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LAND RECYCLING ACT OF 1999

JULY 20, 2000.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2580]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2580) to encourage the creation, development, and enhancement of State response programs for contaminated sites, removing existing Federal barriers to the cleanup of brownfield sites, and cleaning up and returning contaminated sites to economically productive or other beneficial uses, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Land Recycling Act of 1999".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

TITLE I—LAND RECYCLING

Sec. 101. Findings.
Sec. 102. Cleanups pursuant to State response programs.
Sec. 103. Additions to National Priorities List.
Sec. 104. Innocent landowners.
Sec. 105. Bona fide prospective purchaser liability.
Sec. 106. Innocent governmental entities.
Sec. 107. Contiguous properties.
Sec. 108. Remedy selection.
Sec. 109. Brownfields grants.

TITLE II—EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND

Sec. 201. Expenditures from the Hazardous Substance Superfund.
Sec. 202. Authorization of appropriations from general revenues.
Sec. 203. Completion of National Priorities List.

TITLE III—LIABILITY REFORM

Sec. 301. Liability relief for innocent parties.
Sec. 302. Clarifications of certain liability.
Sec. 303. Federal entities and facilities.
Sec. 304. Liability relief for small businesses, municipal solid waste, sewage sludge, municipal owners and operators, and de micromis contributors.
Sec. 305. Liability of response action contractors.
Sec. 306. Amendments to section 122.
Sec. 307. Clarification of liability for recycling transactions.
Sec. 308. Allocation.
Sec. 309. Standard for cleanup by dry cleaners.

TITLE IV—PUBLIC HEALTH

Sec. 401. Public health authorities.
Sec. 402. Indian health provisions.
Sec. 403. Hazard ranking system.
Sec. 404. Disclosure of releases of hazardous substances at Superfund sites.

SEC. 2. AMENDMENTS TO COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of law, the reference shall be considered to be made to a section or other provision of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

TITLE I—LAND RECYCLING

SEC. 101. FINDINGS.

(a) FINDINGS.—Congress finds the following:

(1) Brownfields are parcels of land that contain or contained abandoned or under used commercial or industrial facilities, the expansion or redevelopment of which is complicated by the actual or potential presence of hazardous substances, pollutants, or contaminants.

(2) Brownfields, which may number in the hundreds of thousands nationwide, threaten the environment, devalue surrounding property, erode State and local tax bases, and prevent job growth.

(3) The primary environmental reason that current owners and prospective developers do not redevelop brownfields is their fear about the potential liability under environmental laws associated with the cleanup and redevelopment of these sites.

(4) Current Federal law poses a barrier to the cleanup and redevelopment of brownfields, leading instead to the development of so-called greenfields, contrib-

uting to urban sprawl, creating infrastructure problems, and reducing recreational and agricultural opportunities.

(5) Cleanup and redevelopment of brownfields will reduce environmental contamination, encourage job growth, enhance State and local tax bases, and curb the development of greenfields.

(6) Many States have enacted cleanup programs to address the brownfields problem by allowing for the consideration of future land use in deciding appropriate cleanup standards and providing clear releases of liability upon completion of cleanups.

(7) State response programs have been very effective in promoting the cleanup and redevelopment of brownfields while ensuring the adequate protection of human health and the environment.

(b) PURPOSES AND OBJECTIVES.—The purposes and objectives of this title are—

(1) to increase significantly the pace of response activities at contaminated sites by promoting and encouraging the creation, development, and enhancement of State response programs; and

(2) to remove existing Federal barriers to the cleanup of brownfield sites;

(3) to benefit the public health, welfare, and the environment by cleaning up and returning contaminated sites to economically productive or other beneficial uses; and

(4) to provide finality and certainty by insuring that the President does not use certain authorities to override State remediation decisions unless there are exceptional circumstances.

SEC. 102. CLEANUPS PURSUANT TO STATE RESPONSE PROGRAMS.

(a) PROHIBITION ON ENFORCEMENT.—Except as otherwise provided in this section, neither the President nor any other person (other than a State) may use any authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or section 7002(a)(1)(B) or section 7003 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to commence an administrative or judicial action under either of those Acts with respect to any release or threatened release at a facility that is, or has been, the subject of a response action pursuant to a State program that meets the requirements of subsection (b).

(b) STATE REQUIREMENTS.—The prohibition in subsection (a) applies with respect to a facility that is, or has been, the subject of a response action pursuant to a State program for undertaking response actions at facilities where there is a release or threatened release of hazardous substances if such program has been submitted to the Administrator of the Environmental Protection Agency together with a certification by the State that—

(1) the State has enacted such program into law,

(2) the State has committed the financial and personnel resources necessary to carry out such program,

(3) such program will be implemented in a manner protective of human health and the environment, and

(4) such program includes meaningful opportunities for public participation.

(c) LIMITATION ON PROHIBITION.—The prohibition under subsection (a) and the exemption under subsection (e) shall not apply with respect to any of the following:

(1) Any facility listed on the National Priorities List, unless the Administrator, on a facility-by-facility basis and pursuant to an agreement with the State concerned, makes a finding that a facility listed on the National Priorities List is eligible to participate in a State cleanup program meeting the requirements of subsection (b).

(2) Any facility for which the Governor of a State has requested Environmental Protection Agency assistance to perform a response action.

(3) Any facility owned or operated by a department, agency, or instrumentality of the United States.

(4) A release or threatened release to the extent that a response action has been required pursuant to an administrative order or judicial order or decree entered into by the United States under any of the following laws before the commencement of a response action pursuant to a State program described in subsection (a):

(A) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(B) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(C) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(D) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(E) Title XIV of the Public Health Service Act (commonly known as the Safe Drinking Water Act) (42 U.S.C. 300f et seq.).

(5) A release or threatened release for which response actions are immediately required to prevent or mitigate a public health or environmental emergency and for which the State is not responding in a timely manner.

(d) PRIOR ACTIONS.—Nothing in this section shall affect administrative or judicial action commenced prior to the date of enactment of this section.

(e) PERMITS AND OTHER REQUIREMENTS.—(1) Effective 18 months after enactment of this Act, no Federal permit or permit revision shall be required for the on-site portion of response actions that are subject to the prohibition under subsection (a). Nothing in this paragraph diminishes the application of substantive standards required by law.

(2) Within 12 months after enactment of this Act and after public notice and comment and consultation with State Governors, the Administrator shall promulgate regulations which streamline any reporting requirements connected with implementation of substantive requirements of Federal law and consistent with paragraph (1).

(f) ASSISTANCE TO STATES.—The Administrator shall provide technical, financial, and other assistance to States to establish and enhance State response programs. The Administrator shall encourage the States to develop risk sharing pools, indemnity pools, or insurance mechanisms to provide financing for response actions under their response programs.

(g) EFFECT OF RESPONSE.—Performance of a response action pursuant to a State program under this section shall not constitute an admission of liability under any Federal, State, or local law or regulation or in any citizens suit or other private action.

SEC. 103. ADDITIONS TO NATIONAL PRIORITIES LIST.

(a) ADDITIONS TO NPL.—Section 105 (42 U.S.C. 9605) is amended by adding at the end the following new subsection:

"(h) ADDITIONS TO NPL.—(1) The President may add a facility to the National Priorities List only after requesting and obtaining the concurrence of the Governor of the State in which the facility is located. If the Governor assures the President that the State is addressing, or will address, the site under State authority, and the Governor does not concur in the listing of the site, the President shall not list the site.

"(2) Notwithstanding paragraph (1), the President may add a facility to the National Priorities List if—

"(A) the release or threatened release affects public health or the environment in more than one State, unless the Governors of each such State fail to concur, upon request by the President, in the listing of the site; or

"(B) the President finds that the State where the facility is located is a major potentially responsible party at that facility.".

(b) CROSS REFERENCE.—Subparagraph (B) of section 105(a)(8) is amended by inserting after "shall revise the list" the following: ", subject to subsection (h),".

SEC. 104. INNOCENT LANDOWNERS.

(a) IN GENERAL.—Section 107 (42 U.S.C. 9607) is amended by adding at the end the following new subsection:

"(o) INNOCENT LANDOWNERS.—

"(1) CONDUCT OF ENVIRONMENTAL ASSESSMENT.—A person who has acquired real property shall have made all appropriate inquiry within the meaning of subparagraph (B) of section 101(35) if he establishes that, within 180 days prior to the time of acquisition, an environmental site assessment of the real property was conducted that meets the requirements of this subsection.

"(2) DEFINITION OF ENVIRONMENTAL SITE ASSESSMENT.—For purposes of this subsection, the term 'environmental site assessment' means an assessment conducted in accordance with the standards set forth in the American Society for Testing and Materials (ASTM) Standard E1527–94, titled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process' or with alternative standards issued by rule by the Administrator or promulgated or developed by others and designated by rule by the Administrator. Before issuing or designating alternative standards, the Administrator shall first conduct a study of commercial and industrial practices concerning environmental site assessments in the transfer of real property in the United States. Any such standards issued or designated by the Administrator shall also be deemed to constitute commercially reasonable and generally accepted standards and practices for purposes of this paragraph. In issuing or designating any such standards, the Administrator shall consider requirements governing each of the following:

"(A) Interviews of owners, operators, and occupants of the property to determine information regarding the potential for contamination.

"(B) Review of historical sources as necessary to determine previous uses and occupancies of the property since the property was first developed. For

purposes of this subparagraph, the term 'historical sources' means any of the following, if they are reasonably ascertainable: recorded chain of title documents regarding the real property, including all deeds, easements, leases, restrictions, and covenants, aerial photographs, fire insurance maps, property tax files, USGS 7.5 minutes topographic maps, local street directories, building department records, zoning/land use records, and any other sources that identify past uses and occupancies of the property.

"(C) Determination of the existence of recorded environmental cleanup liens against the real property which have arisen pursuant to Federal, State, or local statutes.

"(D) Review of reasonably ascertainable Federal, State, and local government records of sites or facilities that are likely to cause or contribute to contamination at the real property, including, as appropriate, investigation reports for such sites or facilities; records of activities likely to cause or contribute to contamination at the real property, including landfill and other disposal location records, underground storage tank records, hazardous waste handler and generator records and spill reporting records; and such other reasonably ascertainable Federal, State, and local government environmental records which could reflect incidents or activities which are likely to cause or contribute to contamination at the real property.

"(E) A visual site inspection of the real property and all facilities and improvements on the real property and a visual inspection of immediately adjacent properties, including an investigation of any hazardous substance use, storage, treatment, and disposal practices on the property.

"(F) Any specialized knowledge or experience on the part of the defendant.

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

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

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

A record shall be considered to be 'reasonably ascertainable' for purposes of this paragraph if a copy or reasonable facsimile of the record is publicly available by request (within reasonable time and cost constraints) and the record is practically reviewable.

"(3) MAINTENANCE OF INFORMATION.—No presumption shall arise under paragraph (1) unless the defendant has maintained a compilation of the information reviewed and gathered in the course of the environmental site assessment.".

(b) CROSS REFERENCE.—Section 101(35)(B) (42 U.S.C. 9601(35)(B)) is amended by inserting after "all appropriate inquiry" the following: "(as specified in section 107(o))".

SEC. 105. BONA FIDE PROSPECTIVE PURCHASER LIABILITY.

(a) LIABILITY.—Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following new subsections:

"(p) BONA FIDE PROSPECTIVE PURCHASER.—(1) Notwithstanding paragraphs (1) through (4) of subsection (a), a person who does not impede the performance of a response action or natural resource restoration at a facility shall not be liable to the extent liability at such facility is based solely on paragraph (1) of subsection (a) for a release or threat of release from the facility, and the person is a bona fide prospective purchaser of the facility.

"(2) For purposes of this subsection, the term 'bona fide prospective purchaser' means a person who acquires ownership of a facility after the date of enactment of this subsection, or a tenant of such a person, who can establish each of the following by a preponderance of the evidence:

"(A) All active disposal of hazardous substances at the facility occurred before that person acquired the facility.

"(B) The person made all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted commercial and customary standards and practices. Standards described in subsection (o)(2) (relating to innocent landowners) shall satisfy the requirements of this subparagraph. In the case of property for residential or other similar use, purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.

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

"(D) The person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop on-going releases, prevent threatened future releases of hazardous substances, and prevent or limit human or natural resource exposure to hazardous substances previously released into the environment.

"(E) The person provides full cooperation, assistance, and facility access to persons authorized to conduct 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) The person is not affiliated with any other person liable for 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.

"(q) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—(1) In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (p), and the conditions described in paragraph (2) are met, the United States shall have a lien upon such facility for such unrecovered costs. Such lien—

"(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 property;

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

"(C) shall be subject to the requirements for notice and validity established in paragraph (3) of subsection (l); and

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

"(2) The conditions referred to in paragraph (1) are the following:

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

"(B) Such response action increases the fair market value of the facility above the fair market value of the facility that existed within 6 months before the response action was taken.".

SEC. 106. INNOCENT GOVERNMENTAL ENTITIES.

Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following new subsection:

"(r) INNOCENT GOVERNMENTAL ENTITIES.—There shall be no liability under subsection (a) for any State or local government if such liability is based solely on—

"(1) the granting of a license or permit to conduct business; or

"(2) the State or local government's status as an owner or operator of the facility or vessel, and the State or local government—

"(A) acquired the facility or vessel by escheat or through any other involuntary transfer or through the exercise of eminent domain, and

"(B) establishes by a preponderance of the evidence that it—

"(i) acquired the facility or vessel after the disposal or placement of the hazardous substances for which liability is alleged;

"(ii) did not, by any act or omission, cause or contribute to the release or threatened release of such hazardous substances; and

"(iii) exercised appropriate care with respect to such hazardous substances taking into consideration the characteristics of such hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the defendant's acts or omissions.".

SEC. 107. CONTIGUOUS PROPERTIES.

Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following new subsection:

"(s) CONTIGUOUS PROPERTIES.—(1) A person (other than the United States or a department, agency, or instrumentality of the United States) who 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 such release shall not be liable under paragraph (1) or (2) of subsection (a) by reason of such ownership or operation solely by reason of such contamination if such person—

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

"(B) provides full cooperation, assistance, and facility access to persons authorized to conduct 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; and

"(C) is not affiliated with any other person liable for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship.

"(2) The President may issue an assurance of no enforcement action under this Act to any such person and may grant any such person protection against cost recovery and contribution actions pursuant to section 113(f)(2). Such person may also petition the President to exclude from the description of a National Priorities List site such contiguous real property, if such property is or may be contaminated solely by ground water that flows under such property and is not used as a source of drinking water. The President may grant such a petition pursuant to such procedures as he deems appropriate.".

SEC. 108. REMEDY SELECTION.

Section 121 (42 U.S.C. 9621) is amended as follows:

(1) By inserting the following before the period at the end of the first sentence in subsection (b)(1): "to the extent practicable, considering the nature and timing of reasonably anticipated uses of land, water, and other resources".

(2) By adding after the first sentence in subsection (b)(1): "The preferences for treatment or permanent solutions in this paragraph shall not apply to a treatment option or permanent solution that would increase risk to the community or to workers' health.".

(3) By striking "maximum" in the penultimate sentence of subsection (b)(1).

(4) By striking "or is relevant and appropriate" and "or relevant and appropriate" in subsection (d)(2)(A).

(5) By striking "Level Goals" in subsection (d)(2)(A) and inserting "Levels".

(6) By striking "and water quality criteria established under section 304 or 303 of the Clean Water Act where such goals or criteria are relevant and appropriate under the circumstances of the release of threatened release" in subsection (d)(2)(A) and inserting "where such levels are relevant and appropriate under the circumstances of the release or threatened release, considering the timing of any reasonably anticipated use of water as drinking water and reasonable points of compliance".

(7) In subsection (d)(2)(B) by striking clause (i), striking "(ii)", and redesignating subclauses (I) through (III) as clauses (i) through (iii).

(8) By adding the following new subsection at the end thereof:

"(g) RISK ASSESSMENT AND CHARACTERIZATION PRINCIPLES.—Risk assessments and characterizations conducted for remedial actions subject to this section, and for other significant Federal actions under this Act, shall—

"(1) provide scientifically objective assessments, estimates, and characterizations which neither minimize nor exaggerate the nature and magnitude of risks to human health and the environment;

"(2) be based on the best available scientific and technical information, including data on bioavailability and site-specific information; and

"(3) be based on an analysis of the weight of the scientific evidence that supports conclusions about a problem's potential risk to human health and the environment.".

(9) By adding the following new subsections at the end thereof:

"(h) SENSITIVE SUBPOPULATIONS AND SITE-SPECIFIC RISK ASSESSMENT.—The President shall use site-specific risk assessment that meets the requirements of the principles set forth in subsection (g) to—

"(1) determine the nature and extent of risk to human health and the environment;

"(2) identify groups which are currently or would be highly exposed or highly susceptible (A) to contamination from the site based on current and reasonably anticipated uses of land, water, and other resources at or around the site, or (B) to risks arising from implementation of a remedial option;

"(3) assist in establishing remedial objectives for the facility respecting releases or threatened releases, and in identifying geographic areas or exposure pathways of concern; and

"(4) evaluate alternative remedial actions for the facility to determine their risk reduction benefits and assist in selecting the remedial action for the facility that meets the criteria of paragraph (1) of subsection (b).

"(i) STUDY OF SUBSTANCES AND MIXTURES.—(1) The President shall conduct a study of the cancer potency values of 12 hazardous substances listed under paragraph (2) of section 104(i) that are frequently found to pose significant risks at National Priorities List facilities. The study may also include a review of other health effects values. The President shall not include a substance in the study under this

subsection if such substance is under scientific reevaluation pursuant to title XIV of the Safe Drinking Water Act.

"(2) The President shall make a scientifically objective assessment of different methodologies for determining the health effects of chemical mixtures at relevant doses based on reasonable exposure scenarios at National Priorities List facilities.

"(3) For purposes of such study and assessments, within 30 days after the date of the enactment of this subsection, the President shall obtain public comments on such study and assessments. Not later than 15 months after the date of the enactment of this subsection, the President shall publish a draft of such assessments. After receiving such comments on such draft assessments, and after external peer review, but within 2 years after the date of the enactment of this subsection, the President shall complete the study and publish the assessments under this subsection. The publication of the final assessments shall be considered final agency action.

"(4) The study and assessments under this subsection shall include a discussion, to the extent relevant, of both laboratory and epidemiological data of sufficient quality which finds, or fails to find, a significant correlation between health risks and a potential toxin. Where conflicts among such data appear to exist, or where animal data are used as a basis to assess human health risks, the study and assessments shall include discussion of differences in study designs, comparative physiology, routes of exposure, bioavailability, pharmacokinetics, and any other relevant and significant factor.

"(5) Where the study and assessment involve application of any significant assumption, inference, or model, the President shall—

"(A) state the weight of scientific evidence supporting a selection relative to other plausible alternatives;

"(B) fully describe any model used in the risk assessment and make explicit the assumptions incorporated in the model; and

"(C) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

"(6) To the extent scientifically appropriate, the President shall include, among other estimates or health effects values, estimates of risks or health effects values, using the most plausible assumptions, given the weight of the scientific information available to the President. Where significant assumptions have substantially similar scientific support, the President shall provide a description of the range of estimates or values.

"(j) PRESENTATION OF RISK INFORMATION.—(1) The President, in carrying out his responsibilities under this Act, shall ensure that the presentation of information on risk is unbiased and informative. The results of any facility-specific risk evaluation shall contain an explanation that clearly communicates the risks at the facility, and shall—

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

"(B) present, to the extent feasible—

"(i) the scientifically objective distribution of exposure estimates,

"(ii) estimates, including estimates, of exposure and risk using the most plausible assumptions given the weight of current scientific information available to the President,

"(iii) groups identified through site specific risk assessment which are currently or would be highly exposed or highly susceptible (I) to contamination from the site based on current and reasonably anticipated uses of land, water, and other resources at or around the site, or (II) to risks arising from implementation of a remedial option, and

"(iv) a statement of the nature and magnitude of the scientific uncertainties associated with such estimates;

"(C) include the size of the population potentially at risk from releases from the facility (based on the current or reasonably anticipated future uses of the land, water, or other resources), the exposure scenario used for each estimate, and the likelihood that such potential exposures will occur; and

"(D) compare risks with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparison of those risks with other similar risks regulated by Federal agencies resulting from comparable activities and exposure pathways.

Comparisons under subparagraph (D) should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks.

"(2) To the maximum extent practicable, documents made available to the general public which purport to describe the degree of risk to human health shall, at a minimum, provide information specified in paragraph (1) or a meaningful reference to such information in another document reasonably available to the public.".

SEC. 109. BROWNFIELDS GRANTS.

(a) IN GENERAL.—Title I (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 127. BROWNFIELDS GRANTS.

"(a) DEFINITIONS.—In this section, the following definitions apply:

"(1) ADMINISTRATIVE COST.—The term 'administrative cost' does not include the cost of—

"(A) site inventories;

"(B) investigation and identification of the extent of contamination;

"(C) design and performance of a response action; or

"(D) monitoring of natural resources.

"(2) BROWNFIELD FACILITY.—

"(A) IN GENERAL.—The term 'brownfield facility' means real property with respect to which expansion, development, or redevelopment is complicated by the presence or potential presence of a hazardous substance.

