remedial action for a delegated facility that has a greater response cost (including operation and maintenance costs) than the response cost for a remedial action that would be selected by the Administrator under section 121, if the State pays for the difference in cost.

"(II) NO COST RECOVERY.—If a delegated State selects a more costly remedial action under subclause (I), the State shall not be entitled to seek cost recovery under this Act or any other Federal or State law from any other person for the difference in cost.

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

"(5) DELISTING OF NATIONAL PRIORITIES LIST FACILITIES.—

"(A) DELISTING.—After notice and an opportunity for public comment, a delegated State may remove from the National Priorities List all or part of a delegated facility—

"(i) if the State makes a finding that no further action is needed to be taken at the facility (or part of the facility) under any applicable law to protect human health and the environment consistent with section 121(a) (1) and (2);

"(ii) with the concurrence of the potentially responsible parties, if the State has an enforceable agreement to perform all required remedial action and operation and maintenance for the facility or if the clean-up will proceed at the facility under section 3004 (u) or (v) of the Solid Waste Disposal Act (42 U.S.C. 6924 (u), (v)); or

"(iii) if the State is a comprehensive delegation State with respect to the facility.

"(B) EFFECT OF DELISTING.—A delisting under subparagraph (A) (ii) or (iii) shall not affect—

"(i) the authority or responsibility of the State to complete remedial action and operation and maintenance;

"(ii) the eligibility of the State for funding under this Act;

"(iii) notwithstanding the limitation on section 104(c)(1), the authority of the Administrator to make expenditures from the Fund relating to the facility; or

"(iv) the enforceability of any consent order or decree relating to the facility.

"(C) NO RELISTING.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Administrator shall not relist on the National Priorities List a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A).

"(ii) CLEANUP NOT COMPLETED.—The Administrator may relist a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A) if cleanup is not completed in accordance with the enforceable agreement under subparagraph (A)(ii).

"(6) COST RECOVERY.—

"(A) RECOVERY BY A DELEGATED STATE.—Of the amount of any response costs recovered from a responsible party by a delegated State for a delegated facility under section 107—

"(i) 25 percent of the amount of any Federal response cost recovered with respect to a facility, plus an amount equal to the amount of response costs incurred by the State with respect to the facility, may be retained by the State; and

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

"(B) RECOVERY BY THE ADMINISTRATOR.—

"(i) IN GENERAL.—The Administrator may take action under section 107 to recover response costs from a responsible party for a delegated facility if—

"(I) the delegated State notifies the Administrator in writing that the delegated State does not intend to pursue action for recovery of response costs under section 107 against the responsible party; or

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

"(ii) NOTICE.—If the Administrator proposes to commence an action for recovery of response costs under section 107, the Administrator shall give the State written notice and allow the State at least 90 days after receipt of the notice to commence the action.

"(iii) NO FURTHER ACTION.—If the Administrator takes action against a potentially re-

sponsible party under section 107 relating to a release from a delegated facility, the delegated State may not take any other action for recovery of response costs relating to that release under this Act or any other Federal or State law.

"(e) FEDERAL RESPONSIBILITIES AND AUTHORITIES.—

"(1) REVIEW USE OF FUNDS.—

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

"(B) FINDING OF USE OF FUNDS INCONSISTENT WITH THIS ACT.—If the Administrator finds that funds were used in a manner that is inconsistent with this Act, the Administrator shall notify the Governor in writing not later than 120 days after receiving the Governor's certification.

"(C) EXPLANATION.—not later than 30 days after receiving a notice under subparagraph (B), the Governor shall—

"(i) explain why the Administrator's finding is in error; or

"(ii) explain to the Administrator's satisfaction how any misapplication or misuse of funds will be corrected.

"(D) FAILURE TO EXPLAIN.—If the Governor fails to make an explanation under subparagraph (C) to the Administrator's satisfaction, the Administrator may request reimbursement of such amount of funds as the Administrator finds was misapplied or misused.

"(E) REPAYMENT OF FUNDS.—If the Administrator fails to obtain reimbursement from the State within a reasonable period of time, the Administrator may, after 30 days' notice to the State, bring a civil action in United States district court to recover from the delegated State any funds that were advanced for a purpose or were used for a purpose or in a manner that is inconsistent with this Act.

"(2) WITHDRAWAL OF DELEGATION OF AUTHORITY.—

"(A) DELEGATED STATES.—If at any time the Administrator finds that contrary to a certification made under subsection (c)(2), a delegated State—

"(i) lacks the required financial and personnel resources, organization, or expertise to administer and enforce the requested delegated authorities;

"(ii) does not have adequate legal authority to request and accept delegation; or

"(iii) is failing to materially carry out the State's delegated authorities,

the Administrator may withdraw a delegation of authority with respect to a delegated facility after providing notice and opportunity to correct deficiencies under subparagraph (D).

"(B) STATES WITH LIMITED DELEGATIONS OF AUTHORITY.—If the Administrator finds that a State to which a limited delegation of authority was made under subsection (c)(5) has materially breached the delegation agreement, the Administrator may withdraw the delegation after providing notice and opportunity to correct deficiencies under subparagraph (D).

"(C) NO WITHDRAWAL WITH 1 YEAR OF APPROVAL.—The Administrator shall not withdraw a delegation of authority within 1 year after the date on which the application for delegation is approved (including approval under subsection (c)(3) (B) or (C)(ii)).

"(D) NOTICE AND OPPORTUNITY TO CORRECT.—If the Administrator proposes to withdraw a delegation of authority for any or all delegated facilities, the Administrator shall give the State written notice and allow the State at least 90 days after the date of receipt of the notice to correct the deficiencies cited in the notice.

"(E) FAILURE TO CORRECT.—If the Administrator finds that the deficiencies have not been corrected within the time specified in a notice under subparagraph (D), the Administrator may withdraw delegation of authority after providing public notice and opportunity for comment.

"(F) JUDICIAL REVIEW.—A decision of the Administrator to withdraw a delegation of authority shall be subject to judicial review under section 113(b).

"(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Administrator under this Act to—

"(A) take a response action at a facility listed on the National Priorities List in a State to which a delegation of authority has not been made under this section or at a facility not included in a delegation of authority; or

"(B) perform a delegable authority with respect to a facility that is not included among the authorities delegated to a State with respect to the facility.

"(4) EMERGENCY REMOVAL.—

"(A) NOTICE.—Before performing an emergency removal action under section 104 at a delegated facility, the Administrator shall notify the delegated States of the Administrator's intention to perform the removal.

"(B) STATE ACTION.—If, after receiving a notice under subparagraph (A), the delegated State notifies the Administrator within 48 hours that the State intends to take action to perform an emergency removal at the delegated facility, the Administrator shall not perform the emergency removal action unless the Administrator determines that the delegated State has failed to act within a reasonable period of time to perform the emergency removal.

"(C) IMMEDIATE AND SIGNIFICANT DANGER.—If the Administrator finds that an emergency at a delegated facility poses an immediate and significant danger to human health or the environment, the Administrator shall not be required to provide notice under subparagraph (A).

"(5) PROHIBITED ACTIONS.—Except as provided in subsections (d)(6)(B), (e)(4), and (g) or except with the concurrence of the delegated State, the President, the Administrator, and the Attorney General shall not take any action under section 104, 106, 107, 109, 121, or 122 in performance of a delegable authority that has been delegated to a State with respect to a delegated facility.

"(f) FUNDING.—

"(1) IN GENERAL.—The Administrator shall provide grants to or enter into contracts or cooperative agreements with delegated States to carry out this section.

"(2) NO CLAIM AGAINST FUND.—Notwithstanding any other law, funds to be granted under this subsection shall not constitute a claim against the Fund or the United States.

"(3) DETERMINATION OF COSTS ON A FACILITY-SPECIFIC BASIS.—The Administrator shall—

"(A) determine—

"(i) the delegable authorities the costs of performing which it is practicable to determine on a facility-specific basis; and

"(ii) the delegable authorities the costs of performing which it is not practicable to determine on a facility-specific basis; and

"(B) publish a list describing the delegable authorities in each category.

"(4) FACILITY-SPECIFIC GRANTS.—The costs described in paragraph (3)(A)(i) shall be funded as such costs arise with respect to each delegated facility.

"(5) NONFACILITY-SPECIFIC GRANTS.—

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

"(B) FORMULA.—The Administrator shall establish a formula under which funds available for nonfacility-specific grants shall be allocated among the delegated States, taking into consideration—

"(i) the cost of administering the delegated authority;

"(ii) the number of sites for which the State has been delegated authority;

"(iii) the types of activities for which the State has been delegated authority;

"(iv) the number of facilities within the State that are listed on the National Priorities List or are delegated facilities under section 127(d)(5);

"(v) the number of other high priority facilities within the State;

"(vi) the need for the development of the State program;

"(vii) the need for additional personnel;

"(viii) the amount of resources available through State programs for the cleanup of contaminated sites; and

"(ix) the benefit to human health and the environment of providing the funding.

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

"(7) COST SHARE.—

"(A) ASSURANCE.—A delegated State to which a grant is made under this subsection shall provide an assurance that the State will pay any amount required under section 104(c)(3).

"(B) PROHIBITED USE OF GRANT FUNDS.—A delegated State to which a grant is made under this subsection may not use grant funds to pay any amount required under section 104(c)(3).

"(8) CERTIFICATION OF USE OF FUNDS.—

"(A) IN GENERAL.—Not later than 1 year after the date on which a delegated State receives funds under this subsection, and annually thereafter, the Governor of the State shall submit to the Administrator—

"(i) a certification that the State has used the funds in accordance with the requirements of this Act and the National Contingency Plan; and

"(ii) information describing the manner in which the State used the funds.

"(B) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a regulation describing with particularity the information that a State shall be required to provide under subparagraph (A)(ii).

"(g) COOPERATIVE AGREEMENTS.—Nothing in this section shall affect the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.

"(h) NON-NATIONAL PRIORITIES LIST FACILITIES.—

"(I) DEFINITIONS.—In this subsection, the term 'non-National Priorities List facility' means a facility that is not, and never has been, listed on the National Priorities List and that is not owned or operated by a department, agency, or instrumentality of the United States.

"(2) FINALITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a determination that a response action at a non-National Priorities List facility or portion of a non-National Priorities List facility is complete under State law is final, and the facility shall not be subject to further response action notwithstanding any provision of this Act or any other Federal law.

"(B) EXCEPTION FOR EMERGENCY REMOVALS.—The Administrator may conduct an emergency removal action under the authority of section 104 subject to the notice requirement of section 135(e)(4) at a non-National Priorities List facility."

(b) STATE COST SHARE.—Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)) is amended—

(1) by striking "(c)(1) Unless" and inserting the following:

"(c) MISCELLANEOUS LIMITATIONS AND REQUIREMENTS.—

"(1) CONTINUANCE OF OBLIGATIONS FROM FUND.—Unless";

(2) by striking "(2) The President" and inserting the following:

"(2) CONSULTATION.—The President"; and

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

"(3) STATE COST SHARE.—

"(A) IN GENERAL.—The Administrator shall not provide any remedial action under this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State will pay, in cash or through in-kind contributions, a specified percentage of the costs of the remedial action and operation and maintenance costs.

"(B) ACTIVITIES WITH RESPECT TO WHICH STATE COST SHARE IS REQUIRED.—No State cost share shall be required except for remedial actions under section 104 and facilities with respect to which there is an exemption under section 107(r).

"(C) SPECIFIED PERCENTAGE.—

"(i) IN GENERAL.—The specified percentage of costs that a State shall be required to share shall be the lower of 10 percent or the percentage determined under clause (ii).

"(ii) MAXIMUM IN ACCORDANCE WITH LAW PRIOR TO 1996 AMENDMENTS.—

"(I) On petition by a State, the Director of the Office of Management and Budget (referred to in this clause as the 'Director'), after providing public notice and opportunity for comment, shall establish a cost share percentage, which shall be uniform for all facilities in the State, at the percentage rate at which the total amount of anticipated payments by the State under the cost share for all facilities in the State for which a cost share is required most closely approximates the total amount of estimated cost share payments by the State for facilities that would have been required under cost share requirements that were applicable prior to the date of enactment of this subparagraph, adjusted to reflect the extent to which the State's ability to recover costs under this Act were reduced by reason of enactment of amendments to this Act by the Accelerated Cleanup and Environmental Restoration Act of 1996.

"(II) The Director may adjust a State's cost share under this clause not more frequently than every 3 years.

"(D) INDIAN TRIBES.—In the case of remedial action to be taken on land or water held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe (if the land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph shall not apply."

(c) USES OF FUND.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

"(7) GRANTS TO DELEGATED STATES.—Making a grant to a delegated State under section 135(f)."

(d) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Section 114(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(b)) is amended by striking "removal" each place it appears and inserting "response".

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

TITLE III—VOLUNTARY CLEANUP

SEC. 301. ASSISTANCE FOR QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

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

"(39) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—The term 'qualifying State voluntary response program' means a State program that includes the elements described in section 133(b)."

(b) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 501, is amended by adding at the end the following:

"SEC. 133. QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

"(a) ASSISTANCE TO STATES.—The Administrator shall provide technical and other assistance to States to establish and expand qualifying State voluntary response programs that include the elements listed in subsection (b).

"(b) ELEMENTS.—The elements of a qualifying State voluntary response program are the following:

"(1) Opportunities for technical assistance for voluntary response actions.

"(2) Adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions.

"(3) Streamlined procedures to ensure expeditious voluntary response actions.

"(4) Oversight and enforcement authorities or other mechanisms that are adequate to ensure that—

"(A) voluntary response actions will protect human health and the environment and be conducted in accordance with applicable Federal and State law; and

"(B) if the person conducting the voluntary response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

"(5) Mechanisms for approval of a voluntary response action plan.

"(6) A requirement for certification or similar documentation from the State to the person conducting the voluntary response action indicating that the response is complete."

(c) FUNDING.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611), as amended by section 201(b), is amended by inserting after paragraph (7) the following:

"(8) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.—For assistance to States to establish and administer qualifying State voluntary response programs, during the first 5 full fiscal years following the date of enactment of this subparagraph, in a total amount to all States that is not less than 2 percent and not more than 5 percent of the amount available in the Fund for each such

fiscal year, distributed among each of the States that notifies the Administrator of the State's intent to establish a qualifying State voluntary response program and each of the States with a qualifying State voluntary response program in the amount that is equal to the total amount multiplied by a fraction—

“(A) the numerator of which is the number of facilities in the State that, as of September 29, 1995, were listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (not including facilities that are listed on the National Priorities List); and

“(B) the denominator of which is the total number of such facilities in the United States.”.

(d) COMPLIANCE WITH ACT.—A person that conducts a voluntary response action under this section at a facility that is listed or proposed for listing on the National Priorities List shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121(a).

SEC. 302. BROWNFIELD CHARACTERIZATION PROGRAM.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 301(b), is amended by adding at the end the following:

“SEC. 134. BROWNFIELD CHARACTERIZATION PROGRAM.

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTRATIVE COST.—The term ‘administrative cost’ does not include the cost of—

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

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

“(C) monitoring of natural resources.

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

“(A) a parcel of land that contains an abandoned, idled, or underused commercial or industrial facility, the expansion or redevelopment of which is complicated by the presence or potential presence of a hazardous substance; but

“(B) does not include—

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

“(ii) a facility that is listed or has been proposed for listing on the National Priorities List or that has been delisted under section 135(d)(5);

“(iii) a facility that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) at the time at which an application for a grant or loan concerning the facility is submitted under this section;

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

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

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

“(v) a facility with respect to which an administrative order on consent or judicial consent decree requiring cleanup has been entered into by the United States under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or title XIV of the Public Health Service Act (commonly known as the ‘Safe Drinking Water Act’) (42 U.S.C. 300f et seq.);

“(vi) a facility that is owned or operated by a department, agency, or instrumentality of the United States; or

“(vii) 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 Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

“(3) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(A) a general purpose unit of local government;

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

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

“(D) a redevelopment agency that is chartered or otherwise sanctioned by a State; and

“(E) an Indian tribe.

“(b) BROWNFIELD CHARACTERIZATION PROGRAM.—

“(1) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide interest-free loans for the site characterization and assessment of brownfield facilities.

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

“(A) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make interest-free loans out of the Fund to the eligible entity to be used for the site characterization and assessment of 1 or more brownfield facilities.

“(B) APPROPRIATE INQUIRY.—A site characterization and assessment carried out with the use of a loan under subparagraph (A) shall be performed in accordance with section 101(35)(B).

“(C) REPAYMENT.—

“(i) IN GENERAL.—An eligible entity that receives a loan under subparagraph (A) shall agree to repay the full amount of the loan within 10 years after the date on which the loan is made.

“(ii) DEPOSIT IN FUND.—Repayments on a loan under subparagraph (A) shall be deposited in the Fund.

“(3) HAZARDOUS SUBSTANCE SUPERFUND.—Notwithstanding section 111 of this Act or any provision of the Superfund Amendments and Reauthorization Act of 1986 (100 Stat. 1613), there is authorized to be appropriated out of the Fund \$15,000,000 for each of the first 5 fiscal years beginning after the date of enactment of this section, to be used for making interest-free loans under paragraph (2).

“(4) MAXIMUM LOAN AMOUNT.—A loan under subparagraph (A) shall not exceed, with respect to each brownfield facility covered by the loan, \$100,000 for any fiscal year or \$200,000 in total.

“(5) SUNSET.—No amount shall be available from the Fund for purposes of this section after the fifth fiscal year after the date of enactment of this section.

“(6) PROHIBITION.—No part of a loan under this section may be used for payment of penalties, fines, or administrative costs.

“(7) AUDITS.—The Inspector General of the Environmental Protection Agency shall audit all loans made under paragraph (2) to ensure that all funds are used for the purposes described in this section and that all loans are repaid in accordance with paragraph (2).

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

“(A) requires the eligible entity to comply with all applicable State laws (including regulations);

“(B) requires that the eligible entity shall use the loan exclusively for purposes specified in paragraph (2); and

“(C) contains such other terms and conditions as the Administrator determines to be necessary to protect the financial interests of the United States and to carry out the purposes of this section.

“(9) LEVERAGING.—An eligible entity that receives a loan under paragraph (1) may use the loaned funds for part of a project at a brownfield facility for which funding is received from other sources, but the loan funds shall be used only for the purposes described in paragraph (2).