"(B) EXCLUDED FACILITIES.—The term 'brownfield facility' does not include—

"(i) any portion of real property that is the subject of an ongoing removal or planned removal under section 104;

"(ii) any portion of real property that is listed or has been proposed for listing on the National Priorities List;

"(iii) any portion of real property with respect to which a cleanup is proceeding under a permit, an administrative order, or a judicial consent decree entered into by the United States or an authorized State 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 the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(iv) a facility that is owned or operated by a department, agency, or instrumentality of the United States, except a facility located on lands held in trust for an Indian tribe; or

"(v) a portion of a facility for which 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.—

"(A) IN GENERAL.—The term 'eligible entity' means—

"(i) a State or a political subdivision of a State, including—

"(I) a general purpose unit of local government; and

"(II) a regional council or group of general purpose units of local government;

"(ii) a redevelopment agency that is chartered or otherwise sanctioned by a State or other unit of government; and

"(iii) an Indian tribe.

"(B) EXCLUDED ENTITIES.—The term 'eligible entity' does not include any entity that is not in full compliance with the requirements of an administrative order, judicial consent decree, or closure plan under a permit which has been issued or entered into by the United States or an authorized State 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 the Safe Drinking Water Act (42 U.S.C. 300f et seq.) with respect to the real property or portion thereof which is the subject of the order, judicial consent decree, or closure plan.

"(b) BROWNFIELD ASSESSMENT GRANT PROGRAM.—

"(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities for inventory and assessment of brownfield facilities.

"(2) ASSISTANCE FOR SITE ASSESSMENT.—On approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for developing an inventory and conducting an assessment of 1 or more brownfield facilities.

"(3) APPLICATIONS.—

"(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection for 1 or more brownfield facilities.

"(B) APPLICATION REQUIREMENTS.—An application for a grant under this subsection shall include information relevant to the ranking criteria established under paragraph (4) for the facility or facilities for which the grant is requested.

"(4) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

"(A) The demonstrated need for Federal assistance.

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

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

"(D) The potential to stimulate economic development of the area, 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 grant to create new or expand existing business and 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.

"(E) 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.

"(F) The extent to which the site assessment and subsequent development involves the active participation and support of the local community.

"(5) MAXIMUM GRANT AMOUNT PER FACILITY.—A grant made to an eligible entity under this subsection shall not exceed $200,000 with respect to any brownfield facility covered by the grant.

"(c) BROWNFIELD REMEDIATION GRANT PROGRAM.—

"(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities to be used for capitalization of revolving loan funds for remedial actions at brownfield facilities.

"(2) ASSISTANCE FOR SITE REMEDIATION.—Upon approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for establishing a revolving loan fund. Any fund established using such grants shall be used to make loans to a State, a site owner, or a site developer for the purpose of carrying out remedial actions at 1 or more brownfield facilities.

"(3) APPLICATIONS.—

"(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection.

"(B) APPLICATION REQUIREMENTS.—An application under this section shall include information relevant to the ranking criteria established under paragraph (4).

"(4) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

"(A) The adequacy of the financial controls and resources of the eligible entity to administer a revolving loan fund in accordance with this title.

"(B) The ability of the eligible entity to monitor the use of funds provided to loan recipients under this title.

"(C) The ability of the eligible entity to ensure that a remedial action funded by the grant will be conducted under the authority of a State cleanup program that ensures that the remedial action is protective of human health and the environment.

"(D) The ability of the eligible entity to ensure that any cleanup funded under this Act will comply with all laws that apply to the cleanup.

"(E) The need of the eligible entity for financial assistance to clean up brownfield sites that are the subject of the application, taking into consideration the financial resources available to the eligible entity.

"(F) The ability of the eligible entity to ensure that the applicants repay the loans in a timely manner.

"(G) The plans of the eligible entity for using the grant to stimulate economic development or creation of recreational areas on completion of the cleanup.

"(H) The plans of the eligible entity for using the grant to stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

"(I) The plans of the eligible entity for using the grant to facilitate a reduction of health and environmental risks.

"(J) The plans of the eligible entity for using the grant for remediation and subsequent development that involve the active participation and support of the local community.

"(5) MAXIMUM GRANT AMOUNT.—A grant made to an eligible entity under this subsection may not exceed $1,000,000.

"(d) GENERAL PROVISIONS.—

"(1) PROHIBITION.—No part of a grant under this section may be used for the payment of penalties, fines, or administrative costs.

"(2) AUDITS.—The President shall audit an appropriate number of grants made under subsections (b) and (c) to ensure that funds are used for the purposes described in this section.

"(3) AGREEMENTS.—

"(A) TERMS AND CONDITIONS.—Each grant made under this section shall be subject to an agreement that—

"(i) requires the eligible entity to comply with all applicable Federal and State laws;

"(ii) requires the eligible entity to use the grant exclusively for the purposes specified in subsection (b)(2) or (c)(2);

"(iii) in the case of an application by a State under subsection (c)(3), requires payment by the State of a matching share, of at least 50 percent of the amount of the grant, from other sources of funding;

"(iv) requires that grants under this section will not supplant State or local funds normally provided for the purposes specified in subsection (b)(2) or (c)(2); and

"(v) contains such other terms and conditions as the President determines to be necessary to ensure proper administration of the grants.

"(B) LIMITATION.—The President shall not place terms or conditions on grants made under this section other than the terms and conditions specified in subparagraph (A).

"(4) LEVERAGING.—An eligible entity that receives a grant under this section may use the funds for part of a project at a brownfield facility for which funding is received from other sources, including other Federal sources, but the grant shall be used only for the purposes described in subsection (b)(2) or (c)(2).

"(e) APPROVAL.—

"(1) INITIAL GRANT.—Before the expiration of the fourth quarter of the first fiscal year following the date of the enactment of this section, the President shall make grants under this section to the eligible entities and States that submit applications, before the expiration of the second quarter of such year, that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(4).

"(2) SUBSEQUENT GRANTS.—Beginning with the second fiscal year following the date of enactment of this section, the President shall make an annual evaluation of each application received during the prior fiscal year and make grants under this section to the eligible entities and States that submit applications during the prior year that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(4).

"(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary. Such funds shall remain available until expended.".

TITLE II—EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND

SEC. 201. EXPENDITURES FROM THE HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXPENDITURES.—Section 111 (42 U.S.C. 9611) is amended by striking subsections (a), (b), (c), (d), and (e) and inserting the following:

"(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE SUPERFUND.—

"(1) SUBSECTION (b) EXPENDITURES.—The following amounts of amounts appropriated to the Hazardous Substance Superfund after January 1, 2000, pursuant to section 9507(b) of the Internal Revenue Code of 1986, and of amounts credited under section 9602(b) of such Code with respect to those appropriated amounts, shall be available for the purposes specified in subsection (b):

"(A) $250,000,000 for fiscal year 2000.
"(B) $250,000,000 for fiscal year 2001.
"(C) $250,000,000 for fiscal year 2002.
"(D) $250,000,000 for fiscal year 2003.
"(E) $250,000,000 for fiscal year 2004.

Such funds shall remain available until expended.

"(2) SUBSECTIONS (c) AND (d) EXPENDITURES.—There is authorized to be appropriated from the Hazardous Substance Superfund established pursuant to section 9507(b) of the Internal Revenue Code of 1986 for the purposes specified in subsections (c) and (d) of this section not more than the following amounts:

"(A) $1,500,000,000 for fiscal year 2000.
"(B) $1,500,000,000 for fiscal year 2001.
"(C) $1,500,000,000 for fiscal year 2002.
"(D) $1,400,000,000 for fiscal year 2003.
"(E) $1,350,000,000 for fiscal year 2004.

"(b) PAYMENTS RELATED TO CERTAIN REDUCTIONS, LIMITATIONS, AND EXEMPTIONS.—

"(1) FUNDING OF EXEMPT PARTY AND FUND SHARE.—The President may use amounts in the Fund made available by subsection (a)(1) for funding the equitable share of liability attributable to exempt parties under section 107(y) and obligations incurred by the President to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under section 129.

"(2) LIMITATIONS.—

"(A) FUNDING.—Amounts made available by subsection (a)(1) for the purposes of this subsection shall not exceed the following:

"(i) $250,000,000 for fiscal year 2000.
"(ii) $250,000,000 for fiscal year 2001.
"(iii) $250,000,000 for fiscal year 2002.
"(iv) $250,000,000 for fiscal year 2003.
"(v) $250,000,000 for fiscal year 2004.

"(B) ELIGIBLE COSTS.—No funds made available under paragraph (1) may be used for payment of, or reimbursement for, any portion of attorneys' fees that do not constitute necessary costs of response consistent the national contingency plan.

"(C) ADDITIONAL PURPOSES.—

"(i) IN GENERAL.—If, in any of fiscal years 2000 through 2004, the Administrator does not have available for obligation for the purposes of subsections (c) and (d) the amount specified for the fiscal year in clause (iii), the Administrator, subject to clause (ii), may use funds provided under subsection (a)(1) for such purposes.

"(ii) LIMITATION.—The total amount of funds provided under subsection (a)(1) that the Administrator may use for the purposes of subsections (c) and (d) may not exceed the amount specified for the fiscal year in clause (iii) less the amount which (but for this subparagraph) would be available to the Administrator in such fiscal year for such purposes.

"(iii) AMOUNTS.—The amounts specified in this clause are $1,500,000,000 for each of fiscal years 2000 through 2002, $1,400,000,000 for fiscal year 2003, and $1,350,000,000 for fiscal year 2004.

"(c) RESPONSE, REMOVAL, AND REMEDIATION.—The President may use amounts in the Fund appropriated under subsection (a)(2) for costs of response, removal, and remediation (and administrative costs directly related to such costs), including the following:

"(1) GOVERNMENT RESPONSE COSTS.—Payment of governmental response costs incurred pursuant to section 104, including costs incurred pursuant to the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

"(2) PRIVATE RESPONSE COST CLAIMS.—Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 105, if such costs are approved under such plan, are reasonable in amount based on open and free competition or fair market value for similar available goods and services, and are certified by the responsible Federal official.

"(3) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

"(4) STATE AND LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursement to States and local governments under section 123; except that during any fiscal year not more than 0.1 percent of the total amount appropriated under subsection (a)(2) may be used for such reimbursements.

"(5) CONTRACTS AND COOPERATIVE AGREEMENTS.—Payment for the implementation of any contract or cooperative agreement under section 104(d).

"(d) ADMINISTRATION, OVERSIGHT, RESEARCH, AND OTHER COSTS.—The President may use amounts in the Fund appropriated under subsection (a)(2) for the following costs (and administrative costs directly related to such costs):

"(1) INVESTIGATION AND ENFORCEMENT.—The costs of identifying, investigating, and taking enforcement action against releases of hazardous substances.

"(2) OVERHEAD.—

"(A) IN GENERAL.—The costs of providing services, equipment, and other overhead related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act and needed to supplement equipment and services available through contractors and other non-Federal entities.

"(B) DAMAGE ASSESSMENT CAPABILITY.—The costs of establishing and maintaining damage assessment capability for any Federal agency involved in strike forces, emergency task forces, or other response teams under the National Contingency Plan.

"(3) EMPLOYEE SAFETY PROGRAMS.—The cost of maintaining programs otherwise authorized by this Act to protect the health and safety of employees involved in response to hazardous substance releases.

"(4) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

"(5) ATSDR ACTIVITIES.—Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, public health assessments, and other activities authorized by section 104(i).

"(6) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

"(7) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

"(8) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration).

"(9) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d) (relating to providing information concerning violations).

"(10) COMPREHENSIVE STATE GROUND WATER PROTECTION PLANS.—Costs of providing assistance to States to develop comprehensive State ground water protection plans to the extent such costs do not exceed $3,000,000 in the aggregate in a fiscal year.

"(e) OTHER LIMITATIONS.—

"(1) LIMITATIONS ON PAYMENTS OF CLAIMS.—Claims against or presented to the Fund shall not be valid or paid in excess of the total unobligated balance in the Fund at any one time. Such claims become valid and are payable only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

"(2) REMEDIAL ACTIONS AT FEDERALLY OWNED FACILITIES.—No money in the Fund shall be available for costs of remedial action, other than costs specified in subsection (d), with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving ground water contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

"(3) REMEDIAL ACTIONS AT FACILITIES NOT LISTED ON NPL.—No money in the Fund shall be available for response actions that are not removal actions under

section 101(23) with respect to any facility that is not listed on the National Priorities List.".

(b) ADDITIONAL AMENDMENTS.—

(1) SECTION 111.—Section 111 (42 U.S.C. 9611) is further amended by striking subsections (j) and (n).

(2) SECTION 107.—Section 107 (42 U.S.C. 9607) is further amended by striking subsection (k).

(c) CONFORMING AMENDMENTS.—Section 112 (42 U.S.C. 9612) is amended—

(1) in subsection (a) by striking "111(a)" and inserting "111(c)"; and

(2) by striking subsection (f).

SEC. 202. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

(a) AUTHORIZATION.—Section 111(p)(1) (42 U.S.C. 9611(p)(1)) is amended to read as follows:

"(1) IN GENERAL.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund such sums as may be necessary for each of fiscal years 2000 through 2004.".

(b) REPEAL OF DUPLICATIVE AUTHORIZATION.—Subsection (b) of section 517 of the Superfund Amendments and Reauthorization Act of 1986 (26 U.S.C. 9507 note) is repealed.

(c) CONFORMING AMENDMENT.—Section 9507(a)(2) of the Internal Revenue Code of 1986 is amended by striking "section 517(b) of the Superfund Revenue Act of 1986" and inserting "section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p))".

SEC. 203. COMPLETION OF NATIONAL PRIORITIES LIST.

(a) STUDY OF 10-YEAR FUNDING NEEDS FOR IMPLEMENTING CERCLA.—There is authorized to be appropriated $1,000,000 for an independent analysis of the projected 10-year costs to the Environmental Protection Agency of implementing the programs authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Such analysis shall include estimates of annual and cumulative costs over the next 10 years associated with administering such Act by the Environmental Protection Agency, shall identify sources of uncertainty in the estimates, and shall be completed by January 1, 2001.

(b) BREAKDOWN OF COSTS.—The study referred to in subsection (a) shall include estimates of each of the following:

(1) Costs for completion of all non-Federal facilities currently on the National Priorities List.

(2) Costs for completion of all Federal facilities currently on the National Priorities List.

(3) Costs associated with those non-Federal sites which the Administrator of the Environmental Protection Agency expects to be added to the National Priorities List over the next 10 years.

(4) Costs associated with those Federal facilities which the Administrator expects to be added to the National Priorities List over the next 10 years.

(5) Costs for operations and maintenance at facilities currently on, or anticipated to be added over the next 10 years to, the National Priorities List.

(6) Costs associated with reviews of remedies under section 121(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any follow-up activities.

(7) Costs for removal activities.

(c) ORGANIZATIONS TO CONDUCT STUDY.—The cost analysis under subsection (a) shall be conducted by a neutral, nongovernmental organization with expertise in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. In conducting the analysis, the nongovernmental organization shall collect relevant information from experts and other interested persons, including experts in public budgeting and accounting.

TITLE III—LIABILITY REFORM

SEC. 301. LIABILITY RELIEF FOR INNOCENT PARTIES.

(a) AMENDMENTS.—Section 107(b) (42 U.S.C. 9607(b)) is amended as follows:

(1) By redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and by moving those subparagraphs 2 ems to the right.

(2) By striking "(b) There shall be" and inserting the following:

"(b) DEFENSES TO LIABILITY.—

"(1) IN GENERAL.—There shall be".

(3) By adding at the end the following:

"(2) LIABILITY RELIEF FOR INNOCENT PARTIES.—

"(A) RECIPIENTS OF PROPERTY BY INHERITANCE OR BEQUEST.—There shall be no liability under subsection (a) for a person whose liability is based solely on the person's status as an owner or operator of a facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of paragraph (4) and that the person acquired the property by inheritance or bequest.

"(B) RECIPIENTS OF PROPERTY BY CHARITABLE DONATION.—Liability under subsection (a) shall be limited to the lesser of the fair market value of the facility or vessel and the actual proceeds of the sale of the facility for a person whose liability is based solely on the person's status as an owner or operator of the facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of paragraph (4) and that the person holding title, either outright or in trust, to the vessel or facility is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and holds such title as a result of a charitable donation that qualifies under section 170, 2055, or 2522 of such Code.

"(C) OWNERS OR OPERATORS OF RIGHTS-OF-WAY.—There shall be no liability under subsection (a) for a person whose liability is based solely on ownership or operation of a road, street, pipeline, or other right-of-way, easement, or public transportation route (other than railroad rights-of-way and railroad property) over which hazardous substances are transported or otherwise are present if such person can establish by a preponderance of the evidence that the person did not, by any act or omission, cause or contribute to the release or threatened release.

"(D) RAILROAD OWNERS OR OPERATORS OF SPUR TRACK.—There shall be no liability under subsection (a) for a person whose liability is based solely on the status of the person as a railroad owner or railroad 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 the railroad owner or operator can establish by a preponderance of the evidence that—

"(i) the spur track provides access to a main line or branch line track that is owned or operated by the railroad owner or operator;

"(ii) the spur track is 10 miles long or less; and

"(iii) the railroad owner or operator did not cause or contribute to a release or threatened release of the hazardous substances for which liability is alleged under subsection (a).

"(E) CONSTRUCTION CONTRACTORS.—There shall be no liability under subsection (a) for a person who is a construction contractor (other than a response action contractor covered by section 119) if such person can establish by a preponderance of the evidence that—

"(i) the person's liability is based solely on construction activities that were specifically directed by and carried out in accordance with a contract with an owner or operator of the facility;

"(ii) the person did not know or have reason to know of the presence of hazardous substances at the facility concerned before beginning construction activities; and

"(iii) the person exercised appropriate care with respect to the hazardous substances discovered in the course of performing the construction activity, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the person's acts or omissions.

"(3) APPROPRIATE CARE.—

"(A) SITE-SPECIFIC BASIS.—The determination whether or not a person has exercised appropriate care with respect to hazardous substances within the meaning of paragraph (4)(C) shall be made on a site-specific basis taking into consideration the characteristics of the hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the defendant's acts or omissions.

"(B) SAFE HARBOR.—A person shall be deemed to have exercised appropriate care within the meaning of paragraph (4)(C) if—

"(i) the person took 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, or

"(ii) in any case in which the release or threatened release of hazardous substances is the subject of a response action by persons authorized to conduct the response action at the facility or vessel, the person provides access for and all reasonable cooperation with the response action.

"(4) REQUIREMENTS.—The requirements referred to in paragraph (2)(A) and (B) are that a person's liability is based solely on the person's status as an owner or operator of a facility or vessel and that the person can establish by a preponderance of the evidence that—

"(A) the person acquired the facility or vessel after the disposal or placement of the hazardous substances for which liability is alleged under subsection (a);

"(B) the person did not, by any act or omission, cause or contribute to the release or threatened release of such hazardous substances; and

"(C) the person exercised appropriate care with respect to such hazardous substances.

"(5) TREATMENT OF NON-LIABLE PARTIES.—The Administrator shall seek to minimize the administrative and legal burdens on parties that are not liable pursuant to this section. To the extent practicable, the Administrator shall—

"(A) inform such parties that they are exempted from liability pursuant to this section, and offer them written assurances establishing their exempt status; and

"(B) eliminate or minimize any need for such parties to retain legal counsel in connection with administrative or legal proceedings concerning the facility at issue.".

(b) CONFORMING AMENDMENTS.—(1) Section 101(35) (42 U.S.C. 9601(35)) is amended by striking "section 107(b)(3)" each place it appears and inserting "section 107(b)(1)(C)".

(2) Section 119(b)(1) (42 U.S.C. 9619(b)(1)) is amended by striking "section 107(b)(3)" and inserting "section 107(b)(1)(C)".

SEC. 302. CLARIFICATIONS OF CERTAIN LIABILITY.

(a) AMOUNT OF LIABILITY.—Section 107(c)(3) (42 U.S.C. 9607(c)(3)) is amended in the first sentence by striking "at least equal to," and all that follows through the end of the sentence and inserting "up to three times the amount of such response costs.".

(b) CLARIFICATION OF COMMON CARRIER LIABILITY.—Section 107(b)(1)(C), as so redesignated by section 301(a) of this Act, is amended by striking "from a published tariff and acceptance for" and inserting "exclusively from a contract for".

(c) OTHER CLARIFICATIONS.—Section 107(a) (42 U.S.C. 9607(a)) is amended as follows:

(1) In paragraph (1), by striking "and" and inserting "or".

(2) In paragraph (4)(B)—

(A) by striking "other" both places it appears; and

(B) by inserting ", other than the United States, a State, or an Indian tribe," before the phrase "consistent with the national contingency plan".

(3) In paragraph (4), by striking "by such person," and all that follows through "shall be liable for—" and inserting in lieu thereof the following: "by such person—

from which there is a release, or a threatened release, that causes the incurrence of response costs, of a hazardous substance, shall be liable for—".

(4) By designating the text beginning with "The amounts recoverable" and ending with "this subsection commences." as paragraph (5) and aligning the margin of such text with paragraph (4).

SEC. 303. FEDERAL ENTITIES AND FACILITIES.

Section 120 (42 U.S.C. 9620) is amended as follows:

(1) By amending the heading to read as follows:

"SEC. 120. FEDERAL ENTITIES AND FACILITIES.".

(2) By amending paragraph (1) of subsection (a) to read as follows:

"(1) IN GENERAL.—(A) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the United States shall be subject to, and comply with, this Act and all other Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provision for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), regarding response or restoration actions related to the release or potential release of hazardous substances,

pollutants, or contaminants in the same manner, and to the same extent, as any nongovernmental entity is subject to such requirements, including enforcement and liability under sections 106 and 107 of this title and the payment of reasonable service charges.

"(B) The Federal, State, interstate, and local substantive and procedural requirements referred to in subparagraph (A) include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties and fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence or any reasonable service charge).

"(C) The reasonable service charges referred to in this paragraph include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a State, interstate, or local response program.

"(D) Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any injunctive relief.

"(E) No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal or State law regarding response or restoration actions relating to the release or potential release of hazardous substances, pollutants, or contaminants, with respect to any act or omission within the scope of their official duties. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any such Federal or State law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States shall be subject to any such sanction.

"(F) The waiver of sovereign immunity provided in this paragraph shall not apply to the extent a State law would apply any standard or requirement to such Federal department, agency, or instrumentality in a manner that is more stringent than such standard or requirement would be applied to any other person.

"(G)(i) The Administrator may issue an order under section 106 of this Act to any department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against any other person.

"(ii) No administrative order issued to such department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

"(iii) Unless a State law in effect on the date of enactment of the Land Recycling Act of 1999, or a State constitution, requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

"(H) Each such department, agency, and instrumentality shall have the right to contribution protection set forth in section 113, when such department, agency, or instrumentality resolves its liability under this Act.".

(3) By striking paragraph (4) of subsection (a).

(4) By inserting "(other than the indemnification requirements of section 119)" after "responsibility" in subsection (a)(3).

SEC. 304. LIABILITY RELIEF FOR SMALL BUSINESSES, MUNICIPAL SOLID WASTE, SEWAGE SLUDGE, MUNICIPAL OWNERS AND OPERATORS, AND DE MICROMIS CONTRIBUTORS.

(a) LIMITATION ON LIABILITY FOR SMALL BUSINESSES.—Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following:

"(t) LIMITATION ON LIABILITY FOR SMALL BUSINESSES.—

"(1) IN GENERAL.—With respect to actions taken before September 29, 1999, no small business concern shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a facility or vessel on the National Priorities List.

"(2) LIMITATION.—Paragraph (1) shall not apply to an action brought by the President against a small business concern if the hazardous substances attributable to the small business concern have contributed, or contribute, significantly to the costs of the response action at the facility.

"(3) SMALL BUSINESS CONCERN DEFINED.—In this subsection, the term 'small business concern' means a business entity that on average over the previous 3 years preceding the date of notification by the President that the business entity is a potentially responsible party—

"(A) has no more than 75 full-time employees or the equivalent thereof; and

"(B) has $3,000,000 or less in gross revenues.".

(b) LIABILITY RELIEF FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following:

"(u) LIABILITY EXEMPTIONS AND LIMITATIONS FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—

"(1) PRE-ENACTMENT ACTIVITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that the person arranged or transported municipal solid waste or municipal sewage sludge prior to the date of enactment of this paragraph for disposal at the landfill facility.

"(B) EXCEPTION.—Notwithstanding subparagraph (A), if the President determines that a person transported material containing municipal solid waste or municipal sewage sludge to a landfill facility that has contributed, or contributes, significantly to the costs of response at the facility and such person is engaged in the business of transporting waste materials, such person may be liable under subsection (a)(4). The liability of such person shall be subject to the aggregate limits on liability for municipal solid waste set forth in paragraph (2). Any determination of such person's equitable share of response costs shall be determined on the basis of such person's equitable share of the aggregate amount of response costs attributable to municipal solid waste under paragraph (2).

"(2) POST-ENACTMENT ACTIVITIES.—

"(A) IN GENERAL.—To the extent that a person or group of persons is liable under subsection (a)(3) or (a)(4) for arranging or transporting municipal solid waste or municipal sewage sludge for disposal at a landfill facility on the National Priorities List on or after the date of enactment of this paragraph, and is not exempt from liability under paragraph (3), the total aggregate liability for all such persons or groups of persons for response costs at such a landfill facility shall not exceed 10 percent of such costs.

"(B) EXPEDITED SETTLEMENTS.—The President may offer a person subject to a limitation on liability under subparagraph (A) an expedited settlement based on the average unit cost of remediating municipal solid waste and municipal sewage sludge in landfills in lieu of the aggregate 10 percent limitation on liability provided by subparagraph (A).

"(3) SPECIAL RULE.—No person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that—

"(A) the materials that the person arranged or transported for disposal consist of municipal solid waste; and

"(B) the person is—

"(i) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

"(ii) a business entity that employs no more than 100 paid individuals and is a small business concern as defined under the Small Business Act (15 U.S.C. 631 et seq.) from which was generated all of the entity's municipal solid waste with respect to the facility; or

"(iii) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code if such organization employs no more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

"(4) MIXED WASTES.—Liability for wastes that do not fall within the definition of municipal solid waste under paragraph (5)(A) and are collected and disposed of with municipal solid wastes shall be governed by section 107(a) and any applicable exemptions or limitations on liability without regard to the wastes covered by paragraph (5)(A).

"(5) DEFINITIONS.—In this section, the following definitions apply:

"(A) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means waste materials generated by households, including single and multifamily residences, and hotels and motels, and waste materials generated by commercial, institutional, and industrial sources, to the extent that such materials—

"(i) are essentially the same as waste materials normally generated by households, or

"(ii) are collected and disposed of with other municipal solid waste, and contain hazardous substances that would qualify for the de micromis exemption under section 107(w).

The term includes food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, wooden pallets, cardboard, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators; solid waste from the extraction, beneficiation, and processing of ores and minerals; or waste from manufacturing or processing operations (including pollution control) that is not essentially the same as waste normally generated by households.

"(B) MUNICIPAL SEWAGE SLUDGE.—The term 'municipal sewage sludge' means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by (i) a publicly owned treatment works, (ii) a federally owned treatment works, or (iii) a treatment works that, without regard to ownership, would be considered to be a publicly owned treatment works and is principally treating municipal waste water or domestic sewage.

"(v) MUNICIPAL OWNERS AND OPERATORS.—

"(1) IN GENERAL.—A municipality that is liable for response costs under paragraph (1) or (2) of subsection (a) on the basis of ownership or operation of a municipal landfill that is listed on the National Priorities List on or before September 1, 1999 (as identified by the President), shall be eligible for a settlement under this subsection.

"(2) SETTLEMENT AMOUNT.—(A) The President shall offer a settlement to a party with respect to such liability on the basis of a payment or other obligation equivalent in value to no more than 20 percent of the total response costs in connection with the facility. The President may increase this percentage to no more than 35 percent of the total response costs in connection with the facility if the President determines—

"(i) the municipality exacerbated environmental contamination or exposure with respect to the facility; or

"(ii) the municipality, during the period of ownership or operation of the facility, received operating revenues substantially in excess of the sum of the waste system operating costs plus 20 percent of total estimated response costs in connection with the facility.

"(B) Such a settlement shall pertain to only the party's liability under paragraph (1) or (2) of subsection (a).

"(3) PERFORMANCE OF RESPONSE ACTIONS.—Subject to the limitations of paragraph (2), the President may require, as a condition of a settlement with a municipality under this subsection, that the municipality perform, or participate in the performance of, the response actions at the site.

"(4) JOINT OWNERSHIP OR OPERATION.—A combination of 2 or more municipalities that jointly owned or operated the facility at the same time or during continuous operations under municipal control, shall be considered a single owner/operator for the purpose of calculating a settlement offer pursuant to this subsection.

"(5) WAIVER OF CLAIMS.—The President may require, as a condition of a settlement under this subsection, that the municipality waive some or all of the claims or causes of action that such municipality may have against other potentially responsible parties relating to the site, including claims for contribution under section 113.

"(6) EXCEPTIONS.—The President may decline to offer a settlement under this subsection where the President determines—

"(A) there is only municipal solid waste or sewage sludge at the facility;

"(B) all other identified potentially responsible parties are insolvent, defunct, or eligible for a settlement under this subsection or under section 122(g);

"(C) the municipality has failed to comply fully and completely with information requests, administrative subpoenas, or discovery requests issued by the United States; or

"(D) the municipality has impeded or is impeding, through action or inaction, the performance of a response action or a natural resource restoration with respect to the facility.

"(7) EXPIRATION OF OFFER.—The President's obligation to offer a settlement under this section shall expire if the municipality to which the offer is made fails to accept such an offer within a reasonable time period.".

(c) DE MICROMIS EXEMPTION.—Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following:

"(w) DE MICROMIS EXEMPTION.—

"(1) IN GENERAL.—In the case of a facility or vessel listed on the National Priorities List, no person shall be liable under subsection (a)(3) or (a)(4) if no more than 110 gallons or 200 pounds of materials containing hazardous substances at the facility or vessel is attributable to such person, and the acts on which liability is based took place before the date of enactment of this subsection.

"(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that the material described in paragraph (1) has contributed, or contributes, significantly to the costs of response at the facility.".

(d) INELIGIBILITY FOR EXEMPTIONS OR LIMITATIONS.—Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following:

"(x) INELIGIBILITY FOR EXEMPTIONS OR LIMITATIONS.—

"(1) IMPEDING RESPONSE OR RESTORATION.—The exemptions and limitations set forth in subsections (t), (u), (v), and (w) and sections 114(c) and 128 shall not apply to any person with respect to a facility if such person impedes the performance of a response action or natural resource restoration at the facility.

"(2) FAILURE TO RESPOND TO INFORMATION REQUEST.—The exemptions and limitations set forth in subsections (t), (u), (v), and (w) and sections 114(c) and 128 shall not apply to any person who—

"(A) willfully fails to submit a complete and timely response to an information request under section 104(e); or

"(B) knowingly makes any false or misleading material statement or representation in any such response.

"(3) FAILURE TO PROVIDE COOPERATION AND FACILITY ACCESS.—The limitation set forth in subsection (v) shall not apply to any owner or operator of a facility who does not provide all reasonable cooperation and facility access to persons authorized to conduct response actions at the facility.".

(e) EXEMPT PARTY FUNDING; CONCLUDED ACTIONS; OVERSIGHT COSTS.—Section 107 (42 U.S.C. 9607) is further amended by adding at the end the following:

"(y) EXEMPT PARTY FUNDING.—

"(1) EXEMPT PARTY FUNDING.—Except as provided in paragraph (2), the equitable share of liability under section 107(a) for any release or threatened release of a hazardous substance from a facility or vessel on the National Priorities List that is extinguished through an exemption or limitation on liability under subsection (t), (u), or (v) of this section, section 114(c), or section 128 shall be transferred to and assumed by the Trust Fund.

"(2) CERTAIN MSW GENERATORS.—Paragraph (1) shall not apply to the equitable share of liability of any person who would have been liable under subsection (a)(3) or (4) but for the exemption from liability under subsection (u)(3).

"(3) SOURCE OF FUNDS.—Payments made by the Trust Fund or work performed on behalf of the Trust Fund to meet the obligations under paragraph (1) shall be funded from amounts made available by section 111(a)(1).

"(z) EFFECT ON CONCLUDED ACTIONS.—The exemptions from, and limitations on, liability provided under subsections (t), (u), (v), and (w) and sections 114(c) and 128 shall not affect any settlement or judgment approved by a United States District Court not later than 30 days after the date of enactment of this subsection or any administrative action against a person otherwise covered by such exemption or limitation that becomes effective not later than 30 days after such date of enactment.

"(aa) LIMITATION ON RECOVERY OF OVERSIGHT COSTS.—

"(1) IN GENERAL.—Costs of oversight of a response action shall not be recoverable under this section from a person referred to in paragraph (2) to the extent that such costs exceed 10 percent of the costs of the response action.

"(2) ACCOUNTING OF RESPONSE COSTS.—Paragraph (1) shall apply only to a person who provides the Administrator with an accounting of the direct and indirect costs that the person incurred in conducting the response action. The Administrator may require an independent audit of the costs from such person.".

(f) CONFORMING AMENDMENT.—Section 113(f)(1) is amended by inserting "or section 107(y)" after "107(a)" in the first place it appears.

SEC. 305. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) EXTENSION OF NEGLIGENCE STANDARD.—Subsection (a) of section 119 (42 U.S.C. 9619(a)) is amended as follows:

(1) In paragraph (1) by striking "title or under any other Federal law" and inserting "title, under any other Federal law, or under the law of any State or political subdivision of a State".

(2) By adding at the end of paragraph (1) the following: "Notwithstanding the preceding sentence, this section shall not apply in determining the liability of a response action contractor under the law of any State or political subdivision thereof if the State has enacted a law determining the liability of a response action contractor.".

(3) By adding at the end of paragraph (2) the following: "Such conduct shall be evaluated based on the generally accepted standards and practices in effect at the time and place that the conduct occurred.".

(b) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c) (42 U.S.C. 9619(c)) is amended by adding at the end of paragraph (1) the following: "Any such agreement may apply to claims for negligence arising under Federal law or under the law of any State or political subdivision of a State.".

(c) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5) (42 U.S.C. 9619(c)(5)) is amended in subparagraph (A) by inserting "or threatened release" after "release" each place it appears.

SEC. 306. AMENDMENTS TO SECTION 122.

(a) FINAL COVENANTS.—Section 122(f) (42 U.S.C. 9622(f)) is amended as follows:

(1) By striking paragraph (1) and inserting the following:

"(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements that are in the public interest a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs addressed in the settlement, if all of the following conditions are met:

"(A) The settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action authorized by the Administrator for the release or threat of release that is the subject of the settlement.

"(B) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility.

"(C) The settling party waives all contribution rights against other potentially responsible parties at the facility.

"(D) The settling party (other than a small business) pays a premium that compensates for the risks of remedy failure; future liability resulting from unknown conditions; and unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action. The President shall have sole discretion to determine the appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President has discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.

"(E) The remedial action does not rely on institutional controls to ensure continued protection of human health and the environment.

"(F) The settlement is otherwise acceptable to the United States.".

(2) In paragraph (2) by striking "remedial" each place it appears and inserting "response".

(3) By amending paragraph (3) to read as follows:

"(3) DISCRETIONARY COVENANTS.—For settlements under this Act for which covenants under paragraph (1) are not available, the President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, if the covenant not to sue is in the public interest. Such covenants shall be subject to the requirements of paragraph (5). The President may include any conditions in such covenant not to sue, including the additional condition referred to in paragraph (5). In determining whether such conditions or covenants are in the public interest, the President shall consider the nature and scope of the commitment by the settling party under the settlement, the effectiveness and reliability of the response action, the nature of the risks remaining at the facility, the strength of evidence, the likelihood of cost recovery, the reliability of any response action or actions to restore, replace, or acquire the equivalent of injured natural resources, the extent to which performance standards are included in the order or decree, the extent to

which the technology used in the response action is demonstrated to be effective, and any other factors relevant to the protection of human health and the environment.".

(4) By striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(5) In subparagraph (A) of paragraph (5) (as so redesignated)—

(A) by striking "remedial" the first place it appears and inserting "response";

(B) by striking "paragraph (2)" and inserting "paragraph (1) or (2)";

(C) by striking "de minimis settlements" and inserting "de minimis and other expedited settlements pursuant to subsection (g) of this section"; and

(D) by striking "the President certifies under paragraph (3) that remedial action has been completed at the facility concerned", and inserting "that the response action that is the subject of the settlement agreement is selected".

(6) In subparagraph (B) of paragraph (5) (as so redesignated)—

(A) by striking "In extraordinary circumstances, the" and inserting "The";

(B) by striking "those referred to in paragraph (4) and";

(C) by striking "if other terms," and inserting ", if the agreement containing the covenant not to sue provides for payment of a premium to address possible remedy failure or any releases that may result from unknown conditions, and if other terms,"; and

(D) by adding at the end the following: "The President may waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.".

(b) EXPEDITED FINAL SETTLEMENTS.—Section 122 (42 U.S.C. 6922) is further amended as follows:

(1) In subsection (g) by striking "(g)" and all that follows through the period at the end of paragraph (1) and inserting the following:

"(g) EXPEDITED FINAL SETTLEMENT.—

"(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—The President shall, as promptly as possible, offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet the following conditions for eligibility for an expedited settlement in subparagraph (A) or (B):

"(A) The potentially responsible party's individual contribution to the release of hazardous substances at the facility as an owner or operator, arranger for disposal, or transporter for disposal is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if both of the following conditions are met:

"(i) The contribution of materials containing hazardous substances that the potentially responsible party arranged or transported for treatment or disposal, or that were treated or disposed during the potentially responsible party's period of ownership or operation of the facility, is minimal in comparison to the total volume of materials containing hazardous substances at the facility. Such individual contribution is presumed to be minimal if it is not more than 1 percent of the total volume of such materials, unless the Administrator identifies a different threshold based on site-specific factors.

"(ii) Such hazardous substances do not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the facility.

"(B)(i) The potentially responsible party is a natural person, a small business, or a municipality and can demonstrate to the United States an inability or limited ability to pay response costs. A party who enters into a settlement pursuant to this subparagraph shall be deemed to have resolved its liability under this Act to the United States for all matters addressed in the settlement.

"(ii) For purposes of this subparagraph, the following provisions apply:

"(I) In the case of a small business, the President shall take into consideration the ability to pay of the business, if requested by the business. The term 'ability to pay' means the President's reasonable expectation of the ability of the small business to pay its total settlement amount and still maintain its basic business operations. Such consideration shall include the business's overall financial condition and demonstrable constraints on its ability to raise revenues.

"(II) Any business requesting such consideration shall promptly provide the President with all relevant information needed to determine the business's ability to pay.

"(III) If the President determines that a small business is unable to pay its total settlement amount immediately, the President shall consider alternative payment methods as may be necessary or appropriate. The methods to be considered may include installment payments to be paid during a period of not to exceed 10 years and the provision of in-kind services.

"(iii) Any municipality which is a potentially responsible party may submit for consideration by the President an evaluation of the potential impact of the settlement on essential services that the municipality must provide, and the feasibility of making delayed payments or payments over time. If a municipality asserts that it has additional environmental obligations besides its potential liability under this Act, then the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations.

"(iv) Any municipality which is a potentially responsible party may establish an inability to pay through an affirmative showing that such payment of its liability under this Act would either—

"(I) create a substantial demonstrable risk that the municipality would default on existing debt obligations, be forced into bankruptcy, be forced to dissolve, or be forced to make budgetary cutbacks that would substantially reduce current levels of protection of public health and safety; or

"(II) necessitate a violation of legal requirements or limitations of general applicability concerning the assumption and maintenance of fiscal municipal obligations.

"(v) This subparagraph does not limit or affect the President's authority to evaluate any person's ability to pay or to enter into settlements with any person based on that person's inability to pay.".

(2) By striking paragraphs (2) and (3) of subsection (g) and inserting the following:

"(2) BASIS OF DETERMINATION.—

"(A) IN GENERAL.—Any person who enters into a settlement pursuant to this subsection shall provide any information requested by the President in accordance with section 104(e). The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the President at the time the determination is made.

"(B) DECISION OF NONQUALIFICATION; APPEAL.—

"(i) DECISION OF NONQUALIFICATION.—If the President determines that a party does not qualify for a settlement under this subsection, the President shall notify the party, in writing, within 90 days after the later of—

"(I) a request by the party for settlement under this subsection; or

"(II) the receipt of all information required by the President from the requesting party to make a determination under this paragraph,

stating the reasons for denial. If the President does not notify the party within such 90-day period, the request is deemed denied.

"(ii) APPEAL.—

"(I) IN GENERAL.—Notwithstanding any other provision of this Act, a denial of settlement under this subsection may be appealed.

"(II) AUTHORITY OF ENVIRONMENTAL APPEALS BOARD.—The Environmental Appeals Board of the Environmental Protection Agency is authorized to adjudicate denials of settlement under this subsection. Within 60 days of the date on which notice of denial is received, a denial of settlement may be appealed to the Board. The Board may consider whether the President has followed the provisions of this Act but shall not determine questions regarding liability.

"(III) PROCEDURAL RULES.—In any appeal made pursuant to this clause, the documents submitted by the requester under clause (i)(II) are not confidential. If a requester agrees not to contest the share of liability under section 107 assigned by the President, the appeal shall include only a determination of the requester's ability to pay its allocated share.

"(C) JUDICIAL PROCEDURES.—In reviewing a proposed settlement under this subsection, a United States district court shall give deference to the President's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person who chal-

lenges a proposed settlement bears the burden of proving that the proposed settlement does not meet applicable legal standards for court approval. If a settlement is reached with a requester, the confidential information supplied to the President under this subsection may be submitted under seal to the court for in camera review.

"(3) ADDITIONAL FACTORS RELEVANT TO SETTLEMENTS WITH MUNICIPALITIES.—In any settlement with a municipality pursuant to this Act, the President may take additional equitable factors into account in determining an appropriate settlement amount, including the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.".