“(c) LOAN APPLICATIONS.—

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

“(2) APPLICATION REQUIREMENTS.—An application for a loan under this section shall include—

“(A) an identification of each brownfield facility for which the loan is sought and a description of the redevelopment plan for the area or areas in which each facility is located, including a description of the nature and extent of any known or suspected environmental contamination within the area;

“(B) an analysis that demonstrates the potential of the grant to stimulate economic development on completion of the planned response action, including a projection of the number of jobs expected to be created at the facility after remediation and redevelopment and, to the extent feasible, a description of the type and skill level of the jobs and a projection of the increases in revenues accruing to Federal, State, and local governments from the jobs; and

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

“(3) APPROVAL.—

“(A) INITIAL LOANS.—On or about March 30 and September 30 of the first fiscal year following the date of enactment of this section, the Administrator shall make loans under this section to eligible entities that submit applications before those dates that the Administrator determines have the highest rankings under ranking criteria established under paragraph (4).

“(B) SUBSEQUENT LOANS.—Beginning with the second fiscal year following the date of enactment of this section, the Administrator shall make an annual evaluation of each application received during the prior fiscal year and make loans under this section to eligible entities that submit applications during the prior year that the Administrator determines have the highest rankings under the ranking criteria established under paragraph (4).

“(4) RANKING CRITERIA.—The Administrator shall establish a system for ranking loan applications that includes the following criteria:

“(A) The extent to which a loan will stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

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

“(i) The relative increase in the estimated fair market value of the area as a result of any necessary response action.

"(ii) The potential of a loan to create new or expand existing business and employment opportunities (particularly full-time employment opportunities) on completion of any necessary response action.

"(iii) The estimated additional tax revenues expected to be generated by economic redevelopment in the area in which a brownfield facility is located.

"(iv) The estimated extent to which a loan would facilitate the identification of or facilitate a reduction of health and environmental risks.

"(v) The financial involvement of the State and local government in any response action planned for a brownfield facility and the extent to which the response action and the proposed redevelopment is consistent with any applicable State or local community economic development plan.

"(vi) The extent to which the site characterization and assessment or response action and subsequent development of a brownfield facility involves the active participation and support of the local community.

"(vii) Such other factors as the Administrator considers appropriate to carry out the purposes of this section."

SEC. 303. TREATMENT OF SECURITY INTEREST HOLDERS AND FIDUCIARIES AS OWNERS OR OPERATORS.

(a) DEFINITION OF OWNER OR OPERATOR.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 301(a), is amended—

(1) in paragraph (20)—

(A) in subparagraph (A) by striking the second sentence; and

(B) by adding at the end the following:

"(E) SECURITY INTEREST HOLDERS.—

"(i) IN GENERAL.—The term 'owner or operator' does not include a person that, without participating in the management of a vessel or facility, holds an indicium of ownership primarily to protect the person's security interest in a vessel or facility.

"(ii) PARTICIPATING IN MANAGEMENT.—A security interest holder—

"(I) shall be considered to be participating in management of a vessel or facility only if the security interest holder has undertaken—

"(aa) responsibility for the hazardous substance handling or disposal practices of the vessel or facility; or

"(bb) overall management of the vessel or facility encompassing day-to-day decision-making over environmental compliance or over an operational function (including functions such as those of a plant manager, operations manager, chief operating officer, or chief executive officer), as opposed to financial and administrative aspects, of a vessel or facility; and

"(II) shall not be considered to be participating in management solely on the ground that the security interest holder—

"(aa) serves in a capacity or has the ability to influence or the right to control the operation of a vessel or facility if that capacity, ability, or right is not exercised;

"(bb) acts, or causes or requires another person to act, to comply with an applicable law or to respond lawfully to disposal of a hazardous substance;

"(cc) performs an act or omits to act in any way with respect to a vessel or facility prior to the time at which a security interest is created in a vessel or facility;

"(dd) holds, abandons, or releases a security interest;

"(ee) includes in the terms of an extension of credit, or in a contract or security agreement relating to an extension of credit, a covenant, warranty, or other term or condition that relates to environmental compliance;

"(ff) monitors or enforces a term or condition of an extension of credit or a security interest;

"(gg) monitors or undertakes 1 or more inspections of a vessel or facility;

"(hh) requires or conducts a response action or other lawful means of addressing a release or threatened release of a hazardous substance in connection with a vessel or facility prior to, during, or on the expiration of the term of an extension of credit;

"(ii) provides financial or other advice or counseling in an effort to mitigate, prevent, or cure a default or diminution in the value of a vessel or facility;

"(jj) exercises forbearance by restructuring, renegotiating, or otherwise agreeing to alter a term or condition of an extension of credit or a security interest; or

"(kk) exercises any remedy that may be available under law for the breach of a term or condition of an extension of credit or a security agreement.

"(iii) FORECLOSURE.—Legal or equitable title acquired by a security interest holder through foreclosure (or the equivalent of foreclosure) shall be considered to be held primarily to protect a security interest if the holder undertakes to sell, re-lease, or otherwise divest the vessel or facility in a reasonably expeditious manner on commercially reasonable terms.

"(iv) DEFINITION OF SECURITY INTEREST.—In this subparagraph, the term 'security interest' includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation.

"(F) FIDUCIARIES.—

"(i) IN GENERAL.—The term 'owner or operator' does not include a fiduciary that holds legal or equitable title to, is the mortgagee or secured party with respect to, controls, or manages, directly or indirectly, a vessel or facility for the purpose of administering an estate or trust of which the vessel or facility is a part."

(2) by adding at the end the following:

"(40) FIDUCIARY.—The term 'fiduciary' means a person that is acting in the capacity of—

"(A) an executor or administrator of an estate, including a voluntary executor or a voluntary administrator;

"(B) a guardian;

"(C) a conservator;

"(D) a trustee under a will or a trust agreement under which the trustee takes legal or equitable title to, or otherwise controls or manages, a vessel or facility for the purpose of protecting or conserving the vessel or facility under the rules applied in State court;

"(E) a court-appointed receiver;

"(F) a trustee appointed in proceedings under title 11, United States Code;

"(G) an assignee or a trustee acting under an assignment made for the benefit of creditors; or

"(H) a trustee, or a successor to a trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender."

(b) LIABILITY OF FIDUCIARIES AND LENDERS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

"(n) LIABILITY OF FIDUCIARIES.—

"(I) IN GENERAL.—The liability of a fiduciary that is liable under any other provision of this Act for the release or threatened release of a hazardous substance from a vessel

or facility held by a fiduciary may not exceed the assets held by the fiduciary that are available to indemnify the fiduciary.

"(2) NO INDIVIDUAL LIABILITY.—Subject to the other provisions of this subsection, a fiduciary shall not be liable in an individual capacity under this Act.

"(3) EXCEPTIONS.—This subsection does not preclude a claim under this Act against—

"(A) the assets of the estate or trust administered by a fiduciary;

"(B) a nonemployee agent or independent contractor retained by a fiduciary; or

"(C) a fiduciary that causes or contributes to a release or threatened release of a hazardous substance.

"(4) SAFE HARBOR.—Subject to paragraph (5), a fiduciary shall not be liable in an individual capacity under this Act for—

"(A) undertaking or directing another to undertake a response action under section 107(d)(1) or under the direction of an on-scene coordinator designated by the Administrator or the Coast Guard to coordinate and direct responses under subpart D of the National Contingency Plan or by the lead agency to coordinate and direct removal actions under subpart E of the National Contingency Plan;

"(B) undertaking or directing another to undertake any other lawful means of addressing a hazardous substance in connection with a vessel or facility;

"(C) terminating the fiduciary relationship;

"(D) including, monitoring, or enforcing a covenant, warranty, or other term or condition in the terms of a fiduciary agreement that relates to compliance with environmental laws;

"(E) monitoring or undertaking 1 or more inspections of a vessel or facility;

"(F) providing financial or other advice or counseling to any party to the fiduciary relationship, including the settlor or beneficiary;

"(G) restructuring, renegotiating, or otherwise altering a term or condition of the fiduciary relationship;

"(H) administering a vessel or facility that was contaminated before the period of service of the fiduciary began; or

"(I) declining to take any of the actions described in subparagraphs (B) through (H).

"(5) DUE CARE.—This subsection does not limit the liability of a fiduciary if the fiduciary fails to exercise due care and the failure causes or contributes to the release of a hazardous substance.

"(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

"(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person;

"(B) create any liability for any person; or

"(C) create a private right of action against a fiduciary or against a Federal agency that regulates lenders.

"(o) LIABILITY OF LENDERS.—

"(I) DEFINITIONS.—In this subsection:

"(A) ACTUAL BENEFIT.—The term 'actual benefit' means the net gain, if any, realized by a lender due to an action.

"(B) EXTENSION OF CREDIT.—The term 'extension of credit' includes a lease finance transaction—

"(i) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

"(ii) that conforms to all regulations issued by any appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) and any appropriate State banking regulatory authority.

“(C) FORECLOSURE.—The term ‘foreclosure’ means the acquisition of a vessel or facility through—

“(i) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if the vessel or facility was security for an extension of credit previously contracted;

“(ii) conveyance under an extension of credit previously contracted, including the termination of a lease agreement; or

“(iii) any other formal or informal manner by which a person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

“(D) LENDER.—The term ‘lender’ means—

“(i) a person that makes a bona fide extension of credit to, or takes a security interest from, another party;

“(ii) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner is engaged in the business of buying or selling loans or interests in loans;

“(iii) a person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to another party; and

“(iv) a person regularly engaged in the business of providing title insurance that acquires a vessel or facility as a result of an assignment or conveyance in the course of underwriting a claim or claim settlement.

“(E) NET GAIN.—The term ‘net gain’ means an amount not in excess of the amount realized by a lender on the sale of a vessel or facility less acquisition, holding, and disposition costs.

“(F) VESSEL OR FACILITY ACQUIRED THROUGH FORECLOSURE.—The term ‘vessel or facility acquired through foreclosure’—

“(i) means a vessel or facility that is acquired by a lender through foreclosure from a person that is not affiliated with the lender; but

“(ii) does not include such a vessel or facility if the lender does not seek to sell or otherwise divest the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

“(2) LIABILITY LIMITATION.—

“(A) IN GENERAL.—The liability of a lender that is liable under any other provision of this Act for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility shall be limited to the amount described in subparagraph (E) if the vessel or facility is—

“(i) a vessel or facility acquired through foreclosure;

“(ii) a vessel or facility subject to a security interest held by the lender;

“(iii) a vessel or facility held by a lessor under the terms of an extension of credit; or

“(iv) a vessel or facility subject to financial control or financial oversight under the terms of an extension of credit.

“(B) AMOUNT.—The amount described in this subparagraph is the excess of the fair market value of a vessel or facility on the date on which the liability of a lender is determined over the fair market value of the vessel or facility on the date that is 180 days before the date on which the response action is initiated, not to exceed the amount that the lender realizes on the sale of the vessel or facility after subtracting acquisition, holding, and disposition costs.

“(3) EXCLUSION.—This subsection does not limit the liability of a lender that causes or

contributes to the release or threatened release of a hazardous substance.

“(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

“(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person;

“(B) create any liability for any person; or

“(C) create a private right of action against a lender or against a Federal agency that regulates lenders.”.

SEC. 304. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

“SEC. 45. FEDERAL BANKING AND LENDING AGENCY LIABILITY.

“(a) DEFINITIONS.—In this section:

“(1) FEDERAL BANKING OR LENDING AGENCY.—The term ‘Federal banking or lending agency’—

“(A) means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees; and

“(B) includes a first subsequent purchaser of the vessel or facility from a Federal banking or lending agency, unless the purchaser—

“(i) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, corrective, or other response action due to a prior relationship with the vessel or facility;

“(ii) is or was affiliated with or related to a party described in clause (i);

“(iii) fails to agree to take reasonable steps necessary to remedy the release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable environmental laws; or

“(iv) causes or contributes to any additional release or threatened release on the vessel or facility.

“(2) FACILITY.—The term ‘facility’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(3) HAZARDOUS SUBSTANCE.—The term ‘hazardous substance’ means a hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)).

“(4) RELEASE.—The term ‘release’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(5) RESPONSE ACTION.—The term ‘response action’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(6) VESSEL.—The term ‘vessel’ has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

“(b) FEDERAL BANKING AND LENDING AGENCIES NOT STRICTLY LIABLE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a Federal banking or lending

agency shall not be liable under section 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606, 9607) for the release or threatened release of a hazardous substance at or from a vessel or facility (including a right or interest in a vessel or facility) acquired—

“(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including a subsidiary of an insured depository institution;

“(B) in connection with the provision of a loan, a discount, an advance, a guarantee, insurance, or other financial assistance; or

“(C) in connection with a vessel or facility received in a civil or criminal proceeding, or administrative enforcement action, whether by settlement or by order.

“(2) ACTIVE CAUSATION.—Subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(d)), a Federal banking or lending agency that causes or contributes to a release or threatened release of a hazardous substance may be liable for a response action pertaining to the release or threatened release.

“(3) FEDERAL OR STATE ACTION.—Notwithstanding subsection (a)(1)(B), if a Federal agency or State environmental agency is required to take a response action because a subsequent purchaser—

“(A) fails to agree to take reasonable steps necessary to remedy a release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable environmental laws; or

“(B) causes or contributes to any additional release or threatened release on the vessel or facility,

the subsequent purchaser shall reimburse the Federal agency or State environmental agency for the costs of the response action in an amount not to exceed the increase in the fair market value of the vessel or facility attributable to the response action.

“(c) LIEN EXEMPTION.—Notwithstanding any other law, a vessel or facility held by a subsequent purchaser described in subsection (a)(1)(B) or held by a Federal banking or lending agency shall not be subject to a lien for costs or damages associated with the release or threatened release of a hazardous substance existing at the time of the transfer.

“(d) EXEMPTION FROM COVENANTS TO REMEDIATE.—Notwithstanding section 120, a Federal banking or lending agency shall be exempt from any law requiring the agency to grant a covenant warranting that a response action has been, or will in the future be, taken with respect to a vessel or facility acquired in a manner described in subsection (b)(1).

“(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

“(1) affect the rights or immunities or other defenses that are available to any party under this Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or any other law;

“(2) create any liability for any party;

“(3) create a private right of action against an insured depository institution or lender, a Federal banking or lending agency, or any other party, except as provided in subsection (b)(3);

“(4) preempt, affect, apply to, or modify a State law or a right, cause of action, or obligation under State law, except that the liability of a Federal banking or lending agency for a response action under a State law shall not exceed the value of the interest of

the agency in the asset giving rise to the liability; or

"(5) preclude a Federal banking or lending agency from agreeing with a State to transfer a vessel or facility to the State in lieu of any liability that might otherwise be imposed under State law."

SEC. 305. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)), as amended by section 303(b), is amended by adding at the end the following:

"(p) CONTIGUOUS PROPERTIES.—

"(1) NOT CONSIDERED TO BE AN OWNER OR OPERATOR.—A person that owns or operates real property that is contiguous to or otherwise similarly situated with respect to real property on which there has been a release or threatened release of a hazardous substance and that is or may be contaminated by the release shall not be considered to be an owner or operator of a vessel or facility under subsection (a) (1) or (2) solely by reason of the contamination if—

"(A) the person did not cause, contribute, or consent to the release or threatened release; and

"(B) the person is not liable, and is not affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.

"(2) COOPERATION, ASSISTANCE, AND ACCESS.—Notwithstanding paragraph (1), a person described in paragraph (1) shall provide full cooperation, assistance, and facility access to the persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(3) ASSURANCES.—The Administrator may—

"(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and

"(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f)."

SEC. 306. PROSPECTIVE PURCHASERS AND WIND-FALL LIENS.

(a) DEFINITION.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 303(a)(2), is amended by adding at the end the following:

"(41) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person that acquires ownership of a facility after the date of enactment of this paragraph, or a tenant of such a person, that establishes each of the following by a preponderance of the evidence:

"(A) DISPOSAL PRIOR TO ACQUISITION.—All active disposal of hazardous substances at the facility occurred before the person acquired the facility.

"(B) INQUIRIES.—

"(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility and the facility's real property in accordance with generally accepted good commercial and customary standards and practices.

"(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in paragraph (35)(B)(ii) or those issued or adopted by the Administrator under that paragraph shall be considered to satisfy the requirements of this subparagraph.

"(iii) RESIDENTIAL USE.—In the case of property for residential or other similar use purchased by a nongovernmental or non-commercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

"(C) NOTICES.—The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

"(D) CARE.—The person exercised appropriate care with respect to each hazardous substance found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release and prevent or limit human or natural resource exposure to any previously released hazardous substance.

"(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to the persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(F) RELATIONSHIP.—The person is not liable, and is not affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed."

(b) AMENDMENT.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 305, is amended by adding at the end the following:

"(q) PROSPECTIVE PURCHASER AND WIND-FALL LIEN.—

"(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

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

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

"(A) RESPONSE ACTION.—A response action for which there are unrecovered costs is carried out at the facility.

"(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed 180 days before the response action was initiated.

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

"(4) AMOUNT.—A lien under paragraph (2)—

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

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

"(C) shall be subject to the requirements of subsection (l)(3); and

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

SEC. 307. SAFE HARBOR INNOCENT LAND-HOLDERS.

(a) AMENDMENT.—Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended by striking subparagraph (B) and inserting the following:

"(B) KNOWLEDGE OF INQUIRY REQUIREMENT.—

"(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must show that, at or prior to the date on which the defendant acquired the facility, the defendant undertook all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.

"(ii) STANDARDS AND PRACTICES.—The Administrator shall by regulation establish as standards and practices for the purpose of clause (i)—

"(I) the American Society for Testing and Materials (ASTM) Standard E1527-94, entitled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'; or

"(II) alternative standards and practices under clause (iii).

"(iii) ALTERNATIVE STANDARDS AND PRACTICES.—

"(I) IN GENERAL.—The Administrator may by regulation issue alternative standards and practices or designate standards developed by other organizations than the American Society for Testing and Materials after conducting a study of commercial and industrial practices concerning the transfer of real property in the United States.

"(II) CONSIDERATIONS.—In issuing or designating alternative standards and practices under subclause (I), the Administrator shall consider including each of the following:

"(aa) The results of an inquiry by an environmental professional.

"(bb) Interviews with past and present owners, operators, and occupants of the facility and the facility's real property for the purpose of gathering information regarding the potential for contamination at the facility and the facility's real property.

"(cc) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records to determine previous uses and occupancies of the real property since the property was first developed.

"(dd) Searches for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or the facility's real property.

"(ee) Reviews of Federal, State, and local government records (such as waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or the facility's real property.

"(ff) Visual inspections of the facility and facility's real property and of adjoining properties.

"(gg) Specialized knowledge or experience on the part of the defendant.

"(hh) The relationship of the purchase price to the value of the property if the property was uncontaminated.

"(ii) Commonly known or reasonably ascertainable information about the property.

"(jj) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

“(iv) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased 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.”