(3) In subsection (g)(4) by striking "$500,000" and inserting "$2,000,000".

(4) By striking paragraph (5) of subsection (g) and inserting the following:

"(5) SMALL BUSINESS DEFINED.—In this section, the term 'small business' refers to any business entity that employs no more than 100 individuals and is a 'small business concern' as defined under the Small Business Act (15 U.S.C. 631 et seq.).".

(5) By adding at the end of subsection (g) the following:

"(7) DEADLINE.—If the President does not make a settlement offer to a small business on or before the 180th day following the date of the President's determination that such small business is eligible for an expedited settlement under this subsection, or on or before the 180th day following the date of the enactment of this paragraph, whichever is later, such small business shall have no further liability under this Act, unless the failure to make a settlement offer on or before such 180th day is due to circumstances beyond the control of the President.

"(8) PREMIUMS.—In any settlement under this Act with a small business, the President may not require the small business to pay any premium over and above the small business's share of liability.".

(c) MUNICIPALITY DEFINED.—Section 101 (42 U.S.C. 9601) is amended by inserting at the end the following:

"(39) The term 'municipality' means a political subdivision of a State, including a city, county, village, town, township, borough, parish, school district, sanitation district, water district, or other public entity performing local governmental functions. The term also includes a natural person acting in the capacity of an official, employee, or agent of any entity referred to in the preceding sentence in the performance of governmental functions.".

SEC. 307. CLARIFICATION OF LIABILITY FOR RECYCLING TRANSACTIONS.

(a) RECYCLING TRANSACTIONS.—Title I (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 128. RECYCLING TRANSACTIONS.

"(a) LIABILITY CLARIFICATION.—(1) As provided in subsections (b), (c), (d), and (e), a person who arranged for the recycling of recyclable material shall not be liable under paragraph (3) or (4) of section 107(a) with respect to such material.

"(2) A determination whether or not any person shall be liable under paragraph (3) or (4) of section 107(a) for any material that is not a recyclable material as that term is used in subsections (b), (c), (d), or (e) of this section shall be made, without regard to subsection (b), (c), (d), or (e) of this section.

"(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include—

"(1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

"(2) any item of material that contained PCBs at a concentration in excess of 50 ppm or any new standard promulgated pursuant to applicable Federal laws.

"(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—

"(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling

of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

"(A) The recyclable material met a commercial specification grade.

"(B) A market existed for the recyclable material.

"(C) A substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product.

"(D) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

"(E) For transactions occurring on or after the 90th day following the date of the enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

"(2) REASONABLE CARE.—For purposes of this subsection, 'reasonable care' shall be determined using criteria that include—

"(A) the price paid in the recycling transaction;

"(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material; and

"(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

"(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with the recyclable materials shall be deemed to be a substantive provision.

"(d) TRANSACTIONS INVOLVING SCRAP METAL.—

"(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

"(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

"(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator issues under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) after the date of the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

"(C) the person did not melt the scrap metal prior to the transaction.

"(2) MELTING OF SCRAP METAL.—For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').

"(3) SCRAP METAL DEFINED.—In this subsection, the term 'scrap metal' means—

"(A) bits and pieces of metal parts (such as bars, turnings, rods, sheets, and wire) or metal pieces that may be combined together with bolts or soldering (such as radiators, scrap automobiles, and railroad box cars) which when worn or superfluous can be recycled; and

"(B) notwithstanding paragraph (1)(C), metal byproducts of the production of copper and copper based alloys that—

"(i) are not the sole or primary products of a secondary production process,

"(ii) are not produced separately from the primary products of a secondary production process,

"(iii) are not and have not been stored in a pile or surface impoundment, and

"(iv) are sold to another recycler that is not speculatively accumulating such byproducts,

except for any scrap metal that the Administrator excludes from this definition by regulation.

"(e) TRANSACTIONS INVOLVING BATTERIES.—

"(1) IN GENERAL.—Transactions involving recyclable materials that consist of spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

"(A) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries but did not recover the valuable components of such batteries; and

"(B)(i) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

"(ii) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries and the person was in compliance with such regulations or standards and any amendments thereto; or

"(iii) with respect to transactions involving other spent batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries and the person was in compliance with such regulations or standards and any amendments thereto.

"(2) RECOVERY OF VALUABLE BATTERY COMPONENTS.—For purposes of paragraph (1)(A), a person who, by contract, arranges or pays for processing of batteries by an unrelated third person and receives from such third person materials reclaimed from such batteries shall not thereby be deemed to recover the valuable components of such batteries.

"(f) EXCLUSIONS.—

"(1) IN GENERAL.—The exemptions set forth in subsections (c), (d), and (e) shall not apply if—

"(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction that—

"(i) the recyclable material would not be recycled;

"(ii) the recyclable material would be burned as fuel or for energy recovery or incineration; or

"(iii) for transactions occurring on or before the 90th day following the date of the enactment of this section, the consuming facility was not in compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

"(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

"(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

"(2) OBJECTIVELY REASONABLE BASIS.—For purposes of paragraph (1)(A), an objectively reasonable basis for belief shall be determined using criteria that include the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

"(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the

handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

"(g) EFFECT ON OWNER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a).

"(h) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—

"(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

"(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

"(i) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) affect any defenses or liabilities of any person to whom subsection (a)(1) does not apply; or

"(2) create any presumption of liability against any person to whom subsection (a)(1) does not apply.".

(b) SERVICE STATION DEALERS.—Section 114(c) (42 U.S.C. 9614(c)) is amended as follows:

(1) In paragraph (1)(B)—

(A) by striking "authorities." and inserting "authorities that were in effect on the date of such activity.".

(2) In paragraph (2)—

(A) by striking "a service station dealer may presume that";

(B) by striking "is not mixed with" and inserting "is presumed to be not mixed with"; and

(C) by striking subparagraphs (A) and (B) and inserting the following:

"(A) has been removed from the engine of a light duty motor vehicle or household appliance by the owner of such vehicle or appliance and is presented by such owner to the dealer for collection, accumulation, and delivery to an oil recycling facility; or

"(B) has been removed from such an engine or appliance by the dealer for collection, accumulation, and delivery to an oil recycling facility.".

(3) By striking paragraph (4).

SEC. 308. ALLOCATION.

Title I (42 U.S.C. 9601 et seq.) is further amended by adding at the end the following new section:

"SEC. 129. ALLOCATION.

"(a) PURPOSE OF ALLOCATION.—The purpose of an allocation under this section is to determine an equitable allocation of the costs of a removal or remedial action at a facility on the National Priorities List that is eligible for an allocation under this section, including the share to be borne by the Trust Fund under subsection (i).

"(b) ELIGIBLE RESPONSE ACTION.—

"(1) IN GENERAL.—A removal or remedial action is eligible for an allocation under this section if the action is at a facility on the National Priorities List and if—

"(A) the performance of the removal or remedial action is not the subject of an administrative order or consent decree as of September 29, 1999;

"(B) the President's estimate of the costs for performing such removal or remedial action that have not been recovered by the President as of September 29, 1999, exceeds $2,000,000; and

"(C) there are response costs attributable to the Fund share under subsection (i).

"(2) EXCLUDED RESPONSE ACTIONS.—

"(A) CHAIN OF TITLE SITES.—Notwithstanding paragraph (1), a removal or remedial action is not eligible for an allocation if—

"(i) the facility is located on a contiguous area of real property under common ownership or control; and

"(ii) all of the parties potentially liable for response costs are current or former owners or operators of such facility,

unless the current owner of such facility is insolvent or defunct.

"(B) CURRENT OWNER.—If the current owner of the property on which the facility is located is not liable under section 107(b)(2), the owner immediately preceding such owner shall be considered to be the current owner of the property for purposes of subparagraph (A).

"(C) AFFILIATED PARTIES.—If the current owner is affiliated with any other person through any direct or indirect familial relationship or any con-

tractual, corporate, or financial relationship other than that created by instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services, and such other person is liable for response costs at the facility, such other person's assets may be considered assets of the current owner when determining under subparagraph (A) whether the current owner is insolvent or defunct.

"(c) DISCRETIONARY ALLOCATION PROCESS.—Notwithstanding subsection (b), the President may initiate an allocation under this section for any removal or remedial action at a facility listed on the National Priorities List and may provide a Fund share under subsection (i).

"(d) ALLOCATION PROCESS.—For each eligible removal or remedial action, the President shall ensure that a fair and equitable allocation of liability is undertaken at an appropriate time by a neutral allocator selected by agreement of the parties under such process or procedures as are agreed by the parties. An allocation under this section shall apply to subsequent removal or remedial actions for a facility unless the allocator determines that the allocation should address only one or more of such removal or remedial actions.

"(e) EARLY OFFER OF SETTLEMENT.—As soon as practicable and prior to the selection of an allocator, the President shall provide an estimate of the aggregate Fund share in accordance with subsection (i). The President shall offer to contribute to a settlement of liability for response costs on the basis of this estimate.

"(f) REPRESENTATION OF THE UNITED STATES AND AFFECTED STATES.—The Administrator or the Attorney General, as a representative of the Fund, and a representative of any State that is or may be responsible pursuant to section 104(c)(3) for any costs of a removal or remedial action that is the subject of an allocation shall be entitled to participate in the allocation proceeding to the same extent as any potentially responsible party.

"(g) MORATORIUM ON LITIGATION.—

"(1) MORATORIUM ON LITIGATION.—No person may commence any civil action or assert any claim under this Act seeking recovery of any response costs, or contribution toward such costs, in connection with any response action for which the President has initiated an allocation under this section, until 150 days after issuance of the allocator's report or of a report under this section.

"(2) STAY.—If any action or claim referred to in paragraph (1) is pending on the date of enactment of this section or on the date of initiation of an allocation, such action or claim (including any pendant claim under State law over which a court is exercising jurisdiction) shall be stayed until 150 days after the issuance of the allocator's report or of a report under this section, unless the court determines that a stay will result in manifest injustice.

"(3) TOLLING OF LIMITATIONS PERIOD.—Any applicable limitations period with respect to actions subject to paragraph (1) shall be tolled from the earlier of—

"(A) the date of listing of the facility on the National Priorities List, where such listing occurs after the date of enactment of this section; or

"(B) the commencement of the allocation process pursuant to this section, until 180 days after the President rejects or waives the President's right to reject the allocator's report.

"(h) EFFECT ON PRINCIPLES OF LIABILITY.—The allocation process under this section shall not be construed to modify or affect in any way the principles of liability under this title as determined by the courts of the United States.

"(i) FUND SHARE.—For each removal or remedial action that is the subject of an allocation under this section, the allocator shall determine the share of response costs, if any, to be allocated to the Fund. The Fund share shall consist of the sum of following amounts:

"(1) The amount attributable to the aggregate share of response costs that the allocator determines to be attributable to parties who are not affiliated with any potentially responsible party and whom the President determines are insolvent or defunct.

"(2) The amount attributable to the difference in the aggregate share of response costs that the allocator determines to be attributable to parties who have resolved their liability to the United States under section 122(g)(1)(B) (relating to limited ability to pay settlements) for the removal or remedial action and the amount actually assumed by those parties in any settlement for the response action with the United States.

"(3) Except as provided in subsection (j), the amount attributable to the aggregate share of response costs that the allocator determines to be attributable to persons who are entitled to an exemption from liability under subsection (t) or (u) of section 107 or section 114(c) or 128 at a facility or vessel on the National Priorities List.

"(4) The amount attributable to the difference in the aggregate share of response costs that an allocator determines to be attributable to persons subject to a limitation on liability under section 107(u) or 107(v) and the amount actually assumed by those parties in accordance with such limitation.

"(j) CERTAIN MSW GENERATORS.—Notwithstanding subsection (i)(3), the allocator shall not attribute any response costs to any person who would have been liable under section 107(a)(3) or 107(a)(4) but for the exemption from liability under section 107(u)(3).

"(k) UNATTRIBUTABLE SHARE.—The share attributable to the aggregate share of response costs incurred to respond to materials containing hazardous substances for which no generator, transporter, or owner or operator at the time of disposal or placement, can be identified shall be divided pro rata among the potentially responsible parties and the Fund share determined under subsection (i).

"(l) EXPEDITED ALLOCATION.—At the request of the potentially responsible parties or the United States, to assist in reaching settlement, the allocator may, prior to reaching a final allocation of response costs among all parties, first provide an estimate of the aggregate Fund share, in accordance with subsection (i), and an estimate of the aggregate share of the potentially responsible parties.

"(m) SETTLEMENT BEFORE ALLOCATION DETERMINATION.—

"(1) SETTLEMENT OF ALL REMOVAL OR REMEDIAL COSTS.—A group of potentially responsible parties may submit to the allocator a private allocation for any removal or remedial action that is within the scope of the allocation. If such private allocation meets each of the following criteria, the allocator shall promptly adopt it as the allocation report:

"(A) The private allocation is a binding allocation of at least 80 percent of the past, present, and future costs of the removal or remedial action.

"(B) The private allocation does not allocate any share to any person who is not a signatory to the private allocation.

"(C) The signatories to the private allocation waive their rights to seek recovery of removal or remedial costs or contribution under this Act with respect to the removal or remedial action from any other party at the facility.

"(2) OTHER SETTLEMENTS.—The President may use the authority under section 122(g) to enter into settlement agreements with respect to any response action that is the subject of an allocation at any time.

"(n) SETTLEMENTS BASED ON ALLOCATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), the President shall accept an offer of settlement of liability for response costs for a removal or remedial action that is the subject of an allocation if—

"(A) the offer is made within 90 days after issuance of the allocator's report; and

"(B) the offer is based on the share of response costs specified by the allocator and such other terms and conditions (other than the allocated share of response costs) as are acceptable to the President.

"(2) REJECTION OF ALLOCATION REPORT.—The requirement of paragraph (1) to accept an offer of settlement shall not apply if the Administrator and the Attorney General reject the allocation report.

"(o) REIMBURSEMENT FOR UAO PERFORMANCE.—

"(1) REIMBURSEMENT.—The Administrator shall enter into agreements to provide mixed funding to reimburse parties who satisfactorily perform, pursuant to an administrative order issued under section 106, a removal or remedial action eligible for an allocation under subsection (b) for the reasonable and necessary costs of such removal or remedial action to the extent that—

"(A) the costs incurred by a performing party exceed the share of response costs assigned to such party in an allocation that is performed in accordance with the provisions of this section;

"(B) the allocation is not rejected by the United States; and

"(C) the performing party, in consideration for such reimbursement—

"(i) agrees not to contest liability for all response costs not inconsistent with the National Contingency Plan to the extent of the allocated share;

"(ii) receives no covenant not to sue; and

"(iii) waives contribution rights against all parties who are potentially responsible parties for the response action, as well as waives any rights to challenge any settlement the President enters into with any other potentially responsible party.

"(2) OFFSET.—Any reimbursement provided to a performing party under this subsection shall be subject to equitable offset or reduction by the Administrator

upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.

"(3) TIME OF PAYMENT.—Any reimbursement to a performing party under this subsection shall be paid after work is completed, but no sooner than completion of the construction of the remedial action and, subject to paragraph (5), without any increase for interest or inflation.

"(4) LIMIT ON AMOUNT OF REIMBURSEMENT.—The amount of reimbursement under this subsection shall be further limited as follows:

"(A) Performing parties who waive their right to challenge remedy selection at the end of the moratorium following allocation shall be entitled to reimbursement of actual dollars spent by each such performing party in excess of the party's share and attributable by the allocator to the Fund share under subsection (i).

"(B) Performing parties who retain their right to challenge the remedy shall be reimbursed (i) for actual dollars spent by each such performing party, but not to exceed 90 percent of the Fund share, or (ii) an amount equal to 80 percent of the Fund share if the Fund share is less than 20 percent of responsibility at the site.

"(5) REIMBURSEMENT OF SHARES ATTRIBUTABLE TO OTHER PARTIES.—If reimbursement is made under this subsection to a performing party for work in excess of the performing party's allocated share that is not attributable to the Fund share, the performing party shall be entitled to all interest (prejudgment and post judgment, whether recovered from a party or earned in a site account) that has accrued on money recovered by the United States from other parties for such work at the time construction of the remedy is completed.

"(6) REIMBURSEMENT CLAIMS.—The Administrator shall require that all claims for reimbursement be supported by—

"(A) documentation of actual costs incurred; and

"(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.

"(7) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.

"(p) POST-SETTLEMENT LITIGATION.—Following expiration of the moratorium periods under subsection (g), the United States may request the court to lift the stay and proceed with an action under this Act against any potentially responsible party that has not resolved its liability to the United States following an allocation, seeking to recover response costs that are not recovered through settlements with other persons. All such actions shall be governed by the principles of liability under this Act as determined by the courts of the United States.

"(q) RESPONSE COSTS.—

"(1) DESCRIPTION.—The following costs shall be considered response costs for purposes of this Act:

"(A) Costs incurred by the United States and the court of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator.

"(B) Costs paid from amounts made available under section 111(a)(1).

"(2) SETTLED PARTIES.—Any costs of allocation described in paragraph (1)(A) and incurred after a party has settled all of its liability with respect to the response action or actions that are the subject of the allocation may not be recovered from such party.

"(r) FEDERAL, STATE, AND LOCAL AGENCIES.—All Federal, State, and local governmental departments, agencies, or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination provided by this section to the same extent as any other party.

"(s) SOURCE OF FUNDS.—Payments made by the Trust Fund, or work performed on behalf of the Trust Fund, to meet obligations incurred by the President under this section to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under subsections (e), (m), (n), or (o) shall be funded from amounts made available by section 111(a)(1).

"(t) SAVINGS PROVISIONS.—Except as otherwise expressly provided, nothing in this section shall limit or affect the following:

"(1) The President's—

"(A) authority to exercise the powers conferred by sections 103, 104, 105, 106, 107, or 122;

"(B) authority to commence an action against a party where there is a contemporaneous filing of a judicial consent decree resolving that party's liability;

"(C) authority to file a proof of claim or take other action in a proceeding under title 11, United States Code;

"(D) authority to file a petition to preserve testimony under Rule 27 of the Federal Rules of Civil Procedure; or

"(E) authority to take action to prevent dissipation of assets, including actions under chapter 176 of title 28, United States Code.

"(2) The ability of any person to resolve its liability at a facility to any other person at any time before or during the allocation process.

"(3) The validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree issued, signed, lodged, or entered, before the date of enactment of this paragraph with respect to liability under this Act, or authority to modify any such order, judgment, or decree with regard to the response action addressed in the order, judgment or decree.

"(4) The validity, enforceability, finality, or merits of any pre-existing contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.".

SEC. 309. STANDARD FOR CLEANUP BY DRY CLEANERS.

(a) GENERAL RULE.—The maximum level of remediation for a dry cleaning solvent in the soil, surface water, groundwater, and other environmental media (other than for groundwater or surface water actually used as a drinking water source) that any person may require of a dry cleaner shall be equal to the soil screening level for inhalation for that dry cleaning solvent determined in accordance with the Soil Screening Guidance Document.

(b) DEFAULT MAXIMUM REMEDIATION LEVEL.—Until a maximum remediation level is determined for a facility in accordance with subsection (a), the maximum level of remediation of that facility for a dry cleaning solvent in the soil, surface water, groundwater, and other environmental media (other than for groundwater or surface water actually used as a drinking water source) that any person may require of a dry cleaner shall be equal to the generic soil screening level for inhalation for that dry cleaning solvent as set forth in the Soil Screening Guidance Document.

(c) APPLICABILITY TO CERCLA.—The applicable requirements for dry cleaning solvents under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall be the remediation standards established by subsections (a) and (b).

(d) CHANGES TO STANDARDS.—The Administrator of the Environmental Protection Agency may, by rule, change the standards of subsections (a) and (b) in accordance with the provisions of any revised Soil Screening Guidance Document published after the date of enactment of this Act if necessary to protect human health or the environment.

(e) NONPREEMPTION.—Nothing in this section—

(1) shall preempt or otherwise prevent the Federal Government or a State government from remediating soil, surface water, groundwater, or other environmental media to a level other than the maximum remediation level determined in accordance with this section if the government determines, on a site-by-site basis, that a more stringent standard is necessary to protect human health or the environment; or

(2) shall alter or affect the Federal drinking water standards for public consumption under title XIV of the Public Health Service Act.

(f) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) DRY CLEANER.—The term "dry cleaner" means a person who was or is engaged in dry cleaning or in supplying goods or equipment to such a person or the owner of land on or a facility in which a person was or is conducting dry cleaning.

(2) PERSON.—The term "person" includes a governmental entity.

(3) SOIL SCREENING GUIDANCE DOCUMENT.—The term "Soil Screening Guidance Document" means the Soil Screening Guidance: User's Guide (EPA/540/R–96/018) and the Soil Screening Guidance: Technical Background Document (EPA/540/R–95/128) developed by the Environmental Protection Agency.

TITLE IV—PUBLIC HEALTH

SEC. 401. PUBLIC HEALTH AUTHORITIES.

(a) DISEASE REGISTRY AND MEDICAL CARE PROVIDERS.—Section 104(i)(1) (42 U.S.C. 9604(i)(1)) is amended as follows:

(1) By striking subparagraph (A) and inserting the following:

"(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;".

(2) By striking the last sentence and inserting the following:

"In cases of public health emergencies, exposed persons shall be eligible for referral to licensed or accredited health care providers.".

(b) SUBSTANCE PROFILES.—Section 104(i)(3) (42 U.S.C. 9604(i)(3)) is amended as follows:

(1) By inserting "(A)" after "(3)".

(2) By redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively.

(3) By striking "Any toxicological profile or revision thereof" and all that follows through "parties." and inserting the following:

"(B) Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the list but which have been found at facilities for which there has been a response action under this Act and which have been determined by ATSDR to be of health concern. Profiles required under this paragraph shall be revised and republished, as appropriate, based on scientific development and shall be provided to the States, including State health departments, tribal health officials, and local health departments, and made available to other interested parties.".

(c) DETERMINING HEALTH EFFECTS.—Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is amended as follows:

(1) By striking "designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance." and inserting "conducted directly or by means such as cooperative agreements and grants with appropriate public and nonprofit institutions. The research shall be designed to determine the health effects of the substance and techniques for development of methods to determine such health effects.".

(2) By redesignating clause (iv) as clause (v).

(3) By striking "and" at the end of clause (iii).

(4) By inserting after clause (iii) the following:

"(iv) laboratory and other studies to develop innovative techniques for predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and".

(d) PUBLIC HEALTH AT NPL FACILITIES.—

(1) PRELIMINARY PUBLIC HEALTH ASSESSMENTS.—Section 104(i)(6) (42 U.S.C. 9604(i)(6)) is amended by striking "(6)(A)" and all that follows through the period at the end of subparagraph (A) and inserting the following:

"(6)(A)(i) The Administrator of ATSDR shall perform a preliminary public health assessment or health consultation for each facility on the National Priorities List, including those facilities owned by any department, agency, or instrumentality of the United States, and those sites that are the subject of a petition under subparagraph (B). The preliminary public health assessment or health consultation shall be commenced as soon as practicable after each facility is proposed for inclusion on the National Priorities List or the Administrator of ATSDR accepts a petition for a public health assessment. If the Administrator of ATSDR, in consultation with local public health officials, determines that the results of a preliminary public health assessment or health consultation indicate the need for a public health assessment, the Administrator of the ATSDR shall conduct the public health assessment of those sites posing a health hazard. The results of the public health assessment should be considered in selecting the remedial action for the facility.

"(ii) The Administrator of ATSDR, in cooperation with States, shall design public health assessments that take into account the needs and conditions of the affected community.

"(iii) The Administrator of EPA shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or adverse health effects as identified in a public health assessment conducted by the Administrator of ATSDR or are reasonably anticipated based on currently known facts.".

(2) STRATEGIES FOR OBTAINING DATA; COMMUNITY INVOLVEMENT.—Section 104(i)(6)(D) (42 U.S.C. 9604(i)(6)(D)) is amended as follows:

(A) By inserting "(i)" after "(D)".

(B) By adding at the end the following:

"(ii) The President and the Administrator of ATSDR shall develop strategies to obtain relevant on-site and off-site characterization data for use in the public health

assessment. The President shall, to the maximum extent practicable, provide the Administrator of ATSDR with the data and information necessary to make public health assessments sufficiently prior to the choice of remedial actions to allow the Administrator of ATSDR to complete these assessments.

"(iii) Where appropriate, the Administrator of ATSDR shall provide to the President, as soon as practicable after site discovery, recommendations for sampling environmental media for hazardous substances of public health concern. To the extent feasible, the President shall incorporate such recommendations into the President's site investigation activities.

"(iv) In order to improve community involvement in public health assessments, the Administrator of ATSDR shall carry out each of the following duties:

"(I) Collect from community advisory groups, from State and local public health authorities, and from other sources in communities affected or potentially affected by releases of hazardous substances data regarding exposure, relevant human activities, and other factors.

"(II) Design public health assessments that take into account the needs and conditions of the affected community. Community-based research models, local expertise, and local health resources should be used in designing the public health assessment. In developing such designs, emphasis shall be placed on collection of actual exposure data, and sources of multiple exposure shall be considered.".

(3) CONFORMING AMENDMENTS.—So much of section 104(i) (42 U.S.C. 9604(i)) as is not added by this Act is amended by inserting "public" before "health assessment" each place it appears and before "health assessments" each place it appears.

(e) HEALTH STUDIES.—Section 104(i)(7) (42 U.S.C. 9604(i)(7)) is amended by striking "(7)(A)" and all that follows through the period at the end of subparagraph (A) and inserting the following:

"(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a public health assessment or on the basis of other appropriate information, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epidemiologic or other health studies of the entire exposed population.".

(f) DISTRIBUTION OF MATERIALS TO HEALTH PROFESSIONALS AND MEDICAL CENTERS.—Section 104(i)(14) (42 U.S.C. 9604(i)(14)) is amended to read as follows:

"(14) EDUCATIONAL MATERIALS.—In implementing this subsection and other health-related provisions of this Act the Administrator of ATSDR, in cooperation with the States, shall—

"(A) assemble, develop as necessary, and distribute to the State and local health officials, tribes, medical colleges, physicians, nursing institutions, nurses, and other health professionals and medical centers appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of prevention, diagnosis, and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed under paragraph (2)) through means the Administrator of ATSDR considers appropriate; and

"(B) assemble, develop as necessary, and distribute to the general public and to at-risk populations appropriate educational materials and other information on human health effects of hazardous substances.".

(g) GRANTS, CONTRACTS, AND COMMUNITY ASSISTANCE ACTIVITIES.—Section 104(i)(15) (42 U.S.C. 9604(i)(15)) is amended as follows:

(1) By striking "(15)" and inserting the following: "(15) GRANTS, CONTRACTS, AND COMMUNITY ASSISTANCE.—(A)".

(2) In the first sentence by striking "cooperative agreements with States (or political subdivisions thereof)" and inserting "grants, cooperative agreements, or contracts with States (or political subdivisions thereof), other appropriate public authorities, public or private institutions, colleges, universities, and professional associations".

(3) By adding at the end the following:

"(B) When a public health assessment is conducted at a facility on the National Priorities List, or a facility is being evaluated for inclusion on the National Priorities List, the Administrator of ATSDR may provide the assistance specified in this paragraph to public or private nonprofit entities, individuals, and community-based groups that may be affected by the release or threatened release of hazardous substances in the environment.

"(C) The Administrator of ATSDR, pursuant to the grants, cooperative agreements, and contracts referred to in this paragraph, is authorized and directed to provide, where appropriate, diagnostic services, health data registries, and prevent-

ative public health education to communities affected by the release of hazardous substances.".

(h) PEER REVIEW COMMITTEE.—Section 104(i) (42 U.S.C. 9604(i)) is amended by adding at the end the following:

"(19) PEER REVIEW COMMITTEE.—The Administrator of ATSDR shall establish an external peer review committee of qualified health scientists who serve for fixed periods and meet periodically to—

"(A) provide guidance on initiation of studies;

"(B) assess the quality of study reports funded by the agency; and

"(C) provide guidance on effective and objective risk characterization and communication.

The peer review committee may include additional specific experts representing a balanced group of stakeholders on an ad hoc basis for specific issues. Meetings of the committee should be open to the public.".

(i) CONFORMING AMENDMENTS.—Section 104(i) is further amended as follows:

(1) In paragraph (16) by inserting "PERSONNEL.—" after "(16)".

(2) In paragraph (17) by inserting "AUTHORITIES.—" after "(17)".

(3) In paragraph (18) by inserting "POLLUTANTS AND CONTAMINANTS.—" after "(18)".

SEC. 402. INDIAN HEALTH PROVISIONS.

Section 104(i) (42 U.S.C. 9604(i)) is further amended as follows:

(1) In paragraph (1) by inserting "the Director of the Indian Health Service," after "the Secretary of Transportation,".

(2) In paragraph (5)(A) by inserting "and the Director of the Indian Health Service" after "EPA".

(3) In paragraph (6)(C) by inserting "where low population density is not used as an excluding risk factor" after "health appears highest".

(4) By adding at the end of paragraph (6)(E) the following: "If the Administrator of ATSDR or the Administrator of EPA does not act on the recommendations of the State, the Administrator of ATSDR or EPA must respond in writing to the State or tribe as to why the Administrator of ATSDR or EPA has not acted on the recommendations.".

(5) In paragraph (6)(F)—

(A) by striking "and" after "emissions,"; and

(B) by inserting ", and any other pathways resulting from subsistence activities" after "food chain contamination".

(6) By striking the period at the end of paragraph (6)(G) and inserting the following: ", and may give special consideration, where appropriate, to any practices of the affected community that may result in increased exposure to hazardous substances, pollutants, or contaminants, such as subsistence hunting, fishing, and gathering.".

SEC. 403. HAZARD RANKING SYSTEM.

Section 105(c) (42 U.S.C. 9605(c)) is amended by adding at the end the following:

"(5) RISK PRIORITIZATION.—In setting priorities under subsection (a)(8), the President shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or demonstrated adverse health effects as identified in a public health assessment conducted by the Agency for Toxic Substances and Disease Registry or are reasonably anticipated based on currently known facts.

"(6) PRIOR RESPONSE ACTION.—Any evaluation under this section shall take into account all prior response actions taken at a facility.".

SEC. 404. DISCLOSURE OF RELEASES OF HAZARDOUS SUBSTANCES AT SUPERFUND SITES.

Section 117 (42 U.S.C. 9617) is amended as follows:

(1) In the section heading by inserting "**AND DISCLOSURE**" after "**PUBLIC PARTICIPATION**".

(2) By adding at the end the following new subsection:

"(f) DISCLOSURE OF RELEASES OF HAZARDOUS SUBSTANCES AT SUPERFUND SITES.—

"(1) INFORMATION.—The President shall make the following information available to the public as provided in paragraph (2) about releases of hazardous substances, pollutants, and contaminants from facilities that have been listed or proposed for listing on the National Priorities List at the following stages of a response action:

"(A) REMOVAL ACTIONS.—A best estimate of the releases from the facility before the removal action is taken, during the period of the removal action, and that are expected after the removal action is completed.

"(B) REMEDIAL INVESTIGATION.—As part of the requirements for the remedial investigation, a summary and best estimate of the releases from the facility.

"(C) FEASIBILITY STUDY.—As part of the feasibility study, a summary and best estimate of the releases that are expected both during and at the conclusion of each remedial option that is considered.

"(D) RECORD OF DECISION.—As part of the record of decision, a summary and best estimate of the releases that are expected both during and at the conclusion of implementation of the selected remedy.

"(E) CONSTRUCTION COMPLETION.—After construction of the remedy is complete and during operation and maintenance, a best estimate of the releases from the facility.

"(2) AVAILABILITY OF INFORMATION.—Information provided under this subsection shall be made available to the residents of the communities surrounding the covered facility, to police, fire, and emergency medical personnel in the surrounding communities, and to the general public. To improve access to such information by Federal, State, and local governments and researchers, such information may be provided to the general public through electronic or other means. Such information shall be expressed in common units and a common format.

"(3) SOURCE OF INFORMATION AND METHODS OF COLLECTION.—Nothing in this subsection shall require the collection of any additional data beyond that already collected as part of the response action. If data are not readily available, the information provided under this subsection shall be based on best estimates.".

PURPOSE AND SUMMARY

The purpose of H.R. 2580, the Land Recycling Act of 1999, is to promote the cleanup and redevelopment of brownfields and to make the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as "Superfund"; 42 U.S.C. § 9601 *et seq.*) fairer and more efficient.

As reported, H.R. 2580 contains four titles. The first title is devoted to the cleanup and redevelopment of abandoned or underutilized industrial or commercial properties where the fear of actual or potential environmental contamination complicates redevelopment. Such sites are commonly known as "brownfields." The legislation promotes brownfields redevelopment in several ways: (1) by providing finality with respect to voluntary environmental cleanups conducted pursuant to State law; (2) by streamlining the permitting bureaucracy that can apply to State cleanups; (3) by exempting certain future or current innocent owners of land from liability under CERCLA; (4) by amending the remedy selection provisions of current law to expedite cleanups; and (5) by providing certain grants and loans.

Title II of the bill provides a stable funding source for the Superfund program for five years. In addition, it provides for $250 million in mandatory spending during this period to pay for the liability relief provided in Title III of the bill.

Title III addresses liability matters. The provisions primarily focus on exempting certain parties from liability, including small businesses, recyclers, and those who generated municipal solid waste. In doing so, the bill makes clear that, with certain exceptions, this liability is transferred to the Superfund Trust Fund, and not to parties that remain liable at Superfund sites. This is accomplished largely through the establishment of an allocation system, under which the liability of parties at Superfund sites is determined and settled outside of the Federal court system.

Title IV of the bill addresses public health matters.

BACKGROUND AND NEED FOR LEGISLATION

A. SHORT BACKGROUND

In 1980, Congress enacted CERCLA to clean up toxic waste sites across the country. Under CERCLA, Congress created a $1.6 billion trust fund (the "Superfund") as a source of funding for the Superfund program, and established a retroactive, strict, joint and several liability scheme to identify "potentially responsible parties" (PRPs) to pay for the cleanups. It also provided the Environmental Protection Agency (EPA) with authority to clean up sites, and provided EPA and third parties with authority to sue others to recover cleanup costs.

In 1986, Congress enacted the Superfund Amendments and Reauthorization Act (SARA), amending CERCLA to establish, among other things, detailed rules for remedy selection cleanup standards for Superfund sites and providing more specific cleanup standards. SARA also allowed EPA to pay a portion of the costs of cleaning up a site out of the Trust Fund, and gave EPA the authority to establish non-binding allocations of responsibility. In 1990, Congress extended Superfund's authorization and taxing authorities as part of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508 §6301, amending CERCLA §111 (42 U.S.C. §9611)). The authorization of appropriations was extended through September 30, 1994, and taxes were provided through December 31, 1995. Notwithstanding the expiration of these authorizations, Congress has continued to fund the Superfund program out of the excess revenues that had built up in the Superfund Trust Fund. Through Fiscal Year 1999, Congress appropriated $20.6 billion for Superfund.

B. OVERBROAD SUPERFUND LIABILITY SCHEME

1. A Nightmarish web of litigation

Superfund's liability scheme has generated enormous amounts of litigation and transaction costs. This scheme has been described as unfair because it holds parties jointly and severally liable for the costs of site cleanups, even where a party did not cause a significant portion of the contamination at a site. When it enacted CERCLA in 1980, the Conference Committee rejected the work of the House Committee on Interstate and Foreign Commerce directing that common principles of causation should govern the Superfund liability scheme. At that time, the Committee on Interstate and Foreign Commerce recommended:

> The Committee intends that the usual common law principles of causation, including those of proximate causation, should govern the determination of whether a defendant "caused or contributed" to a release or threatened release. Whether a person caused or contributed to a release is a factual inquiry to be determined with reference to the particular circumstances of the case. Thus, for instance, the mere existence of a generator's or transporter's waste in a site with respect to which cleanup costs are incurred would not, in and of itself, result in liability. * * * The Committee intends that for liability to attach under this section, the plaintiff must demonstrate a causal or contributory nexus between the acts of the defendant and the con-

ditions which necessitated the response action. (H. Rpt. 96–1016, 96th Cong., 2nd Sess., pt. 1, at 33–34 (1980))

However, the enacted liability scheme adopted the Senate approach, eliminating the requirement for proximate causation. In hindsight, this decision paved the way for Superfund to be one of the most costly and litigious Federal environmental statutes ever devised.

Because Superfund's liability scheme is strict, joint and several, to hold someone liable for cleanup costs, all that the government must show is that a person falls in one of the categories of liable parties under Superfund (owner, operator, generator, or transporter) at a facility at which there has been a release of hazardous substances. When two or more persons acting independently caused a distinct or single harm for which there is a reasonable basis for division according to the contribution of each, each is subject to liability only for the portion of the total harm that he had himself caused.

CERCLA provides EPA authority to either fund a cleanup under section 104 or compel potentially responsible parties (PRPs) to take cleanup action at a site. Either EPA or the PRPs initially involved in the cleanup can use the provisions of sections 107 and 113 of CERCLA to seek contribution in court from other PRPs. The definition of PRPs under CERCLA is sweeping and the liability scheme contains limited protection for defendants. There is no need to find a party negligent. There is no need to find that a party caused pollution. There is no need to find that a party's contribution of waste is a significant reason for the costs of the cleanup. There is no statute of limitations related to the activity that triggers liability. A single party can be held liable for the entire cost of the cleanup regardless of the amount he or she contributed. The liability scheme applies retroactively and, thus, creates liability on parties who had no knowledge that would have allowed them to alter their actions. Moreover, by the time Superfund law suits are filed, the original party that operated the site or generated the waste may no longer exist. Under these circumstances, courts are often confronted with the question of whether, and in what situation, inheritors or purchasers of assets of the original party should bear costs under the Superfund retroactive liability scheme.

Ultimately, if a party is an owner or operator of a facility placed on the National Priorities List (NPL), that party is potentially liable if hazardous substances have been released on the property. If a party is a generator or transporter, that party is potentially liable if they sent any amount of material that meets the definition of a hazardous substance to a facility, and most courts have not required a causal link between that party's activities and the harm alleged. Examples of parties that have been swept into this liability web are small businesses and municipalities; parties that disposed of ordinary garbage; parties that sent material to recycling facilities; prospective purchasers of property; property owners who own land under which contaminants have migrated; parties that only contributed small quantities of waste to a site; charitable organizations; and cleanup contractors.

The net result has been 19 years of controversy and waves of litigation. A typical situation involves EPA suing a smaller number of PRPs to begin cleanup activities. Those PRPs then sue numerous

other PRPs, regardless of size or significance to the cleanup, for contribution of funds. Many PRPs can then sue insurance companies over coverage for retroactive liability. This scenario often occurs at both the Federal and State levels.

2. EPA enforcement policy and insufficient administrative reform

In 1989, to advance its goal of increasing the number of cleanups conducted by private parties, EPA adopted an "enforcement first" policy. Under this policy, EPA, through an agreement or an order, seeks to compel private parties to conduct cleanups. This policy has resulted in more PRP-lead cleanups, but has also resulted in a great deal of contentious third-party litigation. EPA has tried to reduce third-party litigation by providing separate de minimis settlements for parties who contributed one percent or less of the volume of waste to a site. According to EPA's Superfund Reforms Annual Report for FY 1998, EPA has completed settlements with 18,000 de minimis parties, of which 12,000 received settlements in the past 6 years. However, this administrative reform has not addressed the concerns of many small parties with the Superfund program. Under this reform, EPA contacts de minimis parties directly, informs them of their potential liability, and offers them a settlement. These small parties are often confused by the Superfund statute and process and do not understand why they may be responsible for cleanup costs. At a hearing in August 1999 before the Subcommittee on Finance and Hazardous Materials, Mike Nobis of JK Creative Printing, testifying on behalf of the National Federation of Independent Business, described this process as an "ongoing nightmare for small businesses, their families, friends, and neighbors."

3. Testimony citing the problems with the superfund liability scheme

Since 1994, dozens of witnesses, including EPA officials, governors, mayors, lawyers, and small businesses have testified that the liability scheme is fundamentally unfair, excessively litigious, and delays cleanup. In 1997, Barbara Williams, a restaurant owner from Gettysburg, Pennsylvania, testified before the Subcommittee on Finance and Hazardous Materials about a claim for over $76,000 in response costs against her business for disposal of "chicken bones." Her case involved the Keystone landfill, which was placed on the NPL in 1987 and spawned literally hundreds of third-party lawsuits that brought over 700 defendants into the Superfund liability web with a huge portion of costs going to lawyers hired to defend the parties. In response to these concerns, EPA has cited administrative reforms, such as its use of the de minimis settlement policy, as a panacea for small contributors. However, the record of the Subcommittee on Finance and Hazardous Materials clearly indicates that the nightmare faced by small businesses continues to this day and that legislative reform remains sorely needed:

> For my company, it started on February 10, 1999, when we received a letter in the mail from the EPA that stated 6 large local corporations and the city were looking to recover some of their cost for the cleanup of our local landfill. * * * When I read the letter, I felt sick. For me and

> the 148 other companies that received the letter, it was unexpected and without warning. At first, we had no idea of what the letter was telling us. It was asking us, as small companies, to "contribute" 3.1 million dollars. * * * As I read through the list, I saw Catholic grade schools, our local university, bowling allies, restaurants, small Mom and Pop trash haulers, furniture stores and our local McDonald's listed to pay. Most of the companies named only generated waste like plain office trash or food scraps. * * * EPA and the 6 major PRP's weren't concerned about the waste that was sent to the landfill as being hazardous. The make-up of what we sent there was irrelevant. It was the volume that we sent to the landfill that they cared about, even if the trash was not dangerous. They knew many of us didn't send hazardous waste and they knew we couldn't afford to fight them. We became an easy money source for them because of the real threat of litigation by the major PRP's. And when you think about it, what small company can take on 6 large corporations and the EPA alone and win? If we didn't accept the settlement offer, the major PRP's would sue us for the entire cleanup cost. We were stuck. Pay up or be wiped out. The attorney for the EPA admitted that it would cost us more to fight them in court to prove we didn't haul hazardous waste to the landfill than to just go ahead and settle. It all came down to money * * * and they had more than we did.