(b) STANDARDS AND PRACTICES.—

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

(2) INTERIM STANDARDS AND PRACTICES.—Until the Administrator issues the regulation described in paragraph (1), in making a determination under section 101(35)(B)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), there shall be taken into account—

(A) any specialized knowledge or experience on the part of the defendant;

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

(C) commonly known or reasonably ascertainable 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 IV—SELECTION OF REMEDIAL ACTIONS

SEC. 401. DEFINITIONS.

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 306(a), is amended by adding at the end the following:

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

“(A) the actual use of the land, surface water, and ground water at a facility on the date of submittal of the proposed remedial action plan; and

“(B)(i) with respect to land—

“(I) the use of land that is authorized by the zoning or land use decisions formally adopted, at or prior to the time of the initiation of the facility evaluation, by the local land use planning authority for a facility and the land immediately adjacent to the facility; and

“(II) any other reasonably anticipated use that the local land use authority, in consultation with the community response organization (if any), determines to have a substantial probability of occurring based on recent (as of the time of the determination) development patterns in the area in which the facility is located and on population projections for the area; and

“(ii) with respect to water resources, the future use of the surface water and ground water that is potentially affected by releases from a facility that is reasonably anticipated, by a local government or other governmental unit that regulates surface or ground water use or surface or ground water use planning in the vicinity of the facility, on the earlier of—

“(I) the date of issuance of the first record of decision; or

“(II) the initiation of the facility evaluation.

“(43) SIGNIFICANT ECOSYSTEM.—The term ‘significant ecosystem’, for the purpose of section 121(a)(1)(B), means an ecosystem that

exhibits a uniqueness, particular value, or historical presence or that is widely recognized as a significant resource at the national, State or local level.

“(44) VALUABLE ECOSYSTEM.—The term ‘valuable ecosystem’ means an ecosystem that is a known source of significant human or ecological benefits for its function.

“(45) SUSTAINABLE ECOSYSTEM.—The term ‘sustainable ecosystem’ means an ecosystem that has redundancy and resiliency sufficient to enable the ecosystem to continue to function and provide benefits within the normal range of its variability notwithstanding exposure to hazardous substances resulting from releases.

“(46) ECOLOGICAL RESOURCE.—The term ‘ecological resource’ means land, fish, wildlife, biota, air, surface water, and ground water within an ecosystem.

“(47) SIGNIFICANT RISK TO ECOLOGICAL RESOURCES THAT ARE NECESSARY TO THE SUSTAINABILITY OF A SIGNIFICANT ECOSYSTEM OR VALUABLE ECOSYSTEM.—The term ‘significant risk to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem’ means the risk associated with exposures and impacts resulting from the release of hazardous substances which together reduce or eliminate the sustainability (within the meaning of paragraph (45)) of a significant ecosystem or valuable ecosystem.”

SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

“SEC. 121. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

“(a) GENERAL RULES.—

“(I) SELECTION OF MOST COST-EFFECTIVE REMEDIAL ACTION THAT PROTECTS HUMAN HEALTH AND THE ENVIRONMENT.—

“(A) IN GENERAL.—The Administrator shall select a remedial action that is the most cost-effective means of achieving the goals of protecting human health and the environment as stated in subparagraph (B) using the criteria stated in subparagraph (C).

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

“(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to protect human health if, considering the expected exposures associated with the actual or planned or reasonably anticipated future use of the land and water resources, the remedial action achieves a residual risk—

“(I) from exposure to carcinogenic hazardous substances, pollutants, or contaminants such that cumulative lifetime additional cancer from exposure to hazardous substances from releases at the facility range from 10^{-4} to 10^{-6} for the affected population; and

“(II) from exposure to noncarcinogenic hazardous substances, pollutants, or contaminants at the facility that does not pose an appreciable risk of deleterious effects.

“(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to protect the environment if, based on the actual or planned or reasonably anticipated future use of the land and water resources, the remedial action will protect against significant risks to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem and will not interfere with a sustainable functional ecosystem.

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

“(i) SUBSTANTIVE REQUIREMENTS.—

“(I) IN GENERAL.—Subject to clause (iii), a remedial action shall—

“(aa) comply with the substantive requirements of all promulgated standards, requirements, criteria, and limitations under each Federal law and each State law relating to the environment or to the siting of facilities (including a State law that imposes a more stringent standard, requirement, criterion, or limitation than Federal law) that is applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions; and

“(bb) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State law relating to the environment or siting of facilities that applies to the conduct or operation of remedial actions under this Act, as determined by the State, after the date of enactment of the Accelerated Cleanup and Environmental Restoration Act of 1996, through a rule-making procedure that includes public notice, comment, and written response comment, and opportunity for judicial review, but only if the State demonstrates that the standard, requirement, criterion, or limitation is consistently applied to remedial actions under State law.

“(II) IDENTIFICATION OF FACILITIES.—Compliance with a State standard, requirement, criterion, or limitation described in subclause (I) shall be required at a facility if the standard, requirement, criterion, or limitation has been identified by the State to the Administrator in a timely manner as being applicable to the facility.

“(III) PUBLISHED LISTS.—Each State shall publish a comprehensive list of the standards, requirements, criteria, and limitations that the State may apply to remedial actions under this Act, and shall revise the list periodically, as requested by the Administrator.

“(IV) CONTAMINATED MEDIA.—Compliance with this clause shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same media in or very near then-existing areas of contamination onsite at a facility.

“(ii) PROCEDURAL REQUIREMENTS.—Procedural requirements of Federal and State standards, requirements, criteria, and limitations (including permitting requirements) shall not apply to response actions conducted onsite at a facility.

“(iii) WAIVER PROVISIONS.—

“(I) DETERMINATION BY THE PRESIDENT.—The Administrator shall evaluate and determine if it is not appropriate for a remedial action to attain a Federal or State standard, requirement, criterion, or limitation as required by clause (i).

“(II) SELECTION OF REMEDIAL ACTION THAT DOES NOT COMPLY.—The Administrator may select for a facility a remedial action that meets the requirements of subparagraph (B) but does not comply with or attain a Federal or State standard, requirement, criterion, or limitation described in clause (i) if the Administrator makes any of the following findings:

“(aa) IMPROPER IDENTIFICATION.—The standard, requirement, criterion, or limitation was improperly identified as an applicable requirement under clause (i)(I)(aa) and fails to comply with the rulemaking requirements of clause (i)(I)(bb).

“(bb) PART OF REMEDIAL ACTION.—The selected remedial action is only part of a total remedial action that will comply with or attain the applicable requirements of clause (i) when the total remedial action is completed.

“(cc) GREATER RISK.—Compliance with or attainment of the standard, requirement, criterion, or limitation at the facility will

result in greater risk to human health or the environment than alternative options.

"(dd) **TECHNICALLY IMPRACTICABILITY.**—Compliance with or attainment of the standard, requirement, criterion, or limitation is technically infeasible from an engineering perspective or unreasonably costly.

"(ee) **EQUIVALENT TO STANDARD OF PERFORMANCE.**—The selected remedial action will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation described in clause (i) through use of another approach.

"(ff) **INCONSISTENT APPLICATION.**—With respect to a State standard, requirement, criterion, limitation, or level, the State has not consistently applied (or demonstrated the intention to apply consistently) the standard, requirement, criterion, or limitation or level in similar circumstances to other remedial actions in the State.

"(gg) **BALANCE.**—In the case of a remedial action to be undertaken solely under section 104 or 132 using amounts from the Fund, a selection of a remedial action that complies with or attains a standard, requirement, criterion, or limitation described in clause (i) will not provide a balance between the need for protection of public health and welfare and the environment at the facility, and the need to make amounts from the Fund available to respond to other facilities that may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of the threats presented by the various facilities.

"(III) **PUBLICATION.**—The Administrator shall publish any findings made under subclause (II), including an explanation and appropriate documentation.

"(D) **REMEDY SELECTION CRITERIA.**—In selecting a remedial action from among alternatives that achieve the goals stated in subparagraph (B), the Administrator shall balance the following factors, ensuring that no single factor predominates over the others:

"(i) The effectiveness of the remedy in protecting human health and the environment.

"(ii) The reliability of the remedial action in achieving the protectiveness standards over the long term.

"(iii) Any short-term risk to the affected community, those engaged in the remedial action effort, and to the environment posed by the implementation of the remedial action.

"(iv) The acceptability of the remedial action to the affected community.

"(v) The implementability and technical feasibility of the remedial action from an engineering perspective.

"(vi) The reasonableness of the cost.

"(2) **TECHNICAL INFEASIBILITY AND UNREASONABLE COST.**—

"(A) **MINIMIZATION OF RISK.**—If the Administrator, after reviewing the remedy selection criteria stated in paragraph (1)(C), finds that achieving the goals stated in paragraph (1)(B), is technically infeasible from an engineering perspective or unreasonably costly, the Administrator shall evaluate remedial measures that mitigate the risks to human health and the environment and select a technically practicable remedial action that will most closely achieve the goals stated in paragraph (1) through cost-effective means.

"(B) **BASIS FOR FINDING.**—A finding of technical impracticability may be made on the basis of a determination, supported by appropriate documentation, that, at the time at which the finding is made—

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

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

"(3) **PRESUMPTIVE REMEDIAL ACTIONS.**—A remedial action that implements a presumptive remedial action issued under section 128 shall be considered to achieve the goals stated in paragraph (1)(B) and balance adequately the factors stated in paragraph (1)(C).

"(4) **GROUND WATER.**—

"(A) **IN GENERAL.**—A remedial action shall protect uncontaminated ground water that is suitable for use as drinking water by humans or livestock in the water's condition at the time of initiation of the facility evaluation.

"(B) **CONSIDERATIONS.**—A decision under subparagraph (A) regarding remedial action for ground water shall take into consideration—

"(i) the actual or planned or reasonably anticipated future use of the ground water and the timing of that use;

"(ii) any attenuation or biodegradation that would occur if no remedial action were taken; and

"(iii) the criteria stated in paragraph (1)(C).

"(C) **OFFICIAL CLASSIFICATION.**—For the purposes of subparagraph (A), there shall be no presumption that because ground water is suitable for use as drinking water by humans or livestock, such use is the actual or planned or reasonably anticipated future use of the ground water.

"(D) **UNCONTAMINATED GROUND WATER.**—A remedial action for protecting uncontaminated ground water may be based on natural attenuation or biodegradation so long as the remedial action does not interfere with the actual or planned or reasonably anticipated future use of the ground water.

"(E) **CONTAMINATED GROUND WATER.**—A remedial action for contaminated ground water may include point-of-use treatment.

"(5) **OTHER CONSIDERATIONS APPLICABLE TO REMEDIAL ACTIONS.**—A remedial action that uses institutional and engineering controls shall be considered to be on an equal basis with all other remedial action alternatives."

(2) by redesignating subsection (c) as subsection (b), and, in the first sentence of that subsection, by striking "5 years" and inserting "7 years";

(3) by striking subsection (d); and

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

SEC. 403. REMEDY SELECTION METHODOLOGY.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 127. FACILITY-SPECIFIC RISK EVALUATIONS.

"(a) **USES.**—

"(1) **IN GENERAL.**—A facility-specific risk evaluation shall be used to—

"(A) identify the significant components of potential risk posed by a facility;

"(B) screen out potential contaminants, areas, or exposure pathways from further study at a facility;

"(C) compare the relative protectiveness of alternative potential remedies proposed for a facility; and

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

"(2) **COMPLIANCE WITH PRINCIPLES.**—A facility-specific risk evaluation shall comply with the principles stated in this section to ensure that—

"(A) actual or planned or reasonably anticipated future use of the land and water resources is given appropriate consideration; and

"(B) all of the components of the evaluation are, to the maximum extent practicable, scientifically objective and inclusive of all relevant data.

"(b) **RISK EVALUATION PRINCIPLES.**—A facility-specific risk evaluation shall—

"(1) be based on actual or plausible estimates of exposure considering the actual or planned or reasonably anticipated future use of the land and water resources;

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

"(3) use chemical and facility-specific data and analysis (such as toxicity, exposure, and fate and transport evaluations) in preference to default assumptions;

"(4) use a range and distribution of realistic and plausible assumptions when chemical and facility-specific data are not available;

"(5) use mathematical models that take into account the fate and transport of hazardous substances, pollutants, or contaminants, in the environment instead of relying on default assumptions; and

"(6) use credible hazard identification and dose/response assessments.

"(c) **RISK COMMUNICATION PRINCIPLES.**—The document reporting the results of a facility-specific risk evaluation shall—

"(1) contain an explanation that clearly communicates the risks at the facility;

"(2) identify and explain all assumptions used in the evaluation, all alternative assumptions, the policy or value judgments used in choosing the assumptions, and whether empirical data conflict with or validate the assumptions;

"(3) present—

"(A) a range and distribution of exposure and risk estimates, including, if numerical estimates are provided, central estimates of exposure and risk using—

"(i) the most plausible assumptions or a weighted combination of multiple assumptions based on different scenarios; or

"(ii) any other methodology designed to characterize the most plausible estimate of risk given the scientific information that is available at the time of the facility-specific risk evaluation; and

"(B) a statement of the nature and magnitude of the scientific and other uncertainties associated with those estimates;

"(4) state the size of the population potentially at risk from releases from the facility and the likelihood that potential exposures will occur based on the actual or planned or reasonably anticipated future use of the land and water resources; and

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

"(d) **REGULATIONS.**—Not later than 18 months after the date of enactment of this section, the Administrator shall issue a final regulation implementing this section that promotes a realistic characterization of risk that neither minimizes nor exaggerates the risks and potential risks posed by a facility or a proposed remedial action.

"SEC. 128. PRESUMPTIVE REMEDIAL ACTIONS.

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

"(b) **PRACTICABILITY AND COST-EFFECTIVENESS.**—Such presumptive remedies must have been demonstrated to be technically practicable and cost-effective methods of achieving the goals of protecting human

health and the environment stated in section 121(a)(1)(B).

"(C) VARIATIONS.—The Administrator may issue various presumptive remedial actions based on various uses of land and water resources, various environmental media, and various types of hazardous substances, pollutants, or contaminants.

"(d) ENGINEERING CONTROLS.—Presumptive remedial actions are not limited to treatment remedies, but may be based on, or include, institutional and standard engineering controls."

SEC. 404. REMEDY SELECTION PROCEDURES.

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

"SEC. 129. REMEDIAL ACTION PLANNING AND IMPLEMENTATION.

"(a) IN GENERAL.—

"(1) BASIC RULES.—

"(A) PROCEDURES.—A remedial action with respect to a facility that is listed or proposed for listing on the National Priorities List shall be developed and selected in accordance with the procedures set forth in this section.

"(B) NO OTHER PROCEDURES OR REQUIREMENTS.—The procedures stated in this section are in lieu of any procedures or requirements under any other law to conduct remedial investigations, feasibility studies, record of decisions, remedial designs, or remedial actions.

"(C) LIMITED REVIEW.—In a case in which the potentially responsible parties prepare a remedial action plan, only the work plan, facility evaluation, proposed remedial action plan, and final remedial design shall be subject to review, comment, and approval by the Administrator.

"(D) DESIGNATION OF POTENTIALLY RESPONSIBLE PARTIES TO PREPARE WORK PLAN, FACILITY EVALUATION, PROPOSED REMEDIAL ACTION, AND REMEDIAL DESIGN AND TO IMPLEMENT THE REMEDIAL ACTION PLAN.—In the case of a facility for which the Administrator is not required to prepare a work plan, facility evaluation, proposed remedial action, and remedial design and implement the remedial action plan—

"(i) if a potentially responsible party or group of potentially responsible parties—

"(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

"(II) demonstrates that the potentially responsible party or group of potentially responsible parties has the financial resources and the expertise to perform those functions, the Administrator shall designate the potentially responsible party or group of potentially responsible parties to perform those functions; and

"(ii) if more than 1 potentially responsible party or group of potentially responsible parties—

"(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

"(II) demonstrates that the potentially responsible parties or group of potentially responsible parties has the financial resources and the expertise to perform those functions, the Administrator, based on an assessment of the various parties' comparative financial resources, technical expertise, and histories of cooperation with respect to facilities that

are listed on the National Priorities List, shall designate 1 potentially responsible party or group of potentially responsible parties to perform those functions.

"(E) APPROVAL REQUIRED AT EACH STEP OF PROCEDURE.—No action shall be taken with respect to a facility evaluation, proposed remedial action plan, remedial action plan, or remedial design, respectively, until a work plan, facility evaluation, proposed remedial action plan, and remedial action plan, respectively, have been approved by the Administrator.

"(F) NATIONAL CONTINGENCY PLAN.—The Administrator shall conform the National Contingency Plan regulations to reflect the procedures stated in this section.

"(2) USE OF PRESUMPTIVE REMEDIAL ACTIONS.—

"(A) PROPOSAL TO USE.—In a case in which a presumptive remedial action applies, the Administrator (if the Administrator is conducting the remedial action) or the preparer of the remedial action plan may, after conducting a facility evaluation, propose a presumptive remedial action for the facility, if the Administrator or preparer shows with appropriate documentation that the facility fits the generic classification for which a presumptive remedial action has been issued and performs an engineering evaluation to demonstrate that the presumptive remedial action can be applied at the facility.

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

"(b) REMEDIAL ACTION PLANNING PROCESS.—

"(1) IN GENERAL.—The Administrator or a potentially responsible party shall prepare and implement a remedial action plan for a facility.

"(2) CONTENTS.—A remedial action plan shall consist of—

"(A) the results of a facility evaluation, including any screening analysis performed at the facility;

"(B) a discussion of the potentially viable remedies that are considered to be reasonable under section 121(a) and how they balance the factors stated in section 121(a)(1)(C);

"(C) a description of the remedial action to be taken;

"(D) a description of the facility-specific risk-based evaluation under section 127 and a demonstration that the selected remedial action will satisfy sections 121(a) and 128; and

"(E) a realistic schedule for conducting the remedial action, taking into consideration facility-specific factors.

"(3) WORK PLAN.—

"(A) IN GENERAL.—Prior to preparation of a remedial action plan, the preparer shall develop a work plan, including a community information and participation plan, which generally describes how the remedial action plan will be developed.

"(B) SUBMISSION.—A work plan shall be submitted to the Administrator, the State, the community response organization, the local library, and any other public facility designated by the Administrator.

"(C) PUBLICATION.—The Administrator or other person that prepares a work plan shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the work plan is available for review at the local library and that comments concerning the work plan can be submitted to the preparer of the work plan, the Administrator, the State, or the local community response organization.

"(D) FORWARDING OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response orga-

nization, the Administrator, State, or community response organization shall forward the comments to the preparer of the work plan.

"(E) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a work plan, the Administrator shall—

"(i) identify to the preparer of the work plan, with specificity, any deficiencies in the submission; and

"(ii) require that the preparer submit a revised work plan within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(4) FACILITY EVALUATION.—

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

"(i) assess potential remedial alternatives, including ascertaining, to the degree appropriate, the volume and nature of the contaminants, their location, potential exposure pathways and receptors;

"(ii) discern the actual or planned or reasonably anticipated future use of the land and water resources; and

"(iii) screen out any uncontaminated areas, contaminants, and potential pathways from further consideration.