(Mike Nobis, JK Creative Printers, September 22, 1999, testifying before the Subcommittee on Finance and Hazardous Materials.)

C. DISINCENTIVES TO BROWNFIELDS REDEVELOPMENT AND STATE RESPONSE PROGRAMS

1. Uncertainty and lack of finality from CERCLA and Solid Waste Disposal Act enforcement and liability schemes

Under CERCLA, the Federal government oversees thousands of short-term cleanups and over a thousand long-term cleanups. In addition, CERCLA liability provisions can apply to hundreds of thousands of site cleanups that are not on the NPL list, including those labeled voluntary cleanups, brownfields cleanups, and other cleanups where State governments provide direct oversight as long as the cases involve actual or threatened releases of hazardous substances.

Under CERCLA, a number of different parties can compel cleanup, spend money, or require contribution at a broad universe of sites. First, the Federal government is authorized to spend up to $2 million from the Superfund trust fund to conduct removals at a given site for up to 12 months. Second, the Federal government is authorized to spend money from the Superfund trust fund on long-term remedial actions at NPL sites. Third, the Federal government is authorized to compel cleanups by issuing orders at any site under the emergency authorities authorized by CERCLA section 106. Fourth, Federal, State, and tribal "trustees" are authorized to compel restoration of natural resources by proving liability and damages in Federal court at any site where there are hazardous

substances and natural resource damages. Finally, the Federal government, States or "potentially responsible parties" are authorized to seek contribution from other responsible parties under CERCLA in Federal court at any site where there are hazardous substances.

In addition to Federal authority under CERCLA, the Solid Waste Disposal Act (SWDA, 42 U.S.C. § 6901 *et seq.*) provides a citizen with the right to seek to compel a cleanup under authority of section 7002(a)(1)(B), and EPA can compel a cleanup under section 7003 (42 U.S.C. § 6972(a)(1)(B), 42 U.S.C. § 6973). These Federal causes of action are in addition to other causes of action that may be available under State statutory and common law. The net result can mean great legal uncertainty for the status of cleanups. For example, an action approved by a State agency is still subject to potential causes of action by Federal agencies under CERCLA and SWDA. Sites with approved remedial actions may also be subject to subsequent litigation by trustees under the natural resource damages provisions of section 107 (a) and (f) of CERCLA (42 U.S.C. § 9607 (a), (f)). Furthermore, PRPs can initiate contribution actions in any of these situations.

According to a survey conducted by the U.S. Conference of Mayors in April 1999, 180 cities that were assessed have over 19,000 brownfields sites representing more than 178,000 acres (Hearing on Legislation to Improve the Comprehensive Environmental Response, Compensation, and Liability Act before the Subcommittee on Finance and Hazardous Materials, 106th Cong., 1st Sess., (1999) (Statement of Mr. Paul Helmke, Mayor of Fort Wayne, Indiana)). Many witnesses have testified that sites are not being cleaned up because people are afraid that cleaning up these sites and redeveloping them will subject them to increased risk of Superfund liability. Moreover, potential agreements with State authorities do not provide sufficient certainty and finality to eliminate the potential for second guessing of cleanup or liability determinations, where action under Federal laws would override the decisions of State authorities. As a result, developers have been reluctant to invest in brownfields, where they can choose to initiate new projects in areas that have no industrial past. Selection of these "greenfields" has come under recent criticism as a driver of "urban sprawl."

Prescriptive remedy selection requirements have also been a hindrance in brownfields and voluntary cleanups. These requirements operate through the CERCLA liability and enforcement scheme. Section 121(a) (42 U.S.C. § 9621(a)) on "Cleanup Standards" states, in relevant part, that:

> The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106.

Section 120(a)(2) of CERCLA states that:

> All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located * * * applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the same extent

as such guidelines, rules, regulations and criteria are applicable to other facilities. (42 U.S.C. § 9620(a)(2))

Accordingly, the section 121 remedy selection requirements apply not only to sites on the NPL, but also to any remedial actions compelled by orders under CERCLA section 106 and to Federal facilities cleaned up under other Federal authority. In addition, courts have held that contribution actions under section 113 are subject to restrictions posed under the liability provisions of section 107. Section 107(a)(4)(A) makes clear that parties are liable for "all cost of removal or remedial action incurred by the United States Government or a State or an Indian Tribe not inconsistent with the national contingency plan" (42 U.S.C. § 9607(a)(4)(A)).

The remedy selection criteria can apply where the Federal government is financing cleanups, where PRPs are compelled to undertake remedial actions under CERCLA, or where private party cleanups or the government are seeking compensation through contribution suits for remedial actions.

2. Selected congressional testimony citing the problems with Federal law hindering brownfields and State response programs

> We know that Superfund's liability regime too often drives private sector investors from brownfields to more pristine locations. We know these rules punish innocent parties, fueling a development cycle that is unsustainable. We know that current law must be reformed to undo the bias toward new land resources over recycling land that is already urbanized or developed. Mitigating the effects of this nearly twenty-year Superfund policy will require actions on several fronts. * * * We have learned that liability under Superfund is their dominant concern. Despite progress in securing "comfort letters" at many sites, lender liability reforms and growing confidence in state program efforts, there is real anxiety, and we would wish otherwise, among bankers and other lenders on these issues. The specter of Superfund liability severely limits their ability to increase the flow of private capital into these projects. * * * Mayors have been very consistent in urging more attention in federal policies to a "one-stop" brownfields regulatory program at the state level, where states, which are vested with delegated authority, can provide more coordinated and integrated programs. * * * I would note that H.R. 2580 provides authority for RCRA waivers to allow states to integrate this law's permit requirements with cleanups of brownfields. I understand that this provision does not diminish or alter RCRA requirements, but is intended to give states some flexibility in delivering a more responsive and coordinated regulatory program in addressing brownfields. This or some variant of this provision would be very helpful to those of us at the local level who often find ourselves confronting increased complexity at specific sites as we work to return them to productive use.

(The Honorable Paul Helmke, Mayor of Fort Wayne, Indiana, on behalf of the U.S. Conference of Mayors, August 4, 1999, testifying before the Subcommittee on Finance and Hazardous Materials.)

> Legal authority for qualified states to play the primary role in liability clarification is critical to the effective redevelopment of local brownfields sites. A state lead will increase local flexibility and provide confidence to developers, lenders, prospective purchasers and other parties that brownfields sites can be revitalized without the specter of Superfund liability or the involvement of federal enforcement personnel. Parties developing brownfields want to know that the state can provide the last word on liability, and that there will be only one policeman, barring exceptional circumstances.

(Donald J. Stypula, Manager, Environmental Affairs, National Association of Local Government Environmental Professionals, August 4, 1999, testifying before the Subcommittee on Finance and Hazardous Materials.)

> H.R. 2580 succinctly mandates that U.S. EPA must receive a Governor's concurrence prior to listing a facility on the National Priorities List. We support this provision as it is clear, unambiguous and satisfies our goal of clarifying the role of the federal Superfund program in the future. * * * It is our belief that we can no longer afford to foster the illusion that State-authorized cleanups may somehow not be adequate to satisfy federal requirements. The potential for U.S. EPA overfile and for third party lawsuits under CERCLA is beginning to cause many owners of potential brownfields sites to simply "mothball" the properties. * * * H.R. 2580 satisfies the goal of clarifying which governmental entity is and should be responsible for deciding when a cleanup is complete and when a party is released from liability.

(Claudia Kerbawy, testifying on behalf of the National Governors Association and the Association of State and Territorial Waste Management Officials, August 4, 1999, before the Subcommittee on Finance and Hazardous Materials.)

> I am here to tell you that, in actuality, the true Brownfields market has not kept pace with expectations. Why? We have been asking our clients just that. Our clients' responses are fairly unanimous. They fear that EPA will "second guess" Brownfield cleanups, and require costly site rework at a later date to reach a different site cleanup standard so they "hold onto" lightly contaminated parcels instead of turning them over to beneficial reuse. Moreover, there remains potential down-stream liability associated with that reuse which further retards the process. These concerns result in owners of such properties not undertaking redevelopment efforts at viable Brownfields sites. While EPA has indicated a willingness to enter into, on a case-by-case basis, prospective purchaser agreements at Brownfields sites, the process to enter into those agreements is quite time consuming and there is no certainty in the end that EPA will agree to a prospective purchaser agreement.

> H.R. 2580's provisions in Section 3 provide the finality in Brownfields decisions that are truly needed in this market, and the actual cleanups, are to accelerate. * * * This provision is very important to spurring increased voluntary cleanup actions at Brownfields sites across the country and reducing possible risks to nearby populations that are currently not addressed, expressly because of the fear of federal liability.
>
> The permit waiver for on-site response actions that is contained in H.R. 2580 would remove the barriers to actual on-site cleanup and significantly increase the pace of Brownfields cleanups.

(Mr. Jonathan Curtis, President, The Environmental Business Action Coalition, August 4, 1999, testifying before the Subcommittee on Finance and Hazardous Materials.)

3. Insufficient administrative reforms

To address concerns of uncertainty and lack of finality, EPA created a policy of entering into "prospective purchaser agreements" with persons who acquire property with existing contamination, where the new owner did not cause or contribute to that contamination. These agreements provide a "covenant not to sue" from EPA to the new purchaser for existing contamination. However, EPA has finalized only 90 of these agreements, which must be approved by the Department of Justice. Moreover, these agreements do not protect new property owners from third party litigation. As a result, prospective purchaser agreements have not proven to be a sufficient solution for encouraging the redevelopment of over 500,000 brownfields sites. Moreover, prospective purchaser agreements do not address the problem identified by the U.S. Conference of Mayors regarding the "moth-balling" of contaminated property. Many owners of abandoned or underutilized industrial facilities are unwilling to even investigate their property for fear of open-ended CERCLA liability. As a result, former industrial property remains idle, and possibly contaminated.

To provide additional incentives for brownfields redevelopment, in 1995, EPA began providing grants to local governments for brownfields site assessments. These grants are intended for use in investigating property for potential contamination and facilitating its reuse. Since 1997, EPA has also provided grants for establishing revolving loan funds to fund site cleanup. While EPA clearly has the authority to provide funding for site investigations, EPA has relied upon less specific authority in providing Superfund trust fund dollars for cleanup of brownfields sites. Moreover, using funds from the Superfund trust fund requires a recipient of a cleanup grant to follow all the rules and regulations that apply to Federal cleanups under Superfund. These rules prohibit the party from using the funding for removal of asbestos, lead paint, or petroleum products. These constraints greatly reduce the usefulness of this funding.

D. UNREALISTIC RISK ASSESSMENT AND REMEDY SELECTION

1. Problems with Superfund risk assessment practices and application of certain CERCLA remedy selection provisions

There are a number of engineering and institutional actions that can protect human health and the environment and are cost-effective. The specific mix of engineering and institutional actions that are appropriate vary based upon site-specific circumstances. Congress received substantial testimony that the best remedial decision starts with a realistic, unbiased, and scientific assessment of the risk at the site, based on the current and reasonably anticipated uses of land, water and other resources.

Moreover, national assumptions about the best mix of engineering and institutional actions too often make little sense in a site-specific context. Thus, the national preference for permanence and treatment in current CERCLA section 121(b) provides insufficient guidance that does not account for site-specific issues, such as practicality, current and reasonably anticipated uses of land, water and other resources, increases in risk to the community, workers, or the environment from treatment options, reasonableness of costs, or the views of the community. Practicality and reasonably anticipated uses will vary at sites. A site that is likely to be an industrial site should not be treated as though it is a residential area. The Hanford nuclear facility should not be treated the same as a municipal landfill. Furthermore, incineration, construction, and traffic at a site may increase risks to the community, workers, or the environment. Specific engineering options may create more risks than they address. Thus, the preference for treatment and permanence in section 121(b) should not require "treatment for treatment sake". Site-specific issues such as practicality; current and reasonably anticipated uses; substitution risks created by treatment options; and whether the community supports the treatment option selected at the site are factors that should be considered.

Similarly, other provisions in section 121(d) have proven to be a bureaucratic exercise which may or may not be useful to meet the standards in section 121(a). The result has been a disconnect between the national criteria and the need for streamlined, site-specific risk management.

2. Selected congressional testimony supporting legislative changes to Superfund risk practices and certain remedy selection provisions

The Congressional record identifying problems with Federal remedy selection under CERCLA is extensive and covers hearings dating back four Congresses. The following testimony, on behalf of cleanup contractors, attests that these long-standing concerns persist:

> I am here to tell you that, as a representative of the professional community that recommends and implements cleanup actions, more flexibility in the law is needed. The present law is overly prescriptive and contains too little opportunity to accelerate cleanups or initiate rework within the Superfund "process." In addition, work is often performed for the sake of "producing evidence for litigation" instead of just to get on with cleanup. We are pleased that

> H.R. 2580, Congressman Greenwood's Land Recycling Act of 1999, also contains some remedy reform provisions. These provisions include: Consideration of future uses of land in remedy selection decisions. Addressing the preference for treatment and permanent solutions. Deleting the "RA" from "ARARs," meaning that only applicable requirements will apply. (Note: This is an important change because it is often difficult to determine what is also "relevant and appropriate" cleanup requirements). Making risk assessments more realistic and based on scientific evidence and site-specific information. We fully support these well-crafted provisions.

(Mr. Jeremiah Jackson, Ph.D., PE, Environmental Business Action Coalition, in testimony before the Subcommittee on Finance and Hazardous Materials, September 22, 1999.)

Work on reforming remedy selection provisions has included numerous stakeholders. The provisions of H.R. 2580, as reported out of this Committee, are a subset of prior legislative efforts, particularly those from last Congress. The following statements support concepts that were incorporated into H.R. 2580:

> * * * ASTSWMO supports the determination of future land use prior to the calculation of site specific risk assessments and the selection of remedial alternatives. Determining the future land use up-front is a reform which has been established in most State programs and is a common sense measure * * *
>
> * * * State Waste Managers concur with the process outlined in this title for site-specific risk assessments. The great diversity of the United States in terms of geography, climate and population makes, in our opinion, the application of uniform national cleanup standards impractical. The substantial variations in temperature, precipitation, soils and a host of other factors from region to region and State to State preclude the development of standards which will ensure that the cleanup levels required for a particular site are commensurate with the level of risk actually posed at the site. Standards which are protective for all sites will too often result in overly conservative levels at many sites, prolonging debate and increasing the cost of remediation with no concomitant increase in protection * * *

(Letter from Howard Reitman, President, Association of State and Territorial Solid Waste Management Officials, to Subcommittee on Finance and Hazardous Materials Chairman Michael G. Oxley, November 17, 1997.)

> * * * The provisions provide useful direction for identifying reasonably anticipated future resource uses and for performing objective, science-based assessments and characterizations of health and environmental risks * * *

(Commission on Risk Assessment and Risk Management, in Memorandum to Commerce Committee majority staff, August 29, 1997.)

> The first and most important strength of the draft is the requirement that scientific information about risk play a central role in remedial decisions as well as communication with the public * * * The science-based approach to risk assessment will enhance public health by shifting remedial resources away from "unrealistic and insignificant" risk toward important public health problems. It is precisely this change in orientation that is necessary to enhance the effectiveness and credibility of the Superfund program * * * [T]he provisions on "Presentation of Risk Information" * * * are extremely useful because they will provide affected communities with a better understanding of the nature and magnitude of the risks associated with a site * * *

(John Graham, Director, Harvard Center for Risk Analysis, in letter to Committee on Commerce Chairman Tom Bliley and Subcommittee on Finance and Hazardous Materials Chairman Michael G. Oxley, October 1, 1997.)

3. Reforms to the cleanup program

In recent years, in response to criticism over excessive remedy costs, EPA policies have allowed remedies to be tailored to address expected future uses. In many instances, this has resulted in less expensive cleanup options not involving treatment. Currently, about one-third of Superfund cleanups involve active treatment of the hazardous substances at the site. Both EPA Administrator Carol M. Browner and EPA Assistant Administrator Timothy Fields have testified that the cost of cleaning up a Superfund site has been reduced by approximately 20 percent, on average, as a result of EPA's administrative reforms. EPA's Superfund Reforms Annual Report for FY 1998 indicates that by updating older remedies and by providing for EPA Headquarters review of high cost remedies, EPA has been able to save over $1 billion in estimated cleanup costs. These cost savings are particularly significant because EPA has determined that, in many instances, experience with the program indicates that lower cost remedies may provide long term protection of human health and the environment, eliminating the need for many high cost remedies that had been selected before EPA's remedy reforms were put in place.

E. STATUS AND FUTURE OF THE NATIONAL PRIORITIES LIST

As of September 1999, the NPL consisted of 1223 facilities. In addition, 58 facilities have been proposed and are awaiting final listing, for a total of 1281 proposed and final facilities. Over the 19-year period of the Superfund program, 189 sites have been deleted from the NPL (180 because they were cleaned up and 9 because they were deferred to other cleanup programs). At least 50 of the deleted sites required no remedial action. Of the sites currently on the NPL, 443 have completed construction of the remedy. In addition, 459 sites on the NPL have cleanup construction underway, and an additional 214 have had some on-site activity, in the form of a removal action.

The number of sites that are entering the NPL pipeline has been trending downward in recent years and the Committee expects that

trend to continue. In November 1998, the General Accounting Office (GAO) reported that, of the 3036 sites currently in EPA's database of sites where there has been a release of a hazardous substance (CERCLIS), EPA and State officials collectively anticipated that only 232 sites could be placed on the NPL in the future. EPA officials identified 106 sites that they believed might be placed on the list, State officials identified another 100 sites, and both EPA and State officials agreed that 26 sites might be potential National Priority List candidates. (U.S. General Accounting Office, Hazardous Waste: Information on Potential Superfund Sites, Nov. 1998, at 2–3).

F. CONCLUSION

H.R. 2580 will help assure State finality in order to encourage brownfields redevelopment, and insulate cleanup volunteers, brownfields redevelopers, and States, where it is appropriate, from the risks associated with CERCLA liability. The bill is intended to facilitate protective and realistic cleanups that consider reasonably anticipated uses of land, water and other resources; risk to the community and workers; and sound science. The bill further provides grants for site assessment and cleanup revolving loan funds. In addition, H.R. 2580 addresses Superfund liability through an allocation process, as well as by providing liability defenses and exemptions for innocent landowners (including brownfields redevelopers), small businesses, parties arranging for recycling, and persons who send ordinary garbage to Superfund sites. The Committee expects these reforms to reduce litigation and expedite cleanup, thereby increasing the protection of human health and the environment.

HEARINGS

The Subcommittee on Finance and Hazardous Materials held a hearing on the Status of the Federal Superfund Program on March 23, 1999. The Subcommittee received testimony from: The Honorable Timothy Fields, Jr., Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency; Mr. Peter F. Guerrero, Director, Environmental Protection Issues, General Accounting Office; and Ms. Claudia Kerbawy, Chair, Federal Superfund Focus Group, Association of State and Territorial Solid Waste Management Officials.

The Subcommittee on Finance and Hazardous Materials held a second hearing August 4, 1999, on Legislation to Improve the Comprehensive Environmental Response, Compensation and Liability Act: Provisions in H.R. 1300, H.R. 1750, and H.R. 2580. The Subcommittee received testimony from: The Honorable Timothy Fields, Jr., Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency; The Honorable Paul Helmke, Mayor of Fort Wayne, Indiana, representing the U.S. Conference of Mayors; Mr. Donald J. Stypula, Manager of Environmental Affairs, Michigan Municipal League, representing the National Association of Local Government Environmental Professionals; Ms. Claudia Kerbawy, Chair, Federal Superfund Focus Group, Association of State and Territorial Solid Waste Management Officials; Ms. Teresa Mills, representing the Buckeye Envi-

ronmental Network; Mr. Jonathan G. Curtis, President, Environmental Business Action Coalition; Ms. Karen Florini, Senior Attorney, Environmental Defense Fund; and Mr. Gary Garczynski, Treasurer, National Association of Home Builders.

The Subcommittee on Finance and Hazardous Materials held a third hearing on September 22, 1999, on Legislation to Improve the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): Provisions in H.R. 1300 and H.R. 2580. The Subcommittee received testimony from: The Honorable Timothy Fields, Jr., Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency; Mr. Chris Jeffers, City Manager, Monterey Park, representing the National Association of Counties; Mr. Mike Nobis, JK Creative Printer, representing the National Federation of Independent Business; Mr. Gordon Johnson, Deputy Bureau Chief, Office of the Attorney General, State of New York, representing the National Association of Attorneys General; Ms. Jane Williams, Chair, Waste Committee; and Mr. Jeremiah D. Jackson, Ph.D., President-Elect, Environmental Business Action Coalition.

COMMITTEE CONSIDERATION

On September 29, 1999, the Subcommittee on Finance and Hazardous Materials met in open markup session and approved H.R. 2580, the Land Recycling Act of 1999, for Full Committee consideration, amended, by a rollcall vote of 17 yeas to 12 nays. On October 13, 1999, the Full Committee met in open markup session and ordered H.R. 2580 reported to the House, amended, by a roll call vote of 30 yeas to 21 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following are the record votes on the motion to report H.R. 2580 and on amendments offered to the measure, including the names of those Members voting for and against.

COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 15

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: A Substitute Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Towns, #1A, to strike all after the enacting clause and insert in lieu thereof text entitled the Community Revitalization and Brownfield Cleanup Act of 1999, which includes provisions dealing with brownfields remediation, innocent landowner and related liability provisions, State voluntary response programs, and liability relief for small business, municipalities, and recyclers.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 23 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall	X		
Mr. Barton		X		Mr. Boucher	X		
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown			
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green	X		
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin				Mr. Strickland	X		
Mr. Rogan		X		Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 16

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Ms. Capps, #1C, to add consideration of sensitive subpopulations to Superfund cleanup standards.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 22 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall			
Mr. Barton		X		Mr. Boucher	X		
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown			
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green	X		
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin				Mr. Strickland	X		
Mr. Rogan		X		Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 17

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Stupak, #1E, to modify the standards for remediation of dry cleaning solvents for dry cleaners.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 20 yeas to 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton		X		Mr. Boucher			
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns				Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown			
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent				Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield				Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green		X	
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan				Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson	X			Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 18

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Pallone, #1G, to add additional Superfund cleanup standards under section 121 of CERCLA relating to surface and groundwater.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 17 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton		X		Mr. Boucher			
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown			
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent				Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn			
Mr. Coburn		X		Mr. Green			
Mr. Lazio		X		Ms. McCarthy			
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan				Ms. DeGette	X		
Mr. Shimkus				Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther			
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 19

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Barrett, #1H, to add additional provisions to section 103 to expand the President's authority to add a site to National Priorities List (NPL) at the request of a local government without the concurrence of the Governor of the State in which the site is located.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 17 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin				Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey			
Mr. Bilirakis		X		Mr. Hall	X		
Mr. Barton		X		Mr. Boucher			
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown			
Mr. Greenwood		X		Mr. Gordon		X	
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent				Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel			
Mr. Ganske		X		Mr. Sawyer			
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green			
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan				Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 20

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Pallone, #1K, to delete changes to section 121(b) regarding "preference for treatment" requirements and other changes to CERCLA's remedy selection provisions.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 23 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall	X		
Mr. Barton		X		Mr. Boucher	X		
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield				Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green			
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan		X		Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 21

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Waxman, #1L, to expand annual reporting requirements for potentially responsible parties at NPL sites and facilities subject to section 313 of the Emergency Planning and Community Right To Know Act to provide materials accounting data and additional information.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 22 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall		X	
Mr. Barton		X		Mr. Boucher	X		
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray				Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green			
Mr. Lazio				Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan		X		Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 22

BILL: H.R. 2580, Land Recycling Act of 1999

QUESTION: Shall the Committee sustain the ruling of the Chair, who upheld a point of order made against an amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Klink, #1M, to add new sections to the bill addressing interstate transportation and disposal of municipal solid waste, on the grounds that the amendment was nongermane?

DISPOSITION: **THE RULING OF THE CHAIR WAS SUSTAINED** by a roll call vote of 35 yeas to 15 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell	X		
Mr. Tauzin	X			Mr. Waxman	X		
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis	X			Mr. Hall	X		
Mr. Barton	X			Mr. Boucher	X		
Mr. Upton	X			Mr. Towns	X		
Mr. Stearns	X			Mr. Pallone		X	
Mr. Gillmor	X			Mr. Brown		X	
Mr. Greenwood	X			Mr. Gordon	X		
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal	X			Mr. Rush		X	
Mr. Largent	X			Ms. Eshoo		X	
Mr. Burr				Mr. Klink		X	
Mr. Bilbray	X			Mr. Stupak		X	
Mr. Whitfield	X			Mr. Engel		X	
Mr. Ganske	X			Mr. Sawyer		X	
Mr. Norwood	X			Mr. Wynn		X	
Mr. Coburn	X			Mr. Green			
Mr. Lazio				Ms. McCarthy		X	
Mrs. Cubin	X			Mr. Strickland	X		
Mr. Rogan	X			Ms. DeGette	X		
Mr. Shimkus	X			Mr. Barrett		X	
Mrs. Wilson	X			Mr. Luther		X	
Mr. Shadegg	X			Ms. Capps		X	
Mr. Pickering	X						
Mr. Fossella	X						
Mr. Blunt	X						
Mr. Bryant	X						
Mr. Ehrlich	X						

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 23

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Waxman, #1N, to modify the definition of hazardous substance to eliminate the petroleum exclusion and include fuel additives under CERCLA.

DISPOSITION: **NOT AGREED TO** by a roll call vote of 22 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall	X		
Mr. Barton		X		Mr. Boucher		X	
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood		X		Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush	X		
Mr. Largent		X		Ms. Eshoo	X		
Mr. Burr				Mr. Klink	X		
Mr. Bilbray				Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn		X		Mr. Green			
Mr. Lazio		X		Ms. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland	X		
Mr. Rogan		X		Ms. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Ms. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
ROLL CALL VOTE # 24

BILL: H.R. 2580, Land Recycling Act of 1999

MOTION: Motion by Mr. Bliley to order H.R. 2580 reported to the House, amended.

DISPOSITION: **AGREED TO** by a roll call vote of 30 yeas to 21 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Bliley	X			Mr. Dingell		X	
Mr. Tauzin	X			Mr. Waxman		X	
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis	X			Mr. Hall	X		
Mr. Barton	X			Mr. Boucher		X	
Mr. Upton	X			Mr. Towns		X	
Mr. Stearns	X			Mr. Pallone		X	
Mr. Gillmor	X			Mr. Brown		X	
Mr. Greenwood	X			Mr. Gordon	X		
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal	X			Mr. Rush		X	
Mr. Largent	X			Ms. Eshoo		X	
Mr. Burr				Mr. Klink		X	
Mr. Bilbray	X			Mr. Stupak		X	
Mr. Whitfield	X			Mr. Engel		X	
Mr. Ganske	X			Mr. Sawyer		X	
Mr. Norwood	X			Mr. Wynn		X	
Mr. Coburn	X			Mr. Green			
Mr. Lazio	X			Ms. McCarthy		X	
Mrs. Cubin	X			Mr. Strickland		X	
Mr. Rogan	X			Ms. DeGette		X	
Mr. Shimkus	X			Mr. Barrett		X	
Mrs. Wilson	X			Mr. Luther		X	
Mr. Shadegg	X			Ms. Capps		X	
Mr. Pickering	X						
Mr. Fossella	X						
Mr. Blunt	X						
Mr. Bryant	X						
Mr. Ehrlich	X						

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COMMITTEE ON COMMERCE -- 106TH CONGRESS
VOICE VOTES
10/13/1999

BILL: H.R. 2580, Land Recycling Act of 1999

AMENDMENT: An Amendment in the Nature of a Substitute by Mr. Oxley, #1.

DISPOSITION: AGREED TO, amended, by a voice vote.

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Greenwood, #1B, to add a new Title on Public Health that (1) modifies public health authorities for the Agency for Toxic Substances and Disease Registry; (2) requires consideration of sensitive subpopulations in risk assessments; (3) requires a two-year cancer risk study; (4) provides for risk communication; and (5) expands disclosure requirements for hazardous substances at Superfund sites.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Tauzin, #1D, to extend innocent property owner protection for rights of way to cover pipelines and easements.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Ms. DeGette, #1F, to modify section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding application to Federal facilities.

DISPOSITION: AGREED TO by a voice vote.

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Stupak, #1I, to amend section 102(b)(5) by broadening the Federal reopener clause.

DISPOSITION: NOT AGREED TO by a voice vote.

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Ms. DeGette, #1J, to delete changes to section 121(d) regarding "applicable relevant and appropriate requirements" (ARARs) and other changes to CERCLA's remedy selection provisions.

DISPOSITION: NOT AGREED TO by a voice vote.

AMENDMENT: An Amendment to the Oxley Amendment in the Nature of a Substitute by Mr. Klink, #1M, to add new sections to the bill addressing interstate transportation and disposal of municipal solid waste.

DISPOSITION: A POINT OF ORDER AGAINST THE AMENDMENT ON THE GROUNDS THAT IT WAS NONGERMANE WAS SUSTAINED.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held legislative and oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2580, the Land Recycling Act of 1999, would result in new direct spending in the amounts specified in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 29, 1999.

Hon. TOM BLILEY,
Chairman, Committee on Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2580, the Land Recycling Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for federal costs are Susanne S. Mehlman and Perry Beider. The contact for the state and local impact is Shelley Finlayson and the contacts for the private-sector impact are Patrice Gordon and Perry Beider.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

H.R. 2580—Land Recycling Act of 1999

Summary: H.R. 2580 would amend and reauthorize spending for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as the Superfund Act, which governs the cleanup of sites contaminated with

hazardous substances. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

The Superfund program is administered by the Environmental Protection Agency (EPA), which evaluates the need for cleanup at sites brought to its attention, identifies parties liable for the costs of cleanup, and oversees cleanups conducted either by its own contractors or by the liable parties. These EPA activities are currently funded by appropriations from the Hazardous Substance Superfund Trust Fund and from the general fund of the Treasury.

CBO estimates that the bill would authorize appropriations of $7.6 billion over the 2000–2004 period for the Superfund program, including $1.4 billion already appropriated for 2000. H.R. 2580 would establish a new method of determining the extent of liability of potentially responsible parties (PRPs) at Superfund sites, and a portion of this liability would usually be assigned to EPA.

The bill also would provide direct spending authority of $1.25 billion over the 2000–2004 period for EPA to compensate certain private parties for completing cleanup activities for which they are not entirely liable and where some amount of liability has been assigned to EPA. Finally, enacting the bill would result in a decrease in the amount of money recovered by EPA from private parties who remain liable for cleanup expenses incurred by the agency. We estimate that these forgone recoveries would total $188 million over the 2000–2004 period. Overall, CBO estimates that enacting H.R. 2580 would increase direct spending by about $1.4 billion over the 2000–2004 period.

H.R. 2580 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with these mandates would not be significant and would not exceed the threshold established by the act ($50 million in 1996, adjusted annually for inflation). The bill would have other effects on state, local, and tribal governments that do not result from mandates. Some of these effects might be increased costs, but most would be benefits.

H.R. 2580 also would impose private-sector mandates as defined in UMRA by setting a temporary moratorium on certain lawsuits under CERCLA and precluding certain other lawsuits. CBO estimates that the direct costs of complying with those mandates would be well below the statutory threshold specified in UMRA ($100 million in 1996, adjusted annually for inflation). Overall, the bill would tend to lower the costs to the private sector of cleaning up certain Superfund sites under CERCLA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2580 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

BASIS OF ESTIMATE

For purposes of this estimate, CBO assumes that H.R. 2580 will be enacted early in fiscal year 2000, and that all funds authorized by the bill will be appropriated. Estimated outlays are based on the historical spending patterns of the Superfund program.

Spending subject to appropriation

Superfund Program.—CBO estimates that implementing H.R. 2580 would require the appropriation of $6.2 billion over the 2000–2004 period for the Superfund program and related grant programs, in addition to $1.4 billion already appropriated for 2000. In addition to the existing appropriation for 2000, title II would authorize appropriations totaling $5.9 billion over the 2000–2004 period for EPA activities in support of the Superfund program and $1 million in 2000 for an independent analysis of the projected 10-year costs to EPA of implementing the Superfund program. Title I would authorize the appropriation of such funds as may be necessary for grants to be used for site characterization, assessment, and cleanup actions at Brownfield facilities. Brownfield facilities are properties where the presence or potential presence of a hazardous substance complicates the expansion or redevelopment of the property. Based on information from EPA, we estimate that implementing this provision would require the appropriation of $75 million annually over the next five years. Some of these funds could be used by states and local governments to establish revolving loan funds to provide money for eligible work at brownfield facilities.

	By fiscal year, in millions of dollars				
	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION					
Superfund spending under current law:					
Budget authority[1]	1,400	0	0	0	0
Estimated outlays	1,426	1,028	508	217	73
Proposed changes:					
Estimated authorization level	176	1,575	1,575	1,475	1,425
Estimated outlays	48	471	995	1,260	1,358
Superfund spending under H.R. 2580:					
Estimated authorization level	1,576	1,575	1,575	1,475	1,425
Estimated outlays	1,474	1,499	1,503	1,477	1,431
CHANGES IN DIRECT SPENDING					
Reimbursement for Superfund liability:					
Budget authority	250	250	250	250	250
Estimated outlays	60	400	270	260	225
Changes to Superfund recoveries:					
Estimated budget authority	15	45	45	45	38
Estimated outlays	15	45	45	45	38
Total changes in direct spending:					
Estimated budget authority	265	295	295	295	288
Estimated outlays	75	445	315	305	293

[1] The 2000 level is the amount appropriated for that year.

Superfund Cleanup Costs at Federal Sites.—H.R. 2580 would amend the procedures used to select appropriate cleanup solutions (known as remedies) at each Superfund site. Title I would require EPA to consider future land use at a site, and change the goals and criteria EPA uses in determining cleanup levels. These changes in the remedy selection procedures could change the cost of future cleanup projects at federal facilities. However, any savings would be small over the next five years because the changes would not significantly affect spending at sites where mediation has begun.

Section 303 would explicitly waive any federal immunity from administrative orders, or civil or administrative fines or penalties assessed under CERCLA, and would clarify that federal facilities

are subject to reasonable service charges assessed in connection with a federal or state Superfund program. This provision may allow states to seek to impose fines and penalties against the federal government under CERCLA. The Claims, Judgments, and Reliefs Acts account may be available for payment of fines or penalties, but only if pursuant to a court settlement or certain Department of Justice settlements. In the alternative, payments may come from appropriated funds.

Direct spending

Provisions of H.R. 2580 would affect direct spending primarily by providing $1.3 billion over the 2000–2004 period to reimburse certain PRPs for some future cleanup costs and for specified past and ongoing cleanup costs. Such funds could also be used for other authorized Superfund expenses, depending on the amounts provided to the program in future appropriations acts. In addition, enactment of H.R. 2580 would result in a decrease in the amount of money EPA is able to recover from PRPs who are currently liable for cleanup expenses.

Reimbursement for Superfund Share of Liability.—Title II would provide $250 million annually over the 2000–2004 period to reimburse private parties for certain expenditures made during a Superfund cleanup project that the bill would make the responsibility of EPA. When this new program is fully implemented, we estimate that EPA would spend, on average, $135 million annually to reimburse PRPs for cleanup projects that have not yet begun, and $100 million annually to reimburse PRPs for past and ongoing cleanup costs. Although CBO estimates that total claims for reimbursement would be slightly below the $1.3 billion appropriated over the 2000–2004 period, if claims are made unevenly over time, the amount pending at one time could exceed the $250 million provided in that year. In this case, the payment of reimbursement claims could be delayed until funds are available.

Title III would make several changes to current law concerning Superfund liabilities of private parties and the procedures for allocating cleanup responsibilities equitably among the multiple PRPs (site owners and operators, and off-site parties that contributed hazardous substances) involved in a cleanup project. For new cleanup projects that meet certain requirements, section 308 would define how an independent "allocator," chosen by EPA and the PRPs at a site, would determine the share of cleanup costs that each PRP must contribute and what share of the liability belongs to EPA (if any). Under H.R. 2580, EPA's liability at a Superfund site would consist primarily of two components: any liability assigned to defunct or insolvent PRPs and any liability that is eliminated, limited, or reduced by the provisions of the bill. The legislation would eliminate, limit, or reduce the cleanup liability for some PRPs—notably small businesses, municipal governments that owned or reported landfills, and generators and transporters of municipal solid waste or recyclable materials. The difference between the cleanup cost attributed to a private party by the allocator and a smaller amount actually paid by the PRP—because of a liability exemption, reduction, or limitation resulting from enactment of the bill—would become the responsibility of EPA.

Liability for Future Costs.—Based on the characteristics of sites currently in the Superfund program, CBO estimates that approximately one-third of the costs of new cleanup projects would be allocated to the Superfund. Assuming that the pace of cleanups conducted by PRPs continues at current rates, reimbursements to PRPs from the Superfund for cleanup projects would be, on average, $135 million annually. Such spending would come from the annual direct spending authority included in title II of the bill.

Liability for Past Costs.—Under H.R. 2580, EPA also would be liable for reimbursing some PRPs for certain cleanup projects that are ongoing or have already been completed. Under current law, PRPs that pay for Superfund cleanup costs can seek reimbursement for their expenses from other PRPs involved with the same site. H.R. 2580 would make PRPs that have incurred such costs eligible for reimbursement from EPA for the share of costs attributable to PRPs whose liability would be reduced or eliminated under the bill. EPA estimates that the total cost of ongoing and completed cleanups conducted by PRPs is over $13 billion. We estimate that less than one-fifth of the $13 billion is attributable to the relevant PRPs that would be affected by this bill. Most of these costs—roughly 80 percent, by EPA's estimate—have already been settled. CBO therefore estimates that the costs to the Superfund for reimbursement of past and ongoing cleanups would total nearly $500 million over the next five years, or an average of about $100 million per year. Such amounts also would be paid from the bill's direct spending authority—to the extent that funds are available.

Superfund program.—Section 201 would allow funds provided in direct spending authority to be used to make up any shortfall between the annual amounts available to the Superfund program from appropriations acts and the amounts that H.R. 2580 would authorize to be appropriated for the program. In 2000, $1.4 billion was appropriated for the Superfund program, but H.R. 2580 would authorize $1.5 billion. CBO assumes that $100 million out of the $250 million in direct spending authority provided under the bill in 2000 would be transferred to the Superfund program to eliminate that shortfall in authorized funding. Estimated outlays from the transfer would likely be consistent with historical spending patterns of the Superfund program; therefore, CBO estimates that outlays in 2000 from the $100 million transfer would be $25 million. In addition, we estimate that about $35 million out of the remaining $150 million in direct spending provided in 2000 would be used to pay reimbursement claims in 2000. Thus, estimated outlays from the direct spending authority in 2000 would total $60 million. (We estimate that most of the remaining $190 million of 2000 funding would be spent over the 2001–2004 period.) Beginning with 2001, CBO estimates that all of the funds provided in direct spending authority would be spent each year by EPA either for reimbursement of PRPs or on other authorized expenses of the Superfund program. The actual amount of funds (if any) that would be spent for purposes other than reimbursement of private parties would depend on the amounts provided to the Superfund program in future appropriations acts.

Superfund Recoveries.—EPA's enforcement program attempts to recover costs the agency incurs at cleanup projects that are the responsibility of private parties. Spending of the amounts recovered

is subject to annual appropriation action. Under current law, CBO estimates such recoveries will gradually decline from the current level of $300 million annually, and will average $250 million annually over the next 10 years. Under H.R. 2580, however, such recoveries would decline further because the Superfund liability of some PRPs would be eliminated, limited, or reduced. We expect that enacting the bill would lead to an average annual decrease in offsetting receipts to the Treasury of $40 million over the 2000–2004 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted.

	By fiscal year, in millions of dollars									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	75	445	315	305	293	38	30	30	30	30
Changes in receipts	Not applicable									

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Intergovernmental mandates

Federal Facilities.—Section 303 of the bill would clarify that federal facilities are subject to certain charges assessed in connection with a federal or state Superfund program. This clarification could increase the number of fines and penalties imposed and collected by states from the federal government under CERCLA. At the same time, however, the bill would mandate how states may use the funds collected from these charges from federal facilities. States would be required to use all of these funds for environmental purposes unless that state has a law in effect on the date of the bill's enactment or a state constitutional provision that requires the funds to be used in a different manner. CBO cannot estimate the number or amount of fines, penalties, and judgments that could result from enactment of the bill, however, we expect that the requirements about how to spend these collections would impose no additional costs on states.

Preemption of State Liability Law.—Section 305 of the bill would preempt state law by limiting the liability of response action contractors (RACs) to cases of negligence, gross negligence, or intentional misconduct in all states that have not enacted a law specifically addressing the liability of RACs. (Response action contractors are defined in subsection 119(e) of CERCLA.) CBO expects that this preemption would apply to a very small number of cases and that states would not be party to most of them. As a result, CBO estimates the cost to states of this preemption would be minimal.

Dry Cleaning Solvents.—Section 309 would prohibit states from requiring dry cleaners to clean up solvents they have released into the environment (except in the case of drinking water sources) below certain contaminant levels, unless the state determines, on a site-by-site basis, that a more stringent standard is necessary to protect human health or the environment. States would incur addi-

tional costs as a result of this mandate if they choose to conduct site-by-site analyses of dry-cleaning establishments to maintain more stringent standards. CBO cannot precisely estimate the costs states would incur as a result of this mandate. Based on the low cost of soil sample analysis, the small likelihood of states undertaking site-by-site analysis, and the small number of dry-cleaning sites on the Superfund list, we do not expect that such costs would be significant.

Other impacts on State, local, and tribal governments

Enacting H.R. 2580 would have additional effects on state, local, and tribal governments. Some of these effects might increase costs, but most would provide benefits including: creating new grant programs; affording states greater participation and authority over cleanups; and relieving state and local governments from certain liability under current law.

Potential Costs.—Enacting H.R. 2580 could impose costs on states by changing the liability of certain potentially responsible parties. It also could impose costs on local governments by increasing the costs of complying with water standards.