"(B) SUBMISSION.—A draft facility evaluation shall be submitted to the Administrator for approval.

"(C) PUBLICATION.—Not later than 30 days after submission, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the draft facility evaluation, the Administrator shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the draft facility evaluation is available for review and that comments concerning the evaluation can be submitted to the Administrator, the State, and the community response organization.

"(D) AVAILABILITY OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall make the comments available to the preparer of the facility evaluation.

"(E) NOTICE OF APPROVAL.—If the Administrator approves a facility evaluation, the Administrator shall—

"(i) notify the community response organization; and

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

"(F) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a facility evaluation, the Administrator shall—

"(i) identify to the preparer of the facility evaluation, with specificity, any deficiencies in the submission; and

"(ii) require that the preparer submit a revised facility evaluation within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(5) PROPOSED REMEDIAL ACTION PLAN.—

"(A) SUBMISSION.—In a case in which a potentially responsible party prepares a remedial action plan, the preparer shall submit the remedial action plan to the Administrator for approval and provide a copy to the local library.

"(B) PUBLICATION.—After receipt of the proposed remedial action plan, or in a case in which the Administrator is preparing the remedial action plan, after the completion of

the remedial action plan, the Administrator shall cause to be published in a newspaper of general circulation in the area where the facility is located and posted in other conspicuous places in the local community a notice announcing that the proposed remedial action plan is available for review at the local library and that comments concerning the remedial action plan can be submitted to the Administrator, the State, and the community response organization.

“(C) AVAILABILITY OF COMMENTS.—If comments are submitted to a State or the community response organization, the State or community response organization shall make the comments available to the preparer of the proposed remedial action plan.

“(D) HEARING.—The Administrator shall hold a public hearing at which the proposed remedial action plan shall be presented and public comment received.

“(E) APPROVAL.—

“(i) IN GENERAL.—The Administrator shall approve a proposed remedial action plan if the plan—

“(I) contains the information described in section 127(b); and

“(II) satisfies section 121(a).

“(ii) DEFAULT.—If the Administrator fails to issue a notice of disapproval of a proposed remedial action plan in accordance with subparagraph (G) within 90 days after the proposed plan is submitted, the plan shall be considered to be approved and its implementation fully authorized.

“(F) NOTICE OF APPROVAL.—If the Administrator approves a proposed remedial action plan, the Administrator shall—

“(i) notify the community response organization; and

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

“(G) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a proposed remedial action plan, the Administrator shall—

“(i) inform the preparer of the proposed remedial action plan, with specificity, of any deficiencies in the submission; and

“(ii) request that the preparer submit a revised proposed remedial action plan within a reasonable time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

“(6) IMPLEMENTATION OF REMEDIAL ACTION PLAN.—A remedial action plan that has been approved or is considered to be approved under paragraph (5) shall be implemented in accordance with the schedule set forth in the remedial action plan.

“(7) REMEDIAL DESIGN.—

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

“(B) PUBLICATION.—After receipt by the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall—

“(i) notify the community response organization; and

“(ii) cause a notice of submission or completion of the remedial design to be published in a newspaper of general circulation and posted in conspicuous places in the area where the facility is located.

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

“(D) APPROVAL.—Not later than 90 days after the submission to the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall approve or disapprove the remedial design.

“(E) NOTICE OF APPROVAL.—If the Administrator approves a remedial design, the Administrator shall—

“(i) notify the community response organization; and

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

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

“(i) identify with specificity any deficiencies in the submission; and

“(ii) allow the preparer submitting a remedial design a reasonable time (which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator) in which to submit a revised remedial design.

“(c) JUDICIAL REVIEW.—

“(1) FINAL ACTION.—Notwithstanding any other provision of this Act or any other law, an approval or disapproval of a remedial action plan described in paragraph (2), shall be final action of the Administrator subject to judicial review in United States district court.

“(2) APPLICATION AND SUBSECTION.—A remedial action plan is described in this paragraph if—

“(A) the plan is approved or disapproved after the date of enactment of this section; and

“(B) the capital cost of the remedial action under the plan is projected to cost more than \$15,000,000 for any operating unit that is the subject of a separately enforceable remedial action plan or more than \$27,000,000 for an entire facility.

“(d) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

“(1) NOTICE OF SIGNIFICANT DEVIATION.—If the Administrator determines that the implementation of the remedial action plan has deviated significantly from the plan, the Administrator shall provide the implementing party a notice that requires the implementing party, within a reasonable period of time specified by the Administrator, to—

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

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

“(2) FAILURE TO COMPLY.—

“(A) CLASS ONE ADMINISTRATIVE PENALTY.—In issuing a notice under paragraph (1), the Administrator may impose a class one administrative penalty consistent with section 109(a).

“(B) ADDITIONAL ENFORCEMENT MEASURES.—If the implementing party fails to either comply with the plan or submit a proposed modification, the Administrator may pursue all additional appropriate enforcement measures pursuant to this Act.

“(e) MODIFICATIONS TO REMEDIAL ACTION.—

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

“(A) fundamentally alters the interpretation of site conditions at the facility;

“(B) fundamentally alters the interpretation of sources of risk at the facility;

“(C) fundamentally alters the scope of protection to be achieved by the selected remedial action;

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

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

“(2) MAJOR MODIFICATIONS.—

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

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

“(ii) that the revised remedy will continue to satisfy section 121(a).

“(B) NOTICE AND COMMENT.—The Administrator shall provide the implementing party, the community response organization, and the local community notice of the proposed major modification and at least 30 days’ opportunity to comment on any such proposed modification.

“(C) PROMPT ACTION.—At the end of the comment period, the Administrator shall promptly approve or disapprove the proposed modification and order implementation of the modification in accordance with any reasonable and relevant requirements that the Administrator may specify.

“(3) MINOR MODIFICATIONS.—Nothing in this section modifies the discretionary authority of the Administrator to make a minor modification of a record of decision or remedial action plan to conform to the best science and engineering, the requirements of this Act, or changing conditions at a facility.”.

SEC. 405. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

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

“SEC. 130. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

“(a) IN GENERAL.—

“(1) PROPOSED NOTICE OF COMPLETION AND PROPOSED DELISTING.—Not later than 60 days after the completion by the Administrator of physical construction necessary to implement a response action at a facility, or not later than 60 days after receipt of a notice of such completion from the implementing party, the Administrator shall publish a notice of completion and proposed delisting of the facility from the National Priorities List in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

“(2) PHYSICAL CONSTRUCTION.—For the purposes of paragraph (1), physical construction necessary to implement a response action at a facility shall be considered to be complete when—

“(A) construction of all systems, structures, devices, and other components necessary to implement a response action for the entire facility has been completed in accordance with the remedial design plan; or

“(B) no construction, or no further construction, is expected to be undertaken.

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

“(4) FINAL NOTICE.—Not later than 60 days after the end of the comment period, the Administrator shall—

“(A) issue a final notice of completion and delisting or a notice of withdrawal of the proposed notice until the implementation of the remedial action is determined to be complete; and

“(B) publish the notice in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

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

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

“(B) the facility shall be delisted by operation of law.

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

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

“(B) any liability of a potentially responsible party or the obligation of any person to provide continued operation and maintenance;

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

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

“(7) FAILURE TO MAKE TIMELY DISAPPROVAL.—The issuance of a final notice of completion and delisting or of a notice of withdrawal within the time required by subsection (a)(3) constitutes a nondiscretionary duty within the meaning of section 310(a)(2).

“(b) CERTIFICATION.—A final notice of completion and delisting shall include a certification by the Administrator that the facility has met all of the requirements of the remedial action plan (except requirements for continued operation and maintenance).

“(c) FUTURE USE OF A FACILITY.—

“(1) FACILITY AVAILABLE FOR UNRESTRICTED USE.—If, after completion of physical construction, a facility is available for unrestricted use and there is no need for continued operation and maintenance, the potentially responsible parties shall have no further liability under any Federal, State, or local law (including any regulation) for remediation at the facility, unless the Administrator determines, based on new and reliable factual information about the facility, that the facility does not satisfy section 121(a).

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

“(A) review the status of the facility every 7 years; and

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

“(3) FACILITIES AVAILABLE FOR RESTRICTED USE.—The Administrator may determine that a facility or portion of a facility is available for restricted use while a response action is under way or after physical construction has been completed. The Administrator shall make a determination that uncontaminated portions of the facility are available for unrestricted use when such use would not interfere with ongoing operations and maintenance activities or endanger human health or the environment.

“(d) OPERATION AND MAINTENANCE.—The need to perform continued operation and maintenance at a facility shall not delay delisting of the facility or issuance of the certification if performance of operation and maintenance is subject to a legally enforceable agreement, order, or decree.

“(e) CHANGE OF USE OF FACILITY.—

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

“(2) GRANT.—The Administrator may grant a petition under paragraph (1) if the petitioner agrees to implement any additional remedial actions that the Administrator determines are necessary to continue to satisfy section 121(a), considering the different use of the facility.

“(3) RESPONSIBILITY FOR RISK.—When a petition has been granted under paragraph (2), the person requesting the change in use of the facility shall be responsible for all risk associated with altering the facility and all

costs of implementing any necessary additional remedial actions.”.

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

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

“SEC. 131. TRANSITION RULES FOR FACILITIES INVOLVED IN REMEDY SELECTION ON DATE OF ENACTMENT.

“(a) NO RECORD OF DECISION.—

“(1) OPTION.—In the case of a facility or operable unit that, as of the date of enactment of this section, is the subject of a remedial investigation and feasibility study (whether completed or incomplete), the potentially responsible parties or the Administrator may elect to follow the remedial action plan process stated in section 129 rather than the remedial investigation and feasibility study and record of decision process under regulations in effect on the date of enactment of this section that would otherwise apply if the requesting party notifies the Administrator and other potentially responsible parties of the election not later than 90 days after the date of enactment of this section.

“(2) SUBMISSION OF FACILITY EVALUATION.—In a case in which the potentially responsible parties have or the Administrator has made an election under subsection (a), the potentially responsible parties shall submit the proposed facility evaluation within 180 days after the date on which notice of the election is given.

“(b) REMEDY REVIEW BOARDS.—

“(1) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Administrator shall establish 1 or more remedy review boards (referred to in this subsection as a ‘remedy review board’), each consisting of at least 3 independent technical experts, to review petitions under paragraphs (3) and (4).

“(2) GENERAL PROCEDURE.—

“(A) COMPLETION OF REVIEW.—The review of a petition submitted to a remedy review board shall be completed not later than 180 days after the receipt of the petition unless the Administrator, for good cause, grants additional time.

“(B) COSTS.—All costs of review by a remedy review board shall be borne by the petitioner.

“(C) DECISIONS.—At the completion of the 180-day review period, a remedy review board shall issue a written decision including responses to all comments submitted during the review process with regard to a petition.

“(D) OPPORTUNITY FOR COMMENT AND MEETINGS.—In reviewing a petition, a remedy review board shall provide an opportunity for all interested parties, including representatives of the State and local community in which the facility is located, to comment on the petition and, if requested, to meet with the remedy review board.

“(E) REVIEW BY THE ADMINISTRATOR.—

“(i) IN GENERAL.—The Administrator shall have final review of any decision of a remedy review board.

“(ii) STANDARD OF REVIEW.—In conducting a review of a decision of a remedy review board, the Administrator shall accord substantial weight to the remedy review board’s decision.

“(iii) REJECTION OF DECISION.—Any determination to reject a remedy review board’s decision must be approved by the Administrator or the Assistant Administrator for Solid Waste and Emergency Response.

“(F) DECISION OF THE BOARD.—A decision of a remedy review board decision under subparagraph (B) and the Administrator’s review of a decision under subparagraph (E)

shall be subject to judicial review under section 113(h).

“(3) CONSTRUCTION NOT BEGUN.—

“(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed but construction has not yet begun prior to the date of enactment of this section, the implementor of the record of decision may file a petition with a remedy review board not later than 90 days after the date of enactment of this section to determine whether an alternate remedy under section 127 should apply to the facility or operable unit.

“(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

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

“(ii) the alternative remedial action achieves a cost savings of at least \$1,500,000.

“(iii) implementation of the alternative remedial action will not result in a substantial delay in the implementation of a remedial action.

“(C) REVIEW OF COMMENTS.—A remedy review board may reject or modify a petition under subparagraph (A), even though the petition meets the criteria stated in subparagraph (B), based on a review of comments submitted by persons other than the petitioner.

“(D) CONTENTS OF PETITION.—A petition described in subparagraph (A) shall rely on risk assessment data that were available prior to issuance of the record of decision but shall consider the actual or planned or reasonably anticipated future use of the land and water resources.

“(E) INCORRECT DATA.—Notwithstanding subparagraph (B) and (D), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

“(4) ADDITIONAL CONSTRUCTION.—

“(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed and construction has begun prior to the date of enactment of this section, but for which additional construction or long-term operation and maintenance activities are anticipated, the implementor of the record of decision may file a petition with a remedy review board within 90 days after the date of enactment of this section to determine whether an alternative remedial action should apply to the facility or operable unit.

“(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

“(i) the alternative remedial action proposed in the petition is protective of human health and the environment in accordance with the standards of section 121, as in effect prior to the date of enactment of this section;

“(ii) implementation of the alternative remedial action will not result in a substantial delay in the implementation of a remedial action; and

“(iii) (I) the petitioner demonstrates that the selected remedial action is inconsistent with the most recent version of any guidance issued by the Administrator prior to the date of enactment of this section concerning the selection or implementation of any remedial action; or

“(II) the alternative remedial action employs a phased remedial approach which, if successful would preclude the need for full implementation of the selected remedial action.

“(C) REVIEW OF COMMENTS.—A remedy review board may reject or modify a petition under subparagraph (A), even though the petition meets the criteria stated in subparagraph (B), based on a review of comments submitted by persons other than the petitioner.

“(D) INCORRECT DATA.—Notwithstanding subparagraph (B), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

“(5) DELAY.—In determining whether an alternative remedial action will substantially delay the implementation of a remedial action of a facility, no consideration shall be given to the time necessary to review a petition under paragraph (3) or (4) by a remedy review board or the Administrator.”.

SEC. 407. JUDICIAL REVIEW.

(a) REVIEW OF CERTAIN ACTIONS.—Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by adding at the end the following:

“(6) An action under section 129(c).”.

(b) STAY.—Section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(b)) is amended by adding at the end the following: “In the case of a challenge under section 113(h)(6), the court may stay the implementation or initiation of the challenged actions pending judicial resolution of the matter.”.

SEC. 408. NATIONAL PRIORITIES LIST.

(a) REVISION OF NATIONAL CONTINGENCY PLAN.—

(1) AMENDMENTS.—Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended—

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

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

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

“(ii) the owner or operator of the facility is liable, or is affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.”; and

(B) by adding at the end the following:

“(h) LISTING OF PARTICULAR PARCELS.—

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

“(2) STATUTORY CONSTRUCTION.—Nothing in subsection (a)(8)(C) shall be construed to limit the Administrator’s authority under section 104 to obtain access to and 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.—The President shall revise the National Priorities List to conform with the amendment made by paragraph (1) not later than 180 days of the date of enactment of this Act.

TITLE V—LIABILITY

SEC. 501. LIABILITY EXCEPTIONS AND LIMITATIONS.

(a) IN GENERAL.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 306(b), is amended by adding at the end the following:

“(r) 10-PERCENT LIMITATION FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—No person or group of persons (other than the United States or a department, agency, or instrumentality of the United States) shall be liable for more than 10 percent of total response costs at a facility listed on the National Priorities List, in the aggregate, incurred after the date of enactment of this subsection if—

“(1) the person is liable solely under subparagraph (C) or (D) of subsection (a)(1); and

“(2) the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge.

“(s) DE MINIMIS CONTRIBUTOR EXEMPTION.—In the case of a vessel or facility that is not owned by the United States and is listed on the National Priorities List, no person described in subparagraph (C) or (D) of subsection (a)(1) (other than the United States or any department, agency, or instrumentality of the United States) shall be liable to the United States or to any other person (including liability for contribution) under Federal or State law for any costs under this section incurred after the date of enactment of this subsection, if no activity specifically attributable to the person resulted in—

“(1) the disposal or treatment of more than 1 percent of the volume of material containing a hazardous substance at the vessel or facility prior to December 11, 1980; or

“(2) the disposal or treatment of not more than 200 pounds or 110 gallons of material containing hazardous substances at the vessel or facility prior to January 1, 1996, or such greater or lesser amount as the Administrator may determine by regulation.

“(t) SUCCESSOR LIABILITY.—The liability of a person that has purchased assets from another person that is otherwise liable under this section shall be determined in accordance with the law of the State in which the vessel or facility is located.”.

(b) CONFORMING AMENDMENT.—Section 107(a) is amended by striking “of this section” and inserting “, the limitation stated in subsection (r), and the exemption stated in subsection (s)”.

(c) EFFECTIVE DATE AND TRANSITION RULES.—The amendments made by this section—

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

(2) shall not apply to an action brought by any person under section 107 or 113 of that Act (42 U.S.C. 9607 and 9613) for costs or damages incurred by the person before the date of enactment of this Act.

SEC. 502. CONTRIBUTION FROM THE FUND FOR CERTAIN RETROACTIVE LIABILITY.

Section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9612) is amended by adding at the end the following:

“(g) CONTRIBUTION FROM THE FUND FOR CERTAIN RETROACTIVE LIABILITY.—

“(1) COMPLETION OF OBLIGATIONS.—A person that is subject to an administrative order issued under section 106 or has entered into a settlement decree with the United States or a State as of the date of enactment of this subsection shall complete the person’s obligations under the order or settlement decree.

“(2) CONTRIBUTION.—A person described in paragraph (1) shall receive contribution from the Fund for any portion of the costs incurred for the performance of the response action after the date of enactment of this subsection—

“(A) if the person is not liable for such costs by reason of the de minimis contributor exemption under section 107(s); or

“(B) if and to the extent the person’s allocated share, as determined under section 503, is funded by the orphan share under section 503(l)(2)(B).

“(3) APPLICATION FOR CONTRIBUTION.—

“(A) IN GENERAL.—Contribution under this section shall be made upon receipt by the Administrator of an application from the person requesting contribution.

“(B) PERIODIC APPLICATIONS.—Application may be made no more frequently than every 6 months after such payments are made or such costs are incurred, commencing 6 months after the enactment of this subsection.

“(4) REGULATIONS.—Contribution shall be made in accordance with such regulations as the Administrator shall issue within 180 days after the date of enactment of this section.

“(5) DOCUMENTATION.—The regulations under paragraph (4) shall, at a minimum, require that an application for contribution contain such documentation of costs and expenditures as the Administrator considers necessary to ensure compliance with this subsection.

“(6) EXPEDITION.—The Administrator shall develop and implement such procedures as may be necessary to provide contribution to such persons in an expeditious manner, but in no case shall a contribution be made later than 1 year after submission of an application under this subsection.

“(7) CONSISTENCY WITH NATIONAL CONTINGENCY PLAN.—No contribution shall be made under this subsection unless the Administrator determines that such costs are consistent with the National Contingency Plan.”.

SEC. 503. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 406, is amended by adding at the end the following:

“SEC. 132. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

“(a) DEFINITIONS.—In this section:

“(1) ALLOCATED SHARE.—The term ‘allocated share’ means the percentage of liability assigned to a potentially responsible party by the allocator in an allocation report under section 132(j)(6).

“(2) ALLOCATION PARTY.—The term ‘allocation party’ means a party, named on a list of parties that will be subject to the allocation process under this section, issued by an allocator under subsection (g)(3)(A).

“(3) ALLOCATOR.—The term ‘allocator’ means an allocator retained to conduct an allocation for a facility under subsection (f)(1).

“(4) MANDATORY ALLOCATION FACILITY.—The term ‘mandatory allocation facility’ means—

“(A) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this

section, and at which one or more potentially responsible parties are liable or potentially liable for status or conduct after December 11, 1980;

"(B) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which no person is liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980;

"(C) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which 1 or more potentially responsible parties (other than a department, agency, or instrumentality of the United States) are liable or potentially liable for status or conduct after December 11, 1980; and

"(D) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which one or more of the potentially responsible parties is not a department, agency, or instrumentality of the United States and with respect to which no person is liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980.

"(5) ORPHAN SHARE.—The term 'orphan share' means the total of the allocated shares determined by the allocator under section 132(l).

"(b) ALLOCATIONS OF LIABILITY.—

"(1) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties (including 1 or more potentially responsible parties that are qualified for de minimis contributor exemption under section 107(s)), the Administrator shall conduct the allocation process under this section.

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

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

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

"(3) PERMISSIVE ALLOCATIONS.—For any facility (other than a mandatory allocation facility or a facility with respect to which a request is made under paragraph (2)) involving 2 or more potentially responsible parties, the Administrator may conduct the allocation process under this section if the Administrator considers it to be appropriate to do so.

"(4) ORPHAN SHARE.—An allocation performed at a vessel or facility identified under subsection (b) (2) or (3) shall not require payment of an orphan share under subsection (1) or reimbursement under subsection (t).

"(5) EXCLUDED FACILITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of the allocation process only, this section does not apply to a response action at a mandatory allocation facility for which there was in effect as of the date of enactment of this section, a settlement, decree, or order that determines the liability and allocated shares of all potentially responsible parties with respect to the response action.

"(B) AVAILABILITY OF ORPHAN SHARE.—For any mandatory allocation facility that is otherwise excluded by subparagraph (A) and

for which there was not in effect as of the date of enactment of this section a final judicial order that determined the liability of all parties to the action for response costs incurred after the date of enactment of this section, an allocation shall be conducted for the sole purpose of determining the availability of orphan share funding pursuant to subsection (1)(2) for any response costs incurred after the date of enactment of this section.

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

"(A) response costs incurred after the date of enactment of this section, with respect to a mandatory allocation facility described in subsection (a)(3) (A), (B), (C), or (D); and

"(B) response costs incurred at a facility that is the subject of a requested or permissive allocation under subsection (b) (2) or (3).

"(7) ORPHAN SHARE FACILITY.—Any non-federally owned vessel or facility that is listed on the National Priorities List at which at least 1 person is liable or potentially liable under section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980, and at which no person is liable or potentially liable for status or conduct after December 11, 1980, shall be considered to be an orphan share facility, and all response costs incurred at the vessel or facility after the date of enactment of this section shall be paid by the orphan share.

"(8) OTHER MATTERS.—This section shall not limit or affect—

"(A) the obligation of the Administrator to conduct the allocation process for a response action at a facility that has been the subject of a partial or expedited settlement with respect to a response action that is not within the scope of the allocation;

"(B) the ability of any person to resolve any liability at a facility to any other person at any time before initiation or completion of the allocation process, subject to subsection (1)(3);

"(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree, issued prior to the date of enactment of this section with respect to liability under this Act; or

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

"(c) MORATORIUM ON LITIGATION AND ENFORCEMENT.—

"(1) IN GENERAL.—No person may assert a claim for recovery of a response cost or contribution toward a response cost (including a claim for insurance proceeds) under this Act or any other Federal or State law in connection with a response action—

"(A) for which an allocation is required to be performed under subsection (b)(1); or

"(B) for which the Administrator has initiated the allocation process under this section,

until the date that is 120 days after the date of issuance of a report by the allocator under subsection (j)(6) or, if a second or subsequent report is issued under subsection (q), the date of issuance of the second or subsequent report.

"(2) PENDING ACTIONS OR CLAIMS.—If a claim described in paragraph (1) is pending on the date of enactment of this section or on initiation of an allocation under this section, the portion of the claim pertaining to response costs that are the subject of the allocation shall be stayed until the date that is 120 days after the date of issuance of a report by the allocator under subsection (j)(6) or, if a second or subsequent report is issued under subsection (q), the date of issuance of the second or subsequent report, unless the court determines that a stay would result in manifest injustice.

"(3) TOLLING OF PERIOD OF LIMITATION.—

"(A) BEGINNING OF TOLLING.—Any applicable period of limitation with respect to a claim subject to paragraph (1) shall be tolled beginning on the earlier of—

"(i) the date of listing of the facility on the National Priorities List if the listing occurs after the date of enactment of this section; or

"(ii) the date of initiation of the allocation process under this section.

"(B) END OF TOLLING.—A period of limitation shall be tolled under subparagraph (A) until the date that is 180 days after the date of issuance of a report by the allocator under subsection (j)(6), or of a second or subsequent report under subsection (q).

"(4) LATER ACTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), until the date that is 180 days after the date of issuance of a report by the allocator under subsection (j)(6) or of a second or subsequent report under subsection (q), the Administrator shall not issue an order under section 106 after the date of enactment of this section in connection with a response action for which an allocation is required to be performed under subsection (b)(1) to any party that, based on the initial list of parties compiled pursuant to subsection (d)(5) appears to be entitled to full orphan share funding under section (1)(2)(B).

"(B) EMERGENCIES.—Subparagraph (A) does not preclude an order requiring the performance of a removal action that is necessary to address an emergency at a facility.

"(C) SUBSEQUENT ALLOCATION REPORT.—If, after the date of enactment of this section, the Administrator issues an order under section 106 to a party that the allocator subsequently determines is entitled to full funding for the party's allocated share pursuant to section (1)(2)(B)—

"(i) all response costs incurred by the party after the date of enactment of this section shall be reimbursed; and

"(ii) the party's obligations under the order shall cease 90 days after the issuance of the allocator's report under subsection (j)(6) or a second report under subsection (q).

"(5) RETAINED AUTHORITY.—Except as specifically provided in this section, this section does not affect the authority of the Administrator to—

"(A) exercise the powers conferred by section 103, 104, 105, 106, or 122;

"(B) commence an action against a party if there is a contemporaneous filing of a judicial consent decree resolving the liability of the party;

"(C) file a proof of claim or take other action in a proceeding under title 11, United States Code; or

"(D) require implementation of a response action at an allocation facility during the conduct of the allocation process.

"(d) INITIATION OF ALLOCATION PROCESS.—

"(1) RESPONSIBLE PARTY SEARCH.—For each facility described in paragraph (2), the Administrator shall initiate the allocation process as soon as practicable by commencing a comprehensive search for all potentially responsible parties with respect to the facility under authority of section 104.

"(2) FACILITIES.—The Administrator shall initiate the allocation process for each—

"(A) mandatory allocation facility;

"(B) facility for which a request for allocation is made under subsection (b)(2); and

"(C) facility that the Administrator considers to be appropriate for allocation under subsection (b)(3).

"(3) TIME LIMIT.—The Administrator shall initiate the allocation process for a facility not later than the earlier of—

"(A) the date of completion of the facility evaluation or remedial investigation for the facility; or

"(B) the date that is 60 days after the date of selection of a removal action.

"(4) SUBMISSION OF INFORMATION AT ALLOCATION FACILITIES.—Any person may submit information to the Administrator concerning a potentially responsible party for a facility that is subject to a search, and the Administrator shall consider the information in carrying out the search.

"(5) INITIAL LIST OF PARTIES.—

"(A) IN GENERAL.—As soon as practicable after initiation of an allocation process for a facility, the Administrator shall publish, in accordance with section 117(d), a list of all potentially responsible parties identified for a facility.

"(B) TIME LIMIT.—The Administrator shall publish a list under paragraph (1) not later than 120 days after the commencement of a comprehensive search.

"(C) COPY OF LIST.—The Administrator shall provide each person named on a list of potentially responsible parties with—

"(i) a copy of the list; and

"(ii) the names of not less than 25 neutral parties—

"(1) who are not employees of the United States;

"(II) who are qualified to perform an allocation at the facility, as determined by the Administrator; and

"(III) at least some of whom maintain an office in the vicinity of the facility.

"(D) PROPOSED ALLOCATOR.—A person identified by the Administrator as a potentially responsible party may propose an allocator not on the list of neutral parties.

"(e) SELECTION OF ALLOCATOR.—

"(1) IN GENERAL.—As soon as practicable after the receipt of a list under subsection (d)(5)(C), the potentially responsible parties named on the list shall—

"(A) select an individual to serve as allocator by plurality vote on a per capita basis; and

"(B) promptly notify the Administrator of the selection.

"(2) VOTE BY REPRESENTATIVE.—The representative of the Fund shall be entitled to cast 1 vote in an election under paragraph (1).

"(3) ELIGIBLE ALLOCATORS.—The potentially responsible parties shall select an allocator under paragraph (1) from among individuals—

"(A) named on the list of neutral parties provided by the Administrator;

"(B) named on a list that is current on the date of selection of neutrals maintained by the American Arbitration Association, the Center for Public Resources, or another non-profit or governmental organization of comparable standing; or

"(C) proposed by a party under subsection (d)(5)(D).

"(4) UNQUALIFIED ALLOCATOR.—

"(A) IN GENERAL.—If the Administrator determines that a person selected under paragraph (1) is unqualified to serve, the Administrator shall promptly notify all potentially responsible parties for the facility, and the potentially responsible parties shall make an alternative selection under paragraph (1).

"(B) LIMIT ON DETERMINATIONS.—The Administrator may not make more than 2 determinations that an allocator is unqualified under this paragraph with respect to any facility.

"(5) DETERMINATION BY ADMINISTRATOR.—If the Administrator does not receive notice of selection of an allocator within 60 days after a copy of a list is provided under subsection (d)(5)(C), or if the Administrator, having given a notification under paragraph (4), does not receive notice of an alternative selection of an allocator under that paragraph within 60 days after the date of the notification, the Administrator shall promptly se-

lect and designate a person to serve as allocator.

"(6) JUDICIAL REVIEW.—No action under this subsection shall be subject to judicial review.

"(f) RETENTION OF ALLOCATOR.—

"(1) IN GENERAL.—On selection of an allocator, the Administrator shall promptly—

"(A) using the procurement procedures authorized by section 109(e), contract with the allocator for the provision of allocation services in accordance with this section; and

"(B) notify each person named as a potentially responsible party at the facility that the allocator has been retained.

"(2) DISCRETION OF ALLOCATOR.—A contract with an allocator under paragraph (1) shall give the allocator broad discretion to conduct the allocation process in a fair, efficient, and impartial manner.

"(3) PROVISION OF INFORMATION.—

"(A) IN GENERAL.—Not later than 30 days after the selection of an allocator, the Administrator shall make available to the allocator and to each person named as a potentially responsible party for the facility—

"(i) any information or documents furnished under section 104(e)(2); and

"(ii) any other potentially relevant information concerning the facility and the potentially responsible parties at the facility.

"(B) PRIVILEGED INFORMATION.—The Administrator shall not make available any privileged information, except as otherwise authorized by law.

"(4) RECOVERY OF CONTRACT COSTS.—The costs of the Administrator in retaining an allocator under paragraph (1) shall be considered to be a response cost for all purposes of this Act.

"(g) ADDITIONAL PARTIES.—

"(1) IN GENERAL.—Any person may propose to the allocator the name of an additional potentially responsible party at a facility, or otherwise provide the allocator with information pertaining to a facility or to an allocation, until the date that is 60 days after the later of—

"(A) the date of issuance of the initial list described in subsection (d)(5)(A); or

"(B) the date of retention of the allocator under subsection (f)(1)(A).

"(2) NEXUS.—Any proposal under paragraph (1) to add a potentially responsible party shall include all information reasonably available to the person making the proposal regarding the nexus between the additional potentially responsible party and the facility.

"(3) FINAL LIST.—

"(A) IN GENERAL.—The allocator shall issue a final list of all parties that will be subject to the allocation process (referred to in this section as the 'allocation parties') not later than 120 days after publication of the initial list under subsection (d)(5)(A).

"(B) STANDARD.—The allocator shall include each party proposed under paragraph (1) in the final list of allocation parties unless the allocator determines that the party is not liable under section 107.

"(C) IDENTIFICATION OF DE MINIMIS CONTRIBUTORS.—

"(i) IN GENERAL.—In compiling the final list of allocation parties, the allocator shall identify, to the extent possible, all parties entitled to the de minimis contributor exemption under section 107(s) and provide a list of the parties identified to the Administrator.

"(ii) NOTIFICATION OF EXEMPTION.—Not later than 60 days after receipt of the list, the Administrator shall provide to each party identified on the list a written notification of the party's entitlement to the de minimis contributor exemption unless the Administrator publishes a written determination that—

"(I) no rational interpretation of the facts before the allocator supports the allocator's decision; or

"(II) the allocator's decision was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

"(iii) NO JUDICIAL REVIEW.—Any determination by the Administrator under this subparagraph shall not be subject to judicial review.

"(D) EFFECT.—If the allocator determines that there is an inadequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the allocator, the nominated party's costs (including reasonable attorney's fees) shall be borne by the party that proposed the addition of the party to the allocation.

"(h) FEDERAL, STATE, AND LOCAL AGENCIES.—

"(1) IN GENERAL.—Other than as set forth in this Act, any Federal, State, or local governmental department, agency, or instrumentality that is named as a potentially responsible party or an allocation party shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination under this section to the same extent as any other party.

"(2) ORPHAN SHARE.—The Administrator or the Attorney General shall participate in the allocation proceeding as the representative of the Fund from which any orphan share shall be paid.

"(i) POTENTIALLY RESPONSIBLE PARTY SETTLEMENT.—

"(1) SUBMISSION.—At any time prior to the date of issuance of an allocation report under subsection (j)(6) or of a second or subsequent report under subsection (q), any group of potentially responsible parties for a facility may submit to the allocator a private allocation for any response action that is within the scope of the allocation under subsection (b)(6).

"(2) ADOPTION.—The allocator shall promptly adopt a private allocation under paragraph (1) as the allocation report if the private allocation—

"(A) is a binding allocation of 100 percent of the recoverable costs of the response action that is the subject of the allocation; and

"(B) does not allocate a share to—

"(i) any person who is not a signatory to the private allocation; or

"(ii) any person whose share would be part of the orphan share under subsection (l), unless the representative of the Fund is a signatory to the private allocation.

"(3) WAIVER OF RIGHTS.—Any signatory to a private allocation waives the right to seek from any other party for a facility—

"(A) recovery of any response cost that is the subject of the allocation; and

"(B) contribution under this Act with respect to any response action that is within the scope of the allocation.

"(j) ALLOCATION DETERMINATION.—

"(1) ALLOCATION PROCESS.—An allocator retained under subsection (f)(1) shall conduct an allocation process culminating in the issuance of a written report with a nonbinding equitable allocation of percentage shares of responsibility for any response action that is within the scope of the allocation under subsection (b)(6).

"(2) IDENTIFICATION OF DE MINIMIS CONTRIBUTORS.—

"(A) IN GENERAL.—If all parties entitled to the de minimis contributor exemption were not previously identified under subsection (g)(3)(C), the allocator's report under paragraph (1) shall identify all parties entitled to the de minimis contributor exemption under section 107(s).

"(B) PROCEDURE.—If a party is identified under subparagraph (A), the Administrator

shall follow the procedural requirements of subsection (g)(3)(C)(ii).

“(2) COPIES OF REPORT.—An allocator shall provide the report issued under paragraph (1) to the Administrator and to the allocation parties.

“(3) INFORMATION-GATHERING AUTHORITIES.—

“(A) IN GENERAL.—An allocator may request information from any person in order to assist in the efficient completion of the allocation process.

“(B) REQUESTS.—Any person may request that an allocator request information under this paragraph.

“(C) AUTHORITY.—An allocator may exercise the information-gathering authority of the Administrator under section 104(e), including issuing an administrative subpoena to compel the production of a document or the appearance of a witness.

“(D) DISCLOSURE.—Notwithstanding any other law, any information submitted to the allocator in response to a subpoena issued under paragraph (4) shall be exempt from disclosure to any person under section 552 of title 5, United States Code.

“(E) ORDERS.—In the event of contumacy or a failure of a person to obey a subpoena issued under paragraph (4), an allocator may request the Attorney General to—

“(i) bring a civil action to enforce the subpoena; or

“(ii) if the person moves to quash the subpoena, to defend the motion.

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

“(4) ADDITIONAL AUTHORITY.—An allocator may—

“(A) schedule a meeting or hearing and require the attendance of allocation parties at the meeting or hearing;

“(B) sanction an allocation party for failing to cooperate with the orderly conduct of the allocation process;

“(C) require that allocation parties wishing to present similar legal or factual positions consolidate the presentation of the positions;

“(D) obtain or employ support services, including secretarial, clerical, computer support, legal, and investigative services; and

“(E) take any other action necessary to conduct a fair, efficient, and impartial allocation process.

“(5) CONDUCT OF ALLOCATION PROCESS.—

“(A) IN GENERAL.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors described in subsection (k).

“(B) OPPORTUNITY TO BE HEARD.—Each allocation party shall be afforded an opportunity to be heard (orally or in writing, at the option of an allocation party) and an opportunity to comment on a draft allocation report.

“(C) RESPONSES.—The allocator shall not be required to respond to comments.

“(D) STREAMLINING.—The allocator shall make every effort to streamline the allocation process and minimize the cost of conducting the allocation.

“(6) ALLOCATION REPORT.—

“(A) DEADLINE.—

“(i) IN GENERAL.—The allocator shall provide a written allocation report to the Administrator and the allocation parties not later than 180 days after the date of issuance of the final list of allocation parties under subsection (g)(3)(A) that specifies the allocation share of each potentially responsible

party and any orphan shares, as determined by the allocator.

“(ii) EXTENSION.—On request by the allocator and for good cause shown, the Administrator may extend the time to complete the report by not more than 90 days.

“(B) BREAKDOWN OF ALLOCATION SHARES INTO TIME PERIODS.—The allocation share for each potentially responsible party with respect to a mandatory allocation facility at which 1 or more persons are liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980, shall be comprised of percentage shares of responsibility stated separately for status or conduct prior to December 11, 1980, and status or conduct on or after December 11, 1980.

“(k) EQUITABLE FACTORS FOR ALLOCATION.—The allocator shall prepare a nonbinding allocation of percentage shares of responsibility to each allocation party and to the orphan share, in accordance with this section and without regard to any theory of joint and several liability, based on—

“(1) the amount of hazardous substances contributed by each allocation party;

“(2) the degree of toxicity of hazardous substances contributed by each allocation party;

“(3) the mobility of hazardous substances contributed by each allocation party;

“(4) the degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

“(5) the degree of care exercised by each allocation party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

“(6) the cooperation of each allocation party in contributing to any response action and in providing complete and timely information to the allocator; and

“(7) such other equitable factors as the allocator determines are appropriate.

“(l) ORPHAN SHARES.—

“(1) IN GENERAL.—The allocator shall determine whether any percentage of responsibility for the response action shall be allocable to the orphan share.

“(2) MAKEUP OF ORPHAN SHARE.—The orphan share shall consist of—

“(A) any share that the allocator determines is attributable to an allocation party that is insolvent or defunct and that is not affiliated with any financially viable allocation party;

“(B) any share that the allocator determines is attributable to an allocation party (other than a department, agency, or instrumentality of the United States) at a vessel or facility at which one or more persons is liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for status or conduct prior to December 11, 1980, to the extent such allocation party's share is based on status or conduct prior to December 11, 1980; and

“(C) the difference between the aggregate share that the allocator determines is attributable to a person and the aggregate share actually assumed by the person in a settlement with the United States if—

“(i) the person is eligible for an expedited settlement with the United States under section 122 based on limited ability to pay response costs;

“(ii) the liability of the person is eliminated, limited, or reduced by any provision of this Act; or

“(iii) the person settled with the United States before the completion of the allocation.

“(3) UNATTRIBUTABLE SHARES.—A share attributable to a hazardous substance that the allocator specifically determines was disposed at the site prior to December 11, 1980, but which cannot be attributed to any identified and viable party shall be considered an

orphan share. All other unattributable shares shall be distributed among the allocation parties and the orphan share in accordance with the allocated share assigned to each.

“(m) INFORMATION REQUESTS.—

“(1) DUTY TO ANSWER.—Each person that receives an information request or subpoena from the allocator shall provide a full and timely response to the request.

“(2) CERTIFICATION.—An answer to an information request by an allocator shall include a certification by a representative that meets the criteria established in section 270.11(a) of title 40, Code of Federal Regulations (or any successor regulation), that—

“(A) the answer is correct to the best of the representative's knowledge;

“(B) the answer is based on a diligent good faith search of records in the possession or control of the person to whom the request was directed;

“(C) the answer is based on a reasonable inquiry of the current (as of the date of the answer) officers, directors, employees, and agents of the person to whom the request was directed;

“(D) the answer accurately reflects information obtained in the course of conducting the search and the inquiry;

“(E) the person executing the certification understands that there is a duty to supplement any answer if, during the allocation process, any significant additional, new, or different information becomes known or available to the person; and

“(F) the person executing the certification understands that there are significant penalties for submitting false information, including the possibility of a fine or imprisonment for a knowing violation.

“(n) PENALTIES.—

“(1) CIVIL.—

“(A) IN GENERAL.—A person that fails to submit a complete and timely answer to an information request, a request for the production of a document, or a summons from an allocator, submits a response that lacks the certification required under subsection (m)(2), or knowingly makes a false or misleading material statement or representation in any statement, submission, or testimony during the allocation process (including a statement or representation in connection with the nomination of another potentially responsible party) shall be subject to a civil penalty of not more than \$10,000 per day of violation.

“(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

“(2) CRIMINAL.—A person that knowingly and willfully makes a false material statement or representation in the response to an information request or subpoena issued by the allocator under subsection (m) shall be considered to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

“(o) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

“(1) DOCUMENT REPOSITORY.—

“(A) IN GENERAL.—The allocator shall establish and maintain a document repository containing copies of all documents and information provided by the Administrator or any allocation party under this section or generated by the allocator during the allocation process.

“(B) AVAILABILITY.—Subject to paragraph (2), the documents and information in the document repository shall be available only to an allocation party for review and copying at the expense of the allocation party.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Each document or material submitted to the allocator or placed in the document repository and the record of any information generated or obtained during the allocation process shall be confidential.”

“(B) MAINTENANCE.—The allocator, each allocation party, the Administrator, and the Attorney General—

“(i) shall maintain the documents, materials, and records of any depositions or testimony adduced during the allocation as confidential; and

“(ii) shall not use any such document or material or the record in any other matter or proceeding or for any purpose other than the allocation process.”

“(C) DISCLOSURE.—Notwithstanding any other law, the documents and materials and the record shall not be subject to disclosure to any person under section 552 of title 5, United States Code.

“(D) DISCOVERY AND ADMISSIBILITY.—

“(i) IN GENERAL.—Subject to clause (ii), the documents and materials and the record shall not be subject to discovery or admissible in any other Federal, State, or local judicial or administrative proceeding, except—

“(I) a new allocation under subsection (q) or (v) for the same response action; or

“(II) an initial allocation under this section for a different response action at the same facility.

“(ii) OTHERWISE DISCOVERABLE OR ADMISSIBLE.—

“(I) DOCUMENT OR MATERIAL.—If the original of any document or material submitted to the allocator or placed in the document repository was otherwise discoverable or admissible from a party, the original document, if subsequently sought from the party, shall remain discoverable or admissible.

“(II) FACTS.—If a fact generated or obtained during the allocation was otherwise discoverable or admissible from a witness, testimony concerning the fact, if subsequently sought from the witness, shall remain discoverable or admissible.

“(3) NO WAIVER OF PRIVILEGE.—The submission of testimony, a document, or information under the allocation process shall not constitute a waiver of any privilege applicable to the testimony, document, or information under any Federal or State law or rule of discovery or evidence.

“(4) PROCEDURE IF DISCLOSURE SOUGHT.—

“(A) NOTICE.—A person that receives a request for a statement, document, or material submitted for the record of an allocation proceeding, shall—

“(i) promptly notify the person that originally submitted the item or testified in the allocation proceeding; and

“(ii) provide the person that originally submitted the item or testified in the allocation proceeding an opportunity to assert and defend the confidentiality of the item or testimony.

“(B) RELEASE.—No person may release or provide a copy of a statement, document, or material submitted, or the record of an allocation proceeding, to any person not a party to the allocation except—

“(i) with the written consent of the person that originally submitted the item or testified in the allocation proceeding; or

“(ii) as may be required by court order.

“(5) CIVIL PENALTY.—

“(A) IN GENERAL.—A person that fails to maintain the confidentiality of any statement, document, or material or the record generated or obtained during an allocation proceeding, or that releases any information in violation of this section, shall be subject to a civil penalty of not more than \$25,000 per violation.

“(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in ac-

cordance with section 109 or by any allocation party in a citizen suit brought under section 310.

“(C) DEFENSES.—In any administrative or judicial proceeding, it shall be a complete defense that any statement, document, or material or the record at issue under subparagraph (A)—

“(i) was in, or subsequently became part of, the public domain, and did not become part of the public domain as a result of a violation of this subsection by the person charged with the violation;

“(ii) was already known by lawful means to the person receiving the information in connection with the allocation process; or

“(iii) became known to the person receiving the information after disclosure in connection with the allocation process and did not become known as a result of any violation of this subsection by the person charged with the violation.

“(p) REJECTION OF ALLOCATION REPORT.—

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

“(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties; or

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

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

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

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

“(q) SECOND AND SUBSEQUENT ALLOCATIONS.—

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

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

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

“(r) SETTLEMENTS BASED ON ALLOCATIONS.—

“(1) DEFINITION.—In this subsection, the term ‘all settlements’ includes any orphan share allocated under subsection (l).

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

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

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

“(3) PROVISIONS OF SETTLEMENTS.—

“(A) IN GENERAL.—A settlement based on an allocation under this section—

“(i) may consist of a cash-out settlement or an agreement for the performance of a response action; and

“(ii) shall include—

“(I) a waiver of contribution rights against all persons that are potentially responsible parties for any response action addressed in the settlement;

“(II) a covenant not to sue that is consistent with section 122(f) and, except in the case of a cash-out settlement, provisions regarding performance or adequate assurance of performance of the response action;

“(III) a premium, calculated on a facility-specific basis and subject to the limitations on premiums stated in paragraph (5), that reflects the actual risk to the United States of not collecting unrecovered response costs for the response action, despite the diligent prosecution of litigation against any viable allocation party that has not resolved the liability of the party to the United States, except that no premium shall apply if all allocation parties participate in the settlement or if the settlement covers 100 percent of the response costs subject to the allocation;

“(IV) complete protection from all claims for contribution regarding the response action addressed in the settlement; and

“(V) provisions through which a settling party shall receive prompt reimbursement from the Fund under subsection (s) of any response costs incurred by the party for any response action that is the subject of the allocation in excess of the allocated share of the party, including the allocated portion of any orphan share.

“(B) RIGHT TO REIMBURSEMENT.—A right to reimbursement under subparagraph (A)(ii)(V) shall not be contingent on recovery by the United States of any response costs from any person other than the settling party.

“(4) REPORT.—The Administrator shall report annually to Congress on the administration of the allocation process under this section, providing in the report—

“(A) information comparing allocation results with actual settlements at multiparty facilities;

“(B) a cumulative analysis of response action costs recovered through post-allocation litigation or settlements of post-allocation litigation;

“(C) a description of any impediments to achieving complete recovery; and

“(D) a complete accounting of the costs incurred in administering and participating in the allocation process.

“(5) PREMIUM.—In each settlement under this subsection, the premium authorized—

“(A) shall be determined on a case-by-case basis to reflect the actual litigation risk faced by the United States with respect to any response action addressed in the settlement; but

"(B) shall not exceed—

"(i) 5 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 80 percent and less than 100 percent of responsibility for the response action;

"(ii) 10 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 60 percent and not more than 80 percent of responsibility for the response action;

"(iii) 15 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 40 percent and not more than 60 percent of responsibility for the response action; or

"(iv) 20 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for 40 percent or less of responsibility for the response; and

"(C) shall be reduced proportionally by the percentage of the allocated share for that party paid through orphan funding under subsection (l).

"(s) FUNDING OF ORPHAN SHARES.—

"(1) REIMBURSEMENT.—For each settlement agreement entered into under subsection (r), the Administrator shall promptly reimburse the allocation parties for any costs incurred that are attributable to the orphan share, as determined by the allocator.

"(2) ENTITLEMENT.—Paragraph (1) constitutes an entitlement to any allocation party eligible to receive a reimbursement.

"(3) AMOUNTS OWED.—Any amount due and owing in excess of available appropriations in any fiscal year shall be paid from amounts made available in subsequent fiscal years, along with interest on the unpaid balances at the rate equal to that of the current average market yield on outstanding marketable obligations of the United States with a maturity of 1 year.

"(4) DOCUMENTATION AND AUDITING.—The Administrator—

"(A) shall require that any claim for reimbursement be supported by documentation of actual costs incurred; and

"(B) may require an independent auditing of any claim for reimbursement.

"(t) POST-ALLOCATION CONTRIBUTION.—

"(1) IN GENERAL.—Subject to paragraph (2), an allocation party (including a party that is subject to an order under section 106 or a settlement decree) that incurs costs after the date of enactment of this section for implementation of a response action that is the subject of an allocation under this section to an extent that exceeds the percentage share of the allocation party, as determined by the allocator, shall be entitled to prompt reimbursement of the excess amount, including any orphan share, from the Fund, unless the allocation report is rejected under subsection (p).

"(2) EXCEPTION.—No person whose allocated share is fully funded by the orphan share pursuant to subsection (l)(2)(B) shall be subject to an order pursuant to section 106 issued after the date of enactment of this section.

"(3) NOT CONTINGENT.—The right to reimbursement under paragraph (1) shall not be contingent on recovery by the United States of a response cost from any other person.

"(4) TERMS AND CONDITIONS.—

"(A) RISK PREMIUM.—A reimbursement shall be reduced by the amount of the litigation risk premium under subsection (r)(5) that would apply to a settlement by the allocation party concerning the response action, based on the total allocated shares of the parties that have not reached a settlement with the United States.

"(B) TIMING.—

"(i) IN GENERAL.—A reimbursement shall be paid out during the course of the response action that was the subject of the allocation,

using reasonable progress payments at significant milestones.

"(ii) CONSTRUCTION.—Reimbursement for the construction portion of the work shall be paid out not later than 120 days after the date of completion of the construction.

"(C) EQUITABLE OFFSET.—A reimbursement is subject to equitable offset or recoupment by the Administrator at any time if the allocation party fails to perform the work in a proper and timely manner.

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

"(E) WAIVER.—An allocation party seeking reimbursement waives the right to seek recovery of response costs in connection with the response action, or contribution toward the response costs, from any other person.

"(F) BAR.—An administrative order shall be in lieu of any action by the United States or any other person against the allocation party for recovery of response costs in connection with the response action, or for contribution toward the costs of the response action.

"(u) POST-SETTLEMENT LITIGATION.—

"(1) IN GENERAL.—Subject to subsections (q) and (r), and on the expiration of the moratorium period under subsection (c)(4), the Administrator may commence an action under section 107 against an allocation party that has not resolved the liability of the party to the United States following allocation and may seek to recover response costs not recovered through settlements with other persons.

"(2) ORPHAN SHARE.—The recoverable costs shall include any orphan share determined under subsection (l), but shall not include any share allocated to a Federal, State, or local governmental agency, department, or instrumentality.

"(3) IMPEADER.—A defendant in an action under paragraph (1) may implead an allocation party only if the allocation party did not resolve liability to the United States.

"(4) CERTIFICATION.—In commencing or maintaining an action under section 107 against an allocation party after the expiration of the moratorium period under subsection (c)(4), the Attorney General shall certify in the complaint that the defendant failed to settle the matter based on the share that the allocation report assigned to the party.

"(5) RESPONSE COSTS.—

"(A) ALLOCATION PROCEDURE.—The cost of implementing the allocation procedure under this section, including reasonable fees and expenses of the allocator, shall be considered as a necessary response cost.

"(B) FUNDING OF ORPHAN SHARES.—The cost attributable to funding an orphan share under this section—

"(i) shall be considered as a necessary cost of response cost; and

"(ii) shall be recoverable in accordance with section 107 only from an allocation party that does not reach a settlement and does not receive an administrative order under subsection (r) or (t).

"(v) NEW INFORMATION.—

"(1) IN GENERAL.—An allocation under this section shall be final, except that any settling party, including the United States, may seek a new allocation with respect to the response action that was the subject of the settlement by presenting the Administrator with clear and convincing evidence that—

"(A) the allocator did not have information concerning—

"(i) 35 percent or more of the materials containing hazardous substances at the facility; or

"(ii) 1 or more persons not previously named as an allocation party that contrib-

uted 15 percent or more of materials containing hazardous substances at the facility; and

"(B) the information was discovered subsequent to the issuance of the report by the allocator.

"(2) NEW ALLOCATION.—Any new allocation of responsibility—

"(A) shall proceed in accordance with this section;

"(B) shall be effective only after the date of the new allocation report; and

"(C) shall not alter or affect the original allocation with respect to any response costs previously incurred.

"(w) ALLOCATOR'S DISCRETION.—The Administrator shall not issue any rule or order that limits the discretion of the allocator in the conduct of the allocation.

"(x) ILLEGAL ACTIVITIES.—Section 107 (n), (o), (p), (q), (r), (s), (t), and (u), section 112(g), and (l)(2)(B) shall not apply to any person whose liability for response costs under section 107(a)(1) 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."

SEC. 504. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF CONTRACTORS.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)), as amended by section 303(a), is amended by adding at the end the following:

"(G) LIABILITY OF CONTRACTORS.—

"(i) IN GENERAL.—The term 'owner or operator' does not include a response action contractor (as defined in section 119(e)).

"(ii) LIABILITY LIMITATIONS.—A person described in clause (i) shall not, in the absence of negligence by the person, be considered to—

"(I) cause or contribute to any release or threatened release of a hazardous substance, pollutant, or contaminant;

"(II) arrange for disposal or treatment of a hazardous substance, pollutant, or contaminant;

"(III) arrange with a transporter for transport or disposal or treatment of a hazardous substance, pollutant, or contaminant; or

"(IV) transport a hazardous substance, pollutant, or contaminant.

"(iii) EXCEPTION.—This subparagraph does not apply to a person potentially responsible under section 106 or 107 other than a person associated solely with the provision of a response action or a service or equipment ancillary to a response action."

(b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—Section 119(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(a)) is amended—

(1) in paragraph (1) by striking "title or under any other Federal law" and inserting "title or under any other Federal or State law"; and

(2) in paragraph (2)—

(A) by striking "(2) NEGLIGENCE, ETC.—Paragraph (1)" and inserting the following:

"(2) NEGLIGENCE AND INTENTIONAL MISCONDUCT; APPLICATION OF STATE LAW.—

"(A) NEGLIGENCE AND INTENTIONAL MISCONDUCT.—

"(i) IN GENERAL.—Paragraph (1)"; and

(B) by adding at the end the following:

"(ii) STANDARD.—Conduct under clause (i) shall be evaluated based on the generally accepted standards and practices in effect at

the time and place at which the conduct occurred.

“(iii) PLAN.—An activity performed in accordance with a plan that was approved by the Administrator shall not be considered to constitute negligence under clause (i).

“(B) APPLICATION OF STATE LAW.—Paragraph (1) shall not apply in determining the liability of a response action contractor under the law of a State if the State has adopted by statute a law determining the liability of a response action contractor.”.

(c) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(1)) is amended by adding at the end the following: “The agreement may apply to a claim for negligence arising under Federal or State law.”.

(d) INDEMNIFICATION DETERMINATIONS.—Section 119(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)) is amended by striking paragraph (4) and inserting the following:

“(4) DECISION TO INDEMNIFY.—

“(A) IN GENERAL.—For each response action contract for a vessel or facility, the Administrator shall make a decision whether to enter into an indemnification agreement with a response action contractor.

“(B) STANDARD.—The Administrator shall enter into an indemnification agreement to the extent that the potential liability (including the risk of harm to public health, safety, environment, and property) involved in a response action exceed or are not covered by insurance available to the contractor at the time at which the response action contract is entered into that is likely to provide adequate long-term protection to the public for the potential liability on fair and reasonable terms (including consideration of premium, policy terms, and deductibles).

“(C) DILIGENT EFFORTS.—The Administrator shall enter into an indemnification agreement only if the Administrator determines that the response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

“(D) CONTINUED DILIGENT EFFORTS.—An indemnification agreement shall require the response action contractor to continue, not more frequently than annually, to make diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

“(E) LIMITATIONS ON INDEMNIFICATION.—An indemnification agreement provided under this subsection shall include deductibles and shall place limits on the amount of indemnification made available in amounts determined by the contracting agency to be appropriate in light of the unique risk factors associated with the cleanup activity.”.

(e) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting “or threatened release” after “release” each place it appears.

(f) EXTENSION OF COVERAGE TO ALL RESPONSE ACTIONS.—Section 119(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(1)) is amended—

(1) in subparagraph (D) by striking “carrying out an agreement under section 106 or 122”; and

(2) in the matter following subparagraph (D)—

(A) by striking “any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this

Act,” and inserting “any response action,”; and

(B) by inserting before the period at the end the following: “or to undertake appropriate action necessary to protect and restore any natural resource damaged by the release or threatened release”.

(g) DEFINITION OF RESPONSE ACTION CONTRACTOR.—Section 119(e)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking “and is carrying out such contract” and inserting “covered by this section and any person (including any subcontractor) hired by a response action contractor”.

(h) SURETY BONDS.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended—

(1) in subsection (e)(2)(C) by striking “, and before January 1, 1996,”; and

(2) in subsection (g)(5) by striking “, or after December 31, 1995”.

(i) NATIONAL UNIFORM STATUTE OF REPOSE.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended by adding at the end the following:

“(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—

“(1) IN GENERAL.—No action may be brought as a result of the performance of services under a response contract against a response action contractor after the date that is 7 years after the date of completion of work at any facility under the contract to recover—

“(A) injury to property, real or personal;

“(B) personal injury or wrongful death;

“(C) other expenses or costs arising out of the performance of services under the contract; or

“(D) contribution or indemnity for damages sustained as a result of an injury described in subparagraphs (A) through (C).

“(2) EXCEPTION.—Paragraph (1) does not bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct.

“(3) INDEMNIFICATION.—This subsection does not affect any right of indemnification that a response action contractor may have under this section or may acquire by contract with any person.

“(i) STATE STANDARDS OF REPOSE.—Subsections (a)(1) and (h) shall not apply in determining the liability of a response action contractor if the State has enacted a statute of repose determining the liability of a response action contractor.”.

SEC. 505. RELEASE OF EVIDENCE.

(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is amended by inserting after “shall be available to the public” the following: “not later than 14 days after the records, reports, or information is obtained”.

(b) REQUIREMENT TO PROVIDE POTENTIALLY RESPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

(1) ABATEMENT ACTIONS.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended—

(A) by striking “(a) In addition” and inserting the following: “(a) ORDER.”—

“(1) IN GENERAL.—In addition”; and

(B) by adding at the end the following:

“(2) CONTENTS OF ORDER.—An order under paragraph (1) shall provide information concerning the evidence that indicates that each element of liability described in section

107(a)(1) (A), (B), (C), and (D), as applicable, is present.”.

(2) SETTLEMENTS.—Section 122(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)(1)) is amended by inserting after subparagraph (C) the following:

“(D) For each potentially responsible party, the evidence that indicates that each element of liability contained in section 107(a)(1) (A), (B), (C), and (D), as applicable, is present.”.

SEC. 506. CONTRIBUTION PROTECTION.

Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sentence by inserting “or cost recovery” after “contribution”.

SEC. 507. TREATMENT OF RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS AS OWNERS OR OPERATORS.

(a) DEFINITION.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)), as amended by section 502(a), is amended by adding at the end the following:

“(H) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—The term ‘owner or operator’ includes an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is organized and operated exclusively for religious, charitable, scientific, or educational purposes and that holds legal or equitable title to a vessel or facility.”.

(b) LIMITATION ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 306(b), is amended by adding at the end the following:

“(u) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—

“(1) LIMITATION ON LIABILITY.—Subject to paragraph (2), if an organization described in section 101(20)(I) holds legal or equitable title to a vessel or facility as a result of a charitable gift that is allowable as a deduction under section 170, 2055, or 2522 of the Internal Revenue Code of 1986 (determined without regard to dollar limitations), the liability of the organization shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization.

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

“(A) provide full cooperation, assistance, and vessel or facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, preservation of integrity, operation, and maintenance of any complete or partial response action at the vessel or facility;

“(B) provide full cooperation and assistance to the United States in identifying and locating persons who recently owned, operated, or otherwise controlled activities at the vessel or facility;

“(C) establish by a preponderance of the evidence that all active disposal of hazardous substances at the vessel or facility occurred before the organization acquired the vessel or facility; and

“(D) establish by a preponderance of the evidence that the organization did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.

“(3) LIMITATION.—Nothing in this subsection affects the liability of a person other than a person described in section 101(20)(G)

that meets the conditions specified in paragraph (2)."

SEC. 508. COMMON CARRIERS.

Section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(b)(3)) is amended by striking "a published tariff and acceptance" and inserting "a contract".

SEC. 509. LIMITATION ON LIABILITY FOR RESPONSE COSTS.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 505(b), is amended by adding at the end the following:

"(v) LIMITATION ON LIABILITY OF RAILROAD OWNERS.—Notwithstanding subsection (a)(1), a person that does not impede the performance of a response action or natural resource restoration shall not be liable under this Act to the extent that liability is based solely on the status of the person as a railroad owner or operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator, if—

"(1) the spur track provides access to a main line or branch line track that is owned or operated by the railroad;

"(2) the spur track is 10 miles long or less; and

"(3) the railroad owner or operator does not cause or contribute to a release or threatened release at the spur track."

TITLE VI—FEDERAL FACILITIES

SEC. 601. TRANSFER OF AUTHORITIES.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by striking subsection (g) and inserting the following:

"(g) TRANSFER OF AUTHORITIES.—

"(1) DEFINITIONS.—In this section:

"(A) INTERAGENCY AGREEMENT.—The term 'interagency agreement' means an interagency agreement under this section.

"(B) TRANSFER AGREEMENT.—The term 'transfer agreement' means a transfer agreement under paragraph (3).

"(C) TRANSFeree STATE.—The term 'transferee State' means a State to which authorities have been transferred under a transfer agreement.

"(2) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this Act at any facility located in the State that is—

"(A) owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government); and

"(B) listed on the National Priorities List.

"(3) TRANSFER OF AUTHORITIES.—

"(A) DETERMINATIONS.—The Administrator shall enter into a transfer agreement to transfer to a State the authorities described in paragraph (2) if the Administrator determines that—

"(i) the State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise;

"(ii) the State has demonstrated experience in exercising similar authorities;

"(iii) the State has agreed to be bound by all Federal requirements and standards under section 129 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and

"(iv) the State has agreed to abide by the terms of any interagency agreement or agreements covering the Federal facility or facilities with respect to which authorities

are being transferred in effect at the time of the transfer of authorities.

"(B) CONTENTS OF TRANSFER AGREEMENT.—A transfer agreement—

"(i) shall incorporate the determinations of the Administrator under subparagraph (A); and

"(ii) in the case of a transfer agreement covering a facility with respect to which there is no interagency agreement that specifies a dispute resolution process, shall require that within 120 days after the effective date of the transfer agreement, the State shall agree with the head of the Federal department, agency, or instrumentality that owns or operates the facility on a process for resolution of any disputes between the State and the Federal department, agency, or instrumentality regarding the selection of a remedial action for the facility; and

"(iii) shall not impose on the transferee State any term or condition other than that the State meet the requirements of subparagraph (A).

"(4) EFFECT OF TRANSFER.—

"(A) STATE AUTHORITIES.—A transferee State—

"(i) shall not be deemed to be an agent of the Administrator but shall exercise the authorities transferred under a transfer agreement in the name of the State; and

"(ii) shall have exclusive authority to exercise authorities that have been transferred.

"(B) EFFECT ON INTERAGENCY AGREEMENTS.—Nothing in this subsection shall require, authorize, or permit the modification or revision of an interagency agreement covering a facility with respect to which authorities have been transferred to a State under a transfer agreement (except for the substitution of the transferee State for the Administrator in the terms of the interagency agreement, including terms stating obligations intended to preserve the confidentiality of information) without the written consent of the Governor of the State and the head of the department, agency, or instrumentality.

"(5) SELECTED REMEDIAL ACTION.—The remedial action selected for a facility under section 129 by a transferee State shall constitute the only remedial action required to be conducted at the facility, and the transferee State shall be precluded from enforcing any other remedial action requirement under Federal or State law, except for—

"(A) any corrective action under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that was initiated prior to the date of enactment of this subsection; and

"(B) any remedial action in excess of remedial action under section 129 that the State selects in accordance with paragraph (10).

"(6) DEADLINE.—

"(A) IN GENERAL.—The Administrator shall make a determination on an application by a State under paragraph (2) not later than 120 days after the date on which the Administrator receives the application.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of an application within the time period stated in subparagraph (A), the application shall be deemed to have been granted.

"(7) RESUBMISSION OF APPLICATION.—

"(A) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the time period stated in paragraph (6)(A), the resubmitted application shall be deemed to have been granted.

"(8) JUDICIAL REVIEW.—A disapproval of a resubmitted application shall be subject to judicial review under section 113(b).

"(9) WITHDRAWAL OF AUTHORITIES.—The Administrator may withdraw the authorities transferred under a transfer agreement in whole or in part if the Administrator determines that the State—

"(A) is exercising the authorities, in whole or in part, in a manner that is inconsistent with the requirements of this Act;

"(B) has violated the transfer agreement, in whole or in part; or

"(C) no longer meets one of the requirements of paragraph (3).

"(10) STATE COST RESPONSIBILITY.—The State may require a remedial action that exceeds the remedial action selection requirements of section 121 if the State pays the incremental cost of implementing that remedial action over the most cost-effective remedial action that would result from the application of section 129.

"(11) DISPUTE RESOLUTION AND ENFORCEMENT.—

"(A) DISPUTE RESOLUTION.—

"(i) FACILITIES COVERED BY BOTH A TRANSFER AGREEMENT AND AN INTERAGENCY AGREEMENT.—In the case of a facility with respect to which there is both a transfer agreement and an interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in the dispute resolution process provided for in the interagency agreement, except that the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

"(ii) FACILITIES COVERED BY A TRANSFER AGREEMENT BUT NOT AN INTERAGENCY AGREEMENT.—In the case of a facility with respect to which there is a transfer agreement but no interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in dispute resolution as provide in paragraph (3)(B)(ii) under which the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

"(iii) FAILURE TO RESOLVE.—If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor in a dispute resolution process under clause (i) or (ii), the Governor of the State shall make the final determination regarding selection of a remedial action. To compel implementation of the State's selected remedy, the State must bring a civil action in United States district court.

"(B) ENFORCEMENT.—

"(i) AUTHORITY; JURISDICTION.—An interagency agreement with respect to which there is a transfer agreement or an order issued by a transferee State shall be enforceable by a transferee State or by the Federal department, agency, or instrumentality that is a party to the interagency agreement only in the United States district court for the district in which the facility is located.

"(ii) REMEDIES.—The district court shall—

"(I) enforce compliance with any provision, standard, regulation, condition, requirement, order, or final determination that has become effective under the interagency agreement;

"(II) impose any appropriate civil penalty provided for any violation of an interagency agreement, not to exceed \$25,000 per day;

"(III) compel implementation of the selected remedial action; and

"(IV) review a challenge by the Federal department, agency, or instrumentality to the remedial action selected by the State under this section, in accordance with section 113(j).

"(12) COMMUNITY PARTICIPATION.—If, prior to the date of enactment of this section, a Federal department, agency, or instrumentality had established for a facility covered by a transfer agreement a facility-specific advisory board or other community-based advisory group (designated as a 'site-specific advisory board', a 'restoration advisory board', or otherwise), and the Administrator determines that the board or group is willing and able to perform the responsibilities of a community response organization under section 117(e)(2), the board or group—

"(A) shall be considered to be a community response organization for the purposes of section 117 (e) (2), (3), (4), and (9), and (g) and sections 127 and 129; but

"(B) shall not be required to comply with, and shall not be considered to be a community response organization for the purposes of, section 117 (e) (1), (5), (6), (7), or (8) or (f)."

SEC. 602. LIMITATION ON CRIMINAL LIABILITY OF FEDERAL OFFICERS, EMPLOYEES, AND AGENTS.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by adding at the end the following:

"(i) CRIMINAL LIABILITY.—Notwithstanding any other provision of this Act or any other law, an officer, employee, or agent of the United States shall not be held criminally liable for a failure to comply, in any fiscal year, with a requirement to take a response action at a facility that is owned or operated by a department, agency, or instrumentality of the United States, under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any other Federal or State law unless—

"(1) the officer, employee, or agent has not fully performed any direct responsibility or delegated responsibility that the officer, employee, or agent had under Executive Order 12088 (42 U.S.C. 4321 note) or any other delegation of authority to ensure that a request for funds sufficient to take the response action was included in the President's budget request under section 1105 of title 31, United States Code, for that fiscal year; or

"(2) appropriated funds were available to pay for the response action."

SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL ACTION AT FEDERAL FACILITIES.

(a) IN GENERAL.—Section 311 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660) is amended by adding at the end the following:

"(h) FEDERAL FACILITIES.—

"(1) DESIGNATION.—The President may designate a facility that is owned or operated by any department, agency, or instrumentality of the United States, and that is listed or proposed for listing on the National Priorities List, to facilitate the research, development, and application of innovative technologies for remedial action at the facility.

"(2) USE OF FACILITIES.—

"(A) IN GENERAL.—A facility designated under paragraph (1) shall be made available to Federal departments and agencies, State departments and agencies, and public and private instrumentalities, to carry out activities described in paragraph (1).

"(B) COORDINATION.—The Administrator—

"(i) shall coordinate the use of the facilities with the departments, agencies, and instrumentalities of the United States; and

"(ii) may approve or deny the use of a particular innovative technology for remedial action at any such facility.

"(3) CONSIDERATIONS.—

"(A) EVALUATION OF SCHEDULES AND PENALTIES.—In considering whether to permit the application of a particular innovative technology for remedial action at a facility designated under paragraph (1), the Administrator shall evaluate the schedules and penalties applicable to the facility under any agreement or order entered into under section 120.

"(B) AMENDMENT OF AGREEMENT OR ORDER.—If, after an evaluation under subparagraph (A), the Administrator determines that there is a need to amend any agreement or order entered into pursuant to section 120, the Administrator shall comply with all provisions of the agreement or order, respectively, relating to the amendment of the agreement or order."

(b) REPORT TO CONGRESS.—Section 311(e) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

(1) by striking "At the time" and inserting the following:

"(1) IN GENERAL.—At the time"; and

(2) by adding at the end the following:

"(2) ADDITIONAL INFORMATION.—A report under paragraph (1) shall include information on the use of facilities described in subsection (h)(1) for the research, development, and application of innovative technologies for remedial activity, as authorized under subsection (h)."

SEC. 604. FEDERAL FACILITY LISTING.

Section 120(h)(4)(C) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(C)) is amended by adding at the end the following:

"(v) On identification of parcels of uncontaminated property under this paragraph, the President may provide notice that the listing does not include the identified uncontaminated parcels."

SEC. 605. FEDERAL FACILITY LISTING DEFERRAL.

Paragraph (3) of section 120(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(d)), as designated by section 604, is amended by inserting after "persons" the following: ", but an appropriate factor as referred to in section 105(a)(8)(A) may include the extent to which the Federal agency has arranged with the Administrator or with a State to respond to the release or threatened release under other legal authority".

SEC. 606. TRANSFERS OF UNCONTAMINATED PROPERTY.

Section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)) is amended in the first sentence by striking "stored for one year or more,".

TITLE VII—NATURAL RESOURCE DAMAGES

SEC. 701. RESTORATION OF NATURAL RESOURCES.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 504(b), is amended by adding at the end the following:

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

"(53) COMPENSATORY RESTORATION.—The term 'compensatory restoration' means the provision of ecological services lost as a result of injury to or destruction or loss of a natural resource from the initial release giving rise to liability under section 107(a)(2)(C) until primary restoration has been achieved with respect to those services.

"(54) ECOLOGICAL SERVICE.—The term 'ecological service' means a physical or biological function performed by an ecological resource, including the human uses of such a function.

"(55) PRIMARY RESTORATION.—The term 'primary restoration' means rehabilitation, natural recovery, or replacement of an injured, destroyed, or lost natural resource, or acquisition of a substitute or alternative natural resource, to reestablish the baseline ecological service that the natural resource would have provided in the absence of a release giving rise to liability under section 107(a)(2)(C).

"(56) RESTORATION.—The term 'restoration' means primary restoration and compensatory restoration."

(b) LIABILITY FOR NATURAL RESOURCE DAMAGES.—

(1) AMENDMENT.—Section 107(a) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)) is amended—

(A) by inserting "IN GENERAL.—" after "(a)";

(B) by striking "Notwithstanding" and inserting the following:

"(1) PERSONS LIABLE.—Notwithstanding";

(C) by redesignating paragraphs (1), (2), (3), and (4) (as designated prior to the date of enactment of this Act) as subparagraphs (A), (B), (C), and (D), respectively, and adjusting the margins accordingly;

(D) by striking "hazardous substance, shall be liable for—" and inserting the following: "hazardous substance, shall be liable for the costs and damages described in paragraph (2).

"(2) COSTS AND DAMAGES.—A person described in paragraph (1) shall be liable for—

(E) by striking subparagraph (C) of paragraph (2), as designated by subparagraph (D), and inserting the following:

"(C) damages for injury to, destruction of, or loss of the baseline ecological services of natural resources, including the reasonable costs of assessing such injury, destruction, or loss caused by a release; and"

(F) by striking "The amounts" and inserting the following:

"(3) INTEREST.—The amounts"; and

(G) in the first sentence of paragraph (3), as designated by subparagraph (F), by striking "subparagraphs (A) through (D)" and inserting "paragraph (2)".

(2) CONFORMING AMENDMENTS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended—

(A) in subsection (d)(3) by striking "the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section" and inserting "subsection (a)";

(B) in subsection (f)(1) by striking "subparagraph (C) of subsection (a)" each place it appears and inserting "subsection (a)(2)(C)".

(c) NATURAL RESOURCE DAMAGES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by inserting "NATURAL RESOURCE DAMAGES.—" after "(f)";

(2) by striking "(1) NATURAL RESOURCES LIABILITY.—In the case" and inserting the following:

"(1) LIABILITY.—

"(A) IN GENERAL.—In the case";

(3) in paragraph (1)(A), as designated by paragraph (2)—

(A) in the first sentence by inserting "the baseline ecological services of" after "loss of";

(B) in the third and fourth sentences, by striking "to restore, replace, or acquire the equivalent" each place it appears and inserting "for restoration";

(C) by inserting after the fourth sentence the following: "Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration of such natural resources by the Indian tribe. A restoration conducted by the United States, a State, or an Indian tribe shall proceed only if it is technologically practicable, cost-effective, and consistent with all known or anticipated response actions at or near the facility."; and

(D) by striking "The measure of damages in any action" and all that follows through the end of the paragraph and inserting the following:

"(B) LIMITATIONS ON LIABILITY.—

"(i) MEASURE OF DAMAGES.—The measure of damages in any action under subsection (a)(2)(C) shall be limited to the reasonable costs of restoration and of assessing damages.

"(ii) NONUSE VALUES.—There shall be no recovery under this Act for any impairment of non-use values.

"(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for injury to, destruction of, or loss of a natural resource caused by a release shall not be entitled to recovery under or any other Federal or State law for injury to or destruction or loss of the natural resource caused by the release.

"(iv) NO RETROACTIVE LIABILITY.—

"(I) COMPENSATORY RESTORATION.—There shall be no recovery from any person under this section for the costs of compensatory restoration for a natural resource injury, destruction, or loss that occurred prior to December 11, 1980.

"(II) PRIMARY RESTORATION.—There shall be no recovery from any person under this section for the costs of primary restoration if the natural resource injury, destruction, or loss for which primary restoration is sought and the release of the hazardous substance from which the injury resulted occurred wholly before December 11, 1980.

"(v) BURDEN OF PROOF ON THE ISSUE OF THE DATE OF OCCURRENCE OF A RELEASE.—The trustee for an injured, destroyed, or lost natural resource bears the burden of demonstrating that any amount of costs of compensatory restoration that the trustee seeks under this section is to compensate for an injury, destruction, or loss (or portion of an injury, destruction, or loss) that occurred on or after December 11, 1980."; and

(4) by adding at the end the following:

"(3) SELECTION OF RESTORATION METHOD.—When selecting appropriate restoration measures, including natural recovery, a trustee shall select the most cost-effective method of achieving restoration."

SEC. 702. ASSESSMENT OF DAMAGES.

(a) DAMAGE ASSESSMENTS.—Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

"(C) DAMAGE ASSESSMENT.—

"(i) REGULATION.—A natural resource damage assessment conducted for the purposes of this Act made by a Federal, State, or tribal trustee shall be performed, to the extent practicable, in accordance with—

"(I) the regulation issued under section 301(c); and

"(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

"(ii) FACILITY-SPECIFIC CONDITIONS AND RESTORATION REQUIREMENTS.—Injury determination, restoration planning, and quantification of restoration costs shall, to the extent

practicable, be based on an assessment of facility-specific conditions and restoration requirements.

"(iii) USE BY TRUSTEE.—A natural resource damage assessment under clause (i) may be used by a trustee as the basis for a natural resource damage claim only if the assessment demonstrates that the hazardous substance release in question caused the alleged natural resource injury.

"(iv) COST RECOVERY.—As part of a trustee's claim, a trustee may recover only the reasonable damage assessment costs that were incurred directly in relation to the site-specific conditions and restoration measures that are the subject of the natural resource damage action."

(b) REGULATIONS.—

(1) NEW REGULATIONS.—Section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651) is amended by striking subsection (c) and inserting the following:

"(c) REGULATIONS FOR DAMAGE ASSESSMENTS.—

"(1) IN GENERAL.—The President, acting through Federal officials designated by the National Contingency Plan under section 107(f)(2), shall issue a regulation for the assessment of restoration damages and assessment costs for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance for the purposes of this Act.

"(2) CONTENTS.—The regulation under paragraph (1) shall—

"(A) specify protocols for conducting assessments in individual cases to determine the injury, destruction, or loss of baseline ecological services of the environment;

"(B) identify the best available procedures to determine damages for the reasonable cost of restoration and assessment;

"(C) take into consideration the ability of a natural resource to recover naturally and the availability of replacement or alternative resources; and

"(D) specify an appropriate mechanism for the cooperative designation of a single lead decisionmaking trustee at a site where more than one Federal, State, or Indian tribe trustee intends to conduct an assessment, which designation shall occur not later than 180 days after the date of first notice to the responsible parties that a natural resource damage assessment will be made.

"(3) BIENNIAL REVIEW.—The regulation under paragraph (1) shall be reviewed and revised as appropriate every 2 years."

(2) INTERIM PROVISION.—Until such time as the regulations issued pursuant to the amendment made by paragraph (1) become effective, the regulations issued under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651(c)) shall remain in effect and shall be applied, subject to challenge on any ground, in the same manner and to the same extent as if this Act had not been enacted, except to the extent that those regulations are inconsistent with this Act or an amendment made by this Act.

SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS AND ALTERNATIVES.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), as amended by section 701(b)(4), is amended by adding at the end the following:

"(4) CONSISTENCY WITH RESPONSE ACTIONS.—A restoration standard or restoration alternative selected by a trustee for a facility listed or proposed for listing on the National Priorities List shall not be duplicative of or

inconsistent with actions undertaken pursuant to section 104, 106, 121, or 129."

(b) RESPONSE ACTIONS.—

(1) ABATEMENT ACTION.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended by adding at the end the following: "The President shall not take action under this subsection except such action as is necessary to protect the public health and the baseline ecological services of the environment."

(2) LIMITATION ON DEGREE OF CLEANUP.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)), as amended by section 402(l), is amended by adding at the end the following:

"(7) LIMITATION.—

"(A) IN GENERAL.—The Administrator shall not select a remedial action under this section that goes beyond the measures necessary to protect human health and the environment and restore the baseline ecological services of the environment.

"(B) CONSIDERATIONS.—In evaluating and selecting remedial actions, the Administrator shall take into account the potential for injury to or destruction or loss of a natural resource resulting from such actions.

"(C) NO LIABILITY.—No person shall be liable for injury to or destruction or loss of a natural resource resulting from a response action or remedial action selected by the Administrator that is properly implemented without negligence or other improper performance on the part of a potentially responsible party or other person acting at the direction of a potentially responsible party."

SEC. 704. MISCELLANEOUS AMENDMENTS.

Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting "and natural resource damages" after "costs".

TITLE VIII—MISCELLANEOUS

SEC. 801. RESULT-ORIENTED CLEANUPS.

(a) AMENDMENT.—Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; and"; and

(3) by inserting after paragraph (10) the following:

"(11) procedures for conducting response actions, including facility evaluations, remedial investigations, feasibility studies, remedial action plans, remedial designs, and remedial actions, which procedures shall—

"(A) use a results-oriented approach to minimize the time required to conduct response measures and reduce the potential for exposure to the hazardous substances, pollutants, and contaminants in an efficient, timely, and cost-effective manner;

"(B) require, at a minimum, expedited facility evaluations and risk assessments, timely negotiation of response action goals, a single engineering study, streamlined oversight of response actions, and consultation with interested parties throughout the response action process;

"(C) be subject to the requirements of sections 117, 120, 121, and 129 in the same manner and to the same degree as those sections apply to response actions; and

"(D) be required to be used for each remedial action conducted under this Act unless the Administrator determines that their use would not be cost-effective or result in the selection of a response action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B)."

(b) AMENDMENT OF NATIONAL HAZARDOUS SUBSTANCE RESPONSE PLAN.—Not later than 180 days after the date of enactment of this Act, the Administrator, after notice and opportunity for public comment, shall amend the National Hazardous Substance Response Plan under section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) to include the procedures required by the amendment made by subsection (a).

SEC. 802. NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), as amended by section 408(a)(1)(B), is amended by adding at the end the following:

“(i) NATIONAL PRIORITIES LIST.—

“(1) ADDITIONAL VESSELS AND FACILITIES.—

“(A) LIMITATION.—

“(i) IN GENERAL.—After the date of the enactment of this subsection, the President may add vessels and facilities to the National Priorities List only in accordance with the following schedule:

“(I) Not more than 30 vessels and facilities in 1996.

“(II) Not more than 25 vessels and facilities in 1997.

“(III) Not more than 20 vessels and facilities in 1998.

“(IV) Not more than 20 vessels and facilities in 1999.

“(V) Not more than 10 vessels and facilities in 2000.

“(VI) Not more than 10 vessels and facilities in 2001.

“(VII) Not more than 10 vessels and facilities in 2002.

“(ii) RELISTING.—The relisting of a vessel or facility under section 135(d)(5)(C)(ii) shall not be considered to be an addition to the National Priorities List for purposes of this subsection.

“(B) PRIORITIZATION.—The Administrator shall prioritize the vessels and facilities added under subparagraph (A) on a national basis in accordance with the threat to human health and the environment presented by each of the vessels and facilities, respectively.

“(C) STATE CONCURRENCE.—A vessel or facility may be added to the National Priorities List under subparagraph (A) only with the concurrence of the State in which the vessel or facility is located.

“(2) SUNSET.—

“(A) NO ADDITIONAL VESSELS OR FACILITIES.—The authority of the Administrator to add vessels and facilities to the National Priorities List shall expire on December 31, 2002.

“(B) LIMITATION ON ACTION BY THE ADMINISTRATOR.—At the completion of response actions for all vessels and facilities on the National Priorities List, the authority of the Administrator under this Act shall be limited to—

“(i) providing a national emergency response capability;

“(ii) conducting research and development;

“(iii) providing technical assistance; and

“(iv) conducting oversight of grants and loans to the States.”.

SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(1)) is amended—

(1) in subparagraph (C) by striking “consistent with the remedial action to be taken” and inserting “not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility.”;

(2) by striking “\$2,000,000” and inserting “\$4,000,000”; and

(3) by striking “12 months” and inserting “2 years”.

SEC. 804. REMEDIATION WASTE.

(a) DEFINITIONS.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) is amended by adding at the end the following:

“(42) DEBRIS.—The term ‘debris’—

“(A) means—

“(i) a solid manufactured object exceeding a 60 millimeter particle size;

“(ii) plant or animal matter; and

“(iii) natural geologic material; but

“(B) does not include material that the Administrator may exclude from the meaning of the term by regulation.

“(43) IDENTIFIED CHARACTERISTIC WASTE.—The term ‘identified characteristic waste’ means a solid waste that has been identified as having the characteristics of hazardous waste under section 3001.

“(44) LISTED WASTE.—The term ‘listed waste’ means a solid waste that has been listed as a hazardous waste under section 3001.

“(45) MEDIA.—The term ‘media’ means ground water, surface water, soil, and sediment.

“(46) REMEDIATION ACTIVITY.—The term ‘remediation activity’ means the remediation, removal, containment, or stabilization of—

“(A) solid waste that has been released to the environment; or

“(B) media and debris that are contaminated as a result of a release.

“(47) REMEDIATION WASTE.—The term ‘remediation waste’ means—

“(A) solid and hazardous waste that is generated by a remediation activity; and

“(B) debris and media that are generated by a remediation activity and contain a listed waste or identified characteristic waste.

“(48) STATE VOLUNTARY REMEDIATION PROGRAM.—The term ‘State voluntary remediation program’ means a program established by a State that permits a person to conduct remediation activity at a facility under general guidance or guidelines without being subject to a State order or consent agreement specifically applicable to the person.”.

(b) IDENTIFICATION AND LISTING.—Section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) is amended by adding at the end the following:

“(j) REMEDIATION WASTE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a person that manages remediation waste that is an identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste shall be subject to the requirements of this subtitle (including regulations issued under this subtitle, including the regulation for corrective action management units published in section 264.552, Code of Federal Regulations, and the regulation for temporary units published in section 264.553, Code of Federal Regulations, or any successor regulation).

“(2) EXCEPTIONS.—

“(A) REQUIREMENTS UNDER SECTION 3004.—Media and debris generated by a remediation activity that are identified characteristic wastes or listed wastes or that contain an identified characteristic waste or a listed waste shall not be subject to the requirements of section 3004 (d), (e), (f), (g), (j), (m), or (o).

“(B) PERMIT REQUIREMENTS.—No Federal, State, or local permit shall be required for the treatment, storage, or disposal of remediation waste that is conducted entirely at the facility at which the remediation takes place.

“(3) REMEDIATION WASTE SUBJECT TO ORDERS, CONSENT AGREEMENTS, VOLUNTARY REMEDIATION PROGRAMS, AND OTHER MECHANISMS.—

“(A) REQUIREMENTS NOT APPLICABLE.—Notwithstanding paragraph (1), a person that manages remediation waste that—

“(i) is identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste; and

“(ii) is subject to a Federal or State order, Federal or State consent agreement, a State voluntary remediation program, or such other mechanism as the Administrator considers appropriate, shall not be subject to the requirements of this subtitle (including any regulation under this subsection) unless the requirements are specified in the Federal or State order, Federal or State consent agreement, State voluntary cleanup program, or other mechanism, as determined by the Administrator.

“(B) ENFORCEMENT.—Unless other enforcement procedures are specified in the order, consent agreement, or other mechanism, a person described in subparagraph (A) (except a person that manages remediation waste under a State voluntary remediation program) shall be subject to enforcement of the requirements of the order, consent agreement, or other mechanism by use of enforcement procedures under section 3008.”.

(c) REGULATION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue a regulation implementing section 3001(j) of the Solid Waste Disposal Act, as added by subsection (b).

TITLE IX—FUNDING

Subtitle A—General Provisions

SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking “not more than \$8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than \$5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994” and inserting “a total of \$8,500,000,000 for fiscal years 1996, 1997, 1998, 1999, and 2000”.

SEC. 902. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), as amended by section 301(c), is amended by inserting after paragraph (8) the following:

“(9) ORPHAN SHARE FUNDING.—Payment of orphan shares under section 132.”.

SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (m) and inserting the following:

“(m) HEALTH AUTHORITIES.—There are authorized to be appropriated from the Fund to the Secretary of Health and Human Services to be used for the purposes of carrying out the activities described in subsection (c)(4) and the activities described in section 104(i), \$50,000,000 for each of fiscal years 1996, 1997, 1998, 1999, and 2000. Funds appropriated under this subsection for a fiscal year, but not obligated by the end of the fiscal year, shall be returned to the Fund.”.

SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

“(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

“(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

"(A) LIMITATION.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) other than basic research.

"(B) CONTINUING AVAILABILITY.—Such amounts shall remain available until expended.

"(2) HAZARDOUS SUBSTANCE RESEARCH, DEMONSTRATION, AND TRAINING.—

"(A) LIMITATION.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000 not more than \$20,000,000 of the amounts available in the Fund may be used for the purposes of section 311(a).

"(B) FURTHER LIMITATION.—No more than 10 percent of such amounts shall be used for training under section 311(a) for any fiscal year.

"(3) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than \$5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d)."

SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

"(1) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

"(i) for fiscal year 1996, \$250,000,000;

"(ii) for fiscal year 1997, \$250,000,000;

"(iii) for fiscal year 1998, \$250,000,000;

"(iv) for fiscal year 1999, \$250,000,000; and

"(v) for fiscal year 2000, \$250,000,000.

"(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each such fiscal year an amount, in addition to the amount authorized by subparagraph (A), equal to so much of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 as has not been appropriated before the beginning of the fiscal year."

SEC. 906. ADDITIONAL LIMITATIONS.

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

"(q) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than \$25,000,000 of the amounts available in the Fund may be used for the purposes of subsection (a)(7) (relating to qualifying State voluntary response programs).

"(r) BROWNFIELD CLEANUP ASSISTANCE.—For each of fiscal years 1996 through 2000, not more than \$15,000,000 of the amounts available in the Fund may be used to carry out section 134(b).

"(s) COMMUNITY RESPONSE ORGANIZATION.—For the period commencing October 1, 1995, and ending September 30, 2000, not more than \$15,000,000 of the amounts available in the Fund may be used to make grants under section 117(f) (relating to Community Response Organizations).

"(t) RECOVERIES.—Effective beginning October 1, 1995, any response cost recoveries collected by the United States under this Act shall be credited as offsetting collections to the Superfund appropriations account."

SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Li-

ability Act of 1980 (42 U.S.C. 9611(a)), as amended by section 902, is amended by inserting after paragraph (9) the following:

"(10) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.—If—

"(A) a potentially responsible party and the Administrator enter into a settlement under this Act under which the Administrator is reimbursed for the response costs of the Administrator; and

"(B) the Administrator determines, through a Federal audit of response costs, that the costs for which the Administrator is reimbursed—

"(i) are unallowable due to contractor fraud;

"(ii) are unallowable under the Federal Acquisition Regulation; or

"(iii) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures, a potentially responsible party may be reimbursed for those costs."

NOTICE OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. STEVENS. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings regarding the global proliferation of weapons of mass destruction, part II.

This hearing will take place on Friday, March 22, 1996 in room 342 of the Dirksen Senate Office Building. For further information, please contact Daniel S. Gelber of the Subcommittee staff at 224-9157.

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I wish to announce that the Special Committee on Aging will hold a hearing on Thursday, March 28, 1996, at 9:30 a.m., in room 562 of the Dirksen Senate Office Building. The hearing will discuss adverse drug reactions and the effects on the elderly.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 10 a.m. on Thursday, March 21, 1996, in open session, to receive testimony from the unified commanders on their military strategies, operational requirements, and the defense authorization request for fiscal year 1997 and the future years defense programs.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 2 p.m. on Thursday, March 21, 1996 to receive testimony on Department of the Navy shipbuilding programs in review of the defense authorization request for fiscal year 1997 and the future years defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GORTON. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, March 21, at 9:00 a.m. for a hearing on the Tenth Amendment Enforcement Act of 1996.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, March 21, 1996 at 10:00 a.m. in SH216.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to hold a meeting during the session of the Senate on Thursday, March 21, 1996. The committee will be in executive session at 9:00 a.m. on S. 1578, The Individuals With Disabilities in Education Act [IDEA].

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for a hearing on Thursday, March 21, 1996, at 10:30 a.m., in room 428A of the Russell Senate Office Building, to conduct a hearing focusing on "S. 1574, the HUBZones Act of 1996—Revitalizing Inner Cities and Rural America."

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, March 21, 1996, at 2 p.m. to hold a closed briefing for members on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OVERSIGHT AND STRUCTURE

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on HUD Oversight and Structure, of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 21, 1996, to conduct a hearing on the 1992 Federal Housing Enterprises Safety and Soundness Act as it affects Fannie Mae and Freddie Mac.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, March 21, 1996, for purposes of conducting a subcommittee hearing which is