Liability Relief for Potentially Responsible Parties.—H.R. 2580 would eliminate, limit, or reduce the cleanup liability for some PRPs under federal Superfund laws. These changes in liability, while not preemptions of state law, could make it more difficult for any states that currently rely on such laws to recover costs and damages under their own cleanup programs from parties whose liability would be eliminated or limited by the bill. These changes also would benefit state, local, and tribal governments if their Superfund liability would be reduced or eliminated as discussed below.

Cleanup Standards.—H.R. 2580 would make changes to the cleanup standards required under the federal Superfund law. Those changes could increase the costs to public water systems to comply with current water standards, however, CBO has no basis for reliably estimating them.

Potential Benefits.—Implementing the bill would benefit state, local, and tribal governments in a number of ways, as discussed below.

Liability Relief for State, Local, and Tribal Governments.—H.R. 2580 would eliminate, limit, or reduce the cleanup liability for some PRPs, including municipal governments that own or operate landfills, and generators and transporters of municipal solid waste or recyclable materials. The bill also would cap the liability of parties (including local governments) that generated or transported municipal solid waste or sewage sludge to a Superfund site that is a "co-disposal" landfill (a landfill that also accepted other wastes and that became a Superfund site). Excluding those otherwise exempted form liability by the bill, these parties would have their aggregate liability limited to 10 percent of cleanup costs. Roughly two-thirds (160) of the approximately 250 co-disposal landfills that are Superfund sites have at least one municipal owner or operator. In addition, the bill would create an expedited settlement process for certain parties, including municipalities, that have a limited ability to pay.

H.R. 2580 would exempt generators and transporters (including municipal generators and transporters) from liability if they only contribute a specified amount of hazardous material and those materials do not significantly increase response costs. In addition, the bill would establish an affirmative defense for innocent parties including governmental entities that: (1) issues permits or licenses; (2) acquire property by involuntary transfer or eminent domain: (3) own and operate sewage treatment works; and (4) own and operate rights of way.

New Grant Funding.—Title I would create two grant programs to fund assessment and cleanup of brownfield sites. The program for inventory and assessment would make grants of up to $200,000. The cleanup program would make grants of up to $1 million to capitalize revolving loan funds that would make loans to states, site owners, and site developers for the cleanup of brownfield sites. States that receive loans would be required to match at least 50 percent of the federal funds provided. The bill also would authorize grants for technical assistance and for developing groundwater protection plans. Any costs to state, local, or tribal governments to comply with the grant conditions would be incurred voluntarily.

Expanded State, Local and Tribal Roles.—H.R. 2580 would amend the current Superfund program to allow greater authority and participation by the states. Title I would prohibit EPA from taking action against anyone who has completed a response action on a non-Superfund site in compliance with the state laws governing such actions, except under specific circumstances, EPA would be required to defer listing a facility as a Superfund site if the state is addressing or will address the site under a state response program and does not concur with the listing.

Title III would allow a state that may be responsible for response costs as part of the state's cost share to participate in funding allocation. The title also would specify that federal, state, and local agencies are subject to and eligible for the benefits of an allocation to the same extent as any other party including reimbursement when performing parties pay more than their allocated share. Title IV would increase state, local, and tribal government input in Superfund-related public health projects and programs as well as health disclosures to affected communities.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 2580 would impose private-sector mandates as defined in UMRA by setting a temporary moratorium on certain lawsuits under CERCLA and precluding certain other lawsuits. CBO estimates that the direct costs of complying with those mandates would be well below the statutory threshold specified in UMRA ($100 million in 1996, adjusted annually for inflation).

Private-sector mandates

Under current law, the liability standard for a Superfund site, which can affect who pays to clean it up, is retroactive, strict, and generally joint and several. Liability is retroactive because it applies to contamination caused by activities that took place before CERCLA was enacted in 1980. Liability is strict because a responsible party is liable even if it was not negligent. Liability is joint and several in cases where the responsibility for contamination at

a site is not easily divisible. In such cases, the government can hold one or more parties liable for the full costs of cleanup, even if other parties at the site are liable. The federal government does not typically seek to assign liability shares to individual PRPs, preferring instead to reach collective settlements and allowing settling PRPs to allocate liability among themselves. Current law also permits third-party lawsuits, in which parties held responsible by EPA (or by other responsible parties) may sue others who do not settle with the government for contribution.

H.R. 2580 would establish a new process for allocating liability at sites on Superfund's National Priorities List that meet certain criteria. Under the new process, a neutral allocator would be hired to determine the liability of potentially responsible parties for an eligible site. The bill would impose a private-sector mandate by prohibiting civil litigation seeking to recover response costs during the period set aside by the bill to allow the allocator to determine liability under the new method. Specifically, section 308 would prohibit anyone from asserting a claim until 150 days after the release of the allocator's report. In addition, the bill would stay all pending actions or claims during the same period unless the court determines that a stay would result in manifest injustice. CBO expects that the costs of delaying a claim to recover cleanup costs would be negligible, primarily because post-moratorium litigation in such cases in likely to be rare in view of the incentives to settle for the allocated share under the new process.

Currently, contractors performing cleanups are not liable under federal law for work they do at Superfund sites (including CERCLA removal sites), except in cases of negligence, gross negligence, or willful misconduct. Section 305 would extend response action contractors' protection from liability to include the same protection under state law, unless a state has enacted a law determining the liability of such contractors. The extended protection from liability would not allow certain liability claims that may be filed under current law. According to information provided by government sources, lawsuits alleging liability against response contractors have been rare and most such actions have been dismissed or settled out of court for amounts that were not significant. Therefore, CBO expects that the costs to the private sector of extending the liability coverage would be minor.

Generally, provisions of the bill are meant to reduce some of the burdens of compliance under CERCLA. H.R. 2580 would direct the federal government to cover the costs attributed to defunct or insolvent parties, the costs attributed to responsible parties exempted under the bill, and the balance of cost left over when allocation shares have been capped or limited according to the rules specified in the bill. Consequently, the remaining cleanup costs allocated to the private sector would probably be lower than under current law.

Other impacts on the private sector

In some cases, private-sector entities who have incurred cleanup expenses may experience some delays in their efforts to claim reimbursement from the federal government for the share of costs attributed to PRPs whose liability would be reduced or eliminated under the bill. Although CBO estimates that total claims for reimbursement would be slightly below the $1.3 billion appropriated

over the five-year period, if claims are made unevenly over time, the amount pending at one time could exceed the $250 million available in that year. Any such delays might not represent a net burden on the parties seeking reimbursement, however, the PRPs that would be sued under current law have limited financial resources, reimbursement in such cases may be stretched out, reduced, or unavailable.

Previous CBO estimate: On September 23, 1999, CBO transmitted a cost estimate for H.R. 1300, as reported by the House Committee on Transportation and Infrastructure on August 5, 1999. Both H.R. 1300 and H.R. 2580 would amend and reauthorize CERCLA and would authorize appropriations and provides direct spending authority. However, the bills provide for different amounts in appropriations and direct spending over different periods of time. In addition, under both bills, Superfund recoveries would decreased by the same amount each year.

Both H.R. 1300 and H.R. 2580 would impose a private-sector mandate by setting a temporary moratorium on certain lawsuits during the determination phase of the allocation process and expand liability protection for response action contractors. Unlike H.R. 2580, H.R. 1300 also would put a time limit on certain other lawsuits. Specifically, H.R. 1300 would limit to a period of six years after the completion of work at a site, any actions based on negligence to recover claims against contractors performing cleanups. For both H.R. 1300 and H.R. 2580, CBO estimates that the aggregate direct costs of private-sector mandates would fall below the statutory threshold established in UMRA.

Estimate prepared by: Federal costs: Susanne S. Mehlman and Perry Beider; impact on State, local, and tribal governments: Shelley Finalyson; and impact on the private sector: Patrice Gordon and Perry Beider.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of the legislation, the "Land Recycling Act of 1999."

Section 2. Amendments to Comprehensive Environmental Response, Compensation, and Liability Act of 1980

This section amends the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) in the following manner:

Title I—Land Recycling

Section 101. Findings

This section provides findings concerning brownfields, State voluntary cleanup programs, and Federal barriers to remediation efforts.

Section 102. Cleanups pursuant to State response programs

This section provides finality and certainty for State response programs by ensuring that certain Federal authorities cannot override State remedial decisions except under exceptional circumstances which are specified in the bill. To encourage more cleanups at brownfields sites, this section gives those engaging in cleanups on a voluntary basis increased certainty about the risk that they face when they step forward and agree to clean up a site. Under this section, those engaging in cleanups on a voluntary basis have greater assurance that their responsibility will be limited to those actions required by the State cleanup officials, unless one of the specific exceptions is met.

Prohibition on Enforcement.—Section 102(a) makes clear that, once triggered by a State response action under a certified State program under section 102(b), limitations apply to the uses of authorities under CERCLA and under section 7002(a)(1)(B) and section 7003 of the Solid Waste Disposal Act, with specified exceptions. This section prevents second guessing of State remedial and liability decisions. For the Solid Waste Disposal Act, the limitations apply only to the cited authorities. Other authorities, such as those designed to enforce hazardous waste management requirements under the Solid Waste Disposal Act, are not affected. For example, the authority to bring a citizen suit under section 7002(a)(1)(A) of the Solid Waste Disposal Act, and the authorities granted by section 3008 of the Solid Waste Disposal Act continue to cover violations of the Solid Waste Disposal Act for the same universe of sites or activities that they currently cover.

State Requirements.—Limitations on overriding State actions only apply after a State submits a program to the EPA Administrator together with certifications that: the particular program is enacted into law; the State has committed financial and personnel resources; the program will be protective of human health and the environment; and the program includes meaningful opportunities

for public participation. This provision permits the State to tailor its program to prevent the uncertainty that Federal enforcement provisions would override State cleanup decisions. This is an option, not a requirement. A State may desire that certain State program response actions should be immune from a Federal override. The Committee anticipates that these programs would be described with sufficient clarity so that only the classes of response actions that the State intends receive coverage under this section. If a State desires no change to the status quo, that option is available.

The submission and certification by the State triggers the limitations under this section. The language does not provide EPA authority to add to any additional regulatory requirements for States to meet the program requirements.

Limitations on Prohibitions.—Section 102(c) provides five exceptions to the requirements of section 102(a). First, this prohibition generally applies only to facilities that are not on the NPL. EPA retains the discretion to delist a site where a State response program could better address the site. Second, the Governor of a State can request that the President take enforcement action, where appropriate. Third, the prohibition in section 102(a) does not apply to any facility owned or operated by a department, agency, or instrumentality of the United States. Fourth, the prohibition does not apply to the extent that a response action has been required pursuant to an administrative order or judicial order or a decree entered into under a number of specific laws before the commencement of a State action. Thus, the Federal involvement through orders or decrees cannot be cut short by a State action. Finally, the prohibition does not apply to a release or threatened release for which response actions are immediately required to prevent or mitigate a public health or environmental emergency and for which the State is not responding in a timely manner. The Committee intends that the threshold for the determination by the President that "response actions are immediately required to prevent or mitigate a public health or environmental emergency" be higher than the threshold under section 106 of CERCLA or sections 7002(a)(1)(B) or 7003 of the Solid Waste Disposal Act for a determination that there "may be an imminent and substantial endangerment."

Prior Actions.—Subsection (d) clarifies that nothing in this section affects administrative or judicial action commenced prior to the date of enactment of this section.

Permits and Other Requirements.—Subsection (e), in conjunction with a submission under subsection (b), allows State programs to waive the Federal requirements to obtain Federal permits or revisions for the on-site portion of State response actions. This provision is similar to the analogous Federal authority in section 121(e) of CERCLA. States which have certain Federal program authorizations often issue permits that satisfy certain requirements under Federal law. Under subsection (e), it becomes the discretion of the State whether it wants to maintain all of these State permit requirements or wants to consolidate administration and procedures through a process more tailored to remedial efforts. The waiver of the Federal requirement, thus, allows the States to tailor their own State permitting regime in the manner potentially more conducive to their remediation programs without the added administrative mandate of satisfying the procedural permit requirements of Fed-

eral law. In addition, under subsection (b), the State has significant flexibility to define and describe the program or programs that it chooses to make eligible for both the prohibitions on enforcement and for the permit waivers. The Committee expects that any such waiver involves the use of a State document analogous to the Record of Decision under CERCLA that can be used to consolidate applicable substantive requirements. The legislation delays application of this provision for EPA to promulgate regulations on how any necessary reporting requirements between the State and EPA should be addressed.

Assistance to States.—Section 102(f) authorizes the Administrator to provide technical, financial, and other assistance to establish and enhance State response programs.

Effect of Response.—Section 102(g) makes clear that performance of a response action pursuant to a State program under this section shall not constitute an admission of liability under any Federal, State, or local law or regulation or in any citizens suit or other private action.

Section 103. Additions to the National Priorities List

Section 103 amends section 105 of CERCLA by adding a new section 105(h) which allows further additions to the National Priorities List (NPL) only after the President seeks the concurrence of the Governor of the State where the facility is located. If the State is addressing, or will address, the site and the Governor does not want the site listed on the NPL, the President is barred from listing it. The Committee intends that if the State does not begin addressing the site in a reasonably timely fashion the President may list the site without the concurrence of the Governor. The Committee expects swift action to stabilize any site and protect the public. Initiation of long term cleanup actions must be measured against the time required for identification, listing, and action for sites on the National Priorities List. The legislation contains exceptions for situations where two States are affected or where the State has a conflict of interest because it is a major responsible party at the site.

Section 104. Innocent landowners

Section 104 adds a new section 107(o) to CERCLA which provides innocent landowners greater certainty by defining the criteria necessary for avoiding CERCLA liability. The new subsection further defines what constitutes all appropriate inquiry and environmental assessments as criteria for establishing that a party is an innocent landowner.

Section 105. Bona fide prospective purchaser liability

Section 105 adds a new section 107(p) establishing criteria for bona fide prospective purchasers. A party has an affirmative defense to CERCLA liability if that party can establish that the party is a bona fide prospective purchaser and establish by a preponderance of the evidence that all active disposal of hazardous substances at the facility occurred before the party acquired the facility. The party must also show that it made all appropriate inquiry; provided all legally required notice; exercised appropriate care; pro-

vided full cooperation; and is not affiliated with another liable party in order to qualify.

Section 105 adds a new section 107(q) to assure that the United States has a lien on any facility where there are unrecovered response costs for any increase in the fair market value of the property attributable to the response action.

Section 106. Innocent governmental entities

Section 106 adds a new section 107(b)(2)(D) to CERCLA which provides that a governmental entity which is a potentially liable party under CERCLA based solely on the entity's status as an owner or operator of a facility through escheat or other involuntary transfer, eminent domain, or by granting a license or permit to conduct business, can establish a defense to that liability by demonstrating that the governmental entity acquired the facility after all disposal or placement of hazardous substances had taken place, did not cause or contribute to the contamination, and exercised appropriate care with respect to any hazardous substances on the property. Under section 101(20) of CERCLA, governments who acquire property involuntarily are excluded from the definition of owner or operator. Under section 107(b)(2)(D), the exercise of eminent domain authority or merely granting a license or permit, which are not involuntary actions, does not subject a governmental entity to CERCLA liability.

Section 107. Contiguous properties

Section 107 adds a new section 107(s) to CERCLA which provides protection from CERCLA liability for owners of property where there has been migration of hazardous substances on to the person's property from a facility that is under separate ownership or operation, as long as the person did not cause, contribute, or consent to the release or threatened release; provided cooperation; and is not affiliated with another liable party. This amendment reflects existing law on contiguous property owners as set forth in *Kalamazoo River Study Group* v. *Rockwell International,* 3 F.Supp.2d 799 (W.D. Mich. 1998) (riparian property owner is not liable for contamination released from an upstream facility that migrated down the river), and *Dent* v. *Beazer Materials and Services, Inc.,* 1995 W.L. 940693 (D.S.C. 1995) (mere ownership of property to which hazardous substances have migrated is not sufficient for the imposition of liability under CERCLA, apportioning 100 percent of the liability to the owner of the facility that was the source of the hazardous substances).

A contiguous property owner or operator need not await litigation to have its innocence affirmed. This provision authorizes EPA to provide written assurances to these property owners and operators that they are not subject to enforcement actions by the government or to contribution actions by private parties. It is the Committee's intent that EPA will readily provide these assurances in appropriate cases, so that these property owners will not continue to face the specter of potential liability.

In the past, EPA has included the area through which contamination has migrated as part of a NPL-listed Superfund site. This can occur even in cases where the contamination has only migrated through ground water which is not used as drinking water and pre-

sents no realistic risk of exposure to persons using the surface of the property. Listing such properties as part of NPL sites places a significant stigma and financial burden on these property owners by making it difficult for them to sell, develop, or lease their land.

The new section 107(s) addresses the concern that these contiguous properties may be unfairly stigmatized by being included as part of NPL Superfund sites, especially when the surface of the land itself is not contaminated and the ground water beneath the property is not used as a source of drinking water. The section provides that the owner or operator of contiguous property may petition EPA to have that property deleted from the description of an NPL site if that property is only contaminated through migrating ground water and the ground water is not used as a source of drinking water. The Committee strongly encourages EPA to be forthcoming in granting these petitions where the petitioner makes the appropriate showing. No useful purpose is achieved in labeling these properties as part of an NPL site when the land itself is not contaminated and there is no realistic risk of human exposure to the contaminants in the ground water. Rather, the owners and operators of these properties should not be impeded from leasing, developing and otherwise using their properties by an unnecessary NPL listing.

Section 108. Remedy selection

Section 108 amends section 121 of CERCLA in a number of ways. First, section 108 provides for meaningful consideration of practicality and reasonably anticipated uses of land, water and other resources in remedy selection decisions. Second, the changes ensure that the current preference for permanence and treatment in section 121(b) of CERCLA does not override risks to the community or workers. Section 108 also removes the requirement in section 121(d) of CERCLA to meet "relevant and appropriate" standards, but maintains legally applicable requirements. Section 108 also adds new subsections to section 121 of CERCLA to provide for risk assessments, characterization and communication principles; a study of substances and mixtures; and consideration of sensitive subpopulations through site-specific risk assessment.

Section 108 amends section 121(b) of CERCLA to modify the current preferences for treatment and permanence with the qualifiers "to the extent practicable, considering the nature and timing of reasonably anticipated uses of land, water, and other resources." Numerous parties have requested the consideration of reasonably anticipated land use as a commonsense measure that should guide remedy selection. An industrial park need not be cleaned up as if it were a playground. There are many types of engineering and institutional strategies to remediate a site so as to protect human health and the environment consistent with the requirements of section 121(a). Treatment is one such engineering option and, indeed, there are many types of treatment. The Committee intends that strategies should be selected based on the need to protect human health and the environment in a site-specific manner, considering the practicalities at the site and reasonably anticipated uses of land, water and other resources.

Section 108 also amends section 121(b) of CERCLA to ensure that the statutory preference for permanence and treatment is not

implemented in a manner that causes increased risks to workers and the community. Remedial treatment technologies, even if operated within permitted limits and in accordance with the Occupational Safety and Health Administration (OSHA) and other safety or health regulations, should not be presumed to be free of risk to human health or the environment. For example, a particular remedy may destroy significant ecosystems, or expose an ecosystem to previously buried contaminants which may also be followed by increased human exposures; remedial technologies and the handling of contaminated materials may pose a safety or health risk to workers at the site; materials removed from a site may also be transported through a community and pose risks from increased truck traffic and spillage in the community; contaminated materials may be incinerated where air emissions may pose a risk to the community; and finally, contaminated materials or residues may be disposed of in landfills or other containment structures which may themselves pose risks to human health or the environment. A site-specific analysis is necessary to determine whether remedial alternatives involve scenarios such as those above which create risks where none existed before, or increase risks from levels that would exist but for the implementation of the remedy.

Consistent with the requirement of section 121 that remedies be protective of human health and the environment, this provision requires EPA to assess the reasonably anticipated health and environmental risks posed by the remedial alternative, with particular attention to communities where the remedy is to be implemented, and to assess the reasonably anticipated risks to the safety and health of workers who would be engaged in the remedy. This analysis must be completed prior to selecting a remedial action. Risk to the community or workers does not prohibit a treatment option. However, if, applying reasonably anticipated scenarios such as those noted above to a particular site, a remedial alternative would increase health or environmental risks to the public or risks to worker health or safety, the preference itself no longer applies in the remedial selection process, and the remedial action for that site is chosen based on the factors applicable in the absence of the statutory preference.

Section 108 also deletes the requirement to meet "relevant and appropriate" standards under section 121(d) of CERCLA except for Maximum Contaminant Levels under the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.). Section 108 also ensures that the concept of reasonable points of compliance preserves the flexibility that EPA uses to make practical site-specific decisions.

Risk Assessment and Characterization Principles.—Section 108 also adds a new section 121(g) to CERCLA. The new subsection requires risk assessments and characterizations to be scientifically objective and unbiased. The purpose of risk assessment is to assess and explain the best science. It may be appropriate in the step of making risk management decisions to take a precautionary approach on issues of public health through the use of safety factors. Such decisions should be informed by the best science and scientific understanding. It is inappropriate to intentionally bias the risk assessment process by ignoring or discounting the best scientific understanding of the nature and magnitude of risk.

This section does not preclude the use of assumptions in risk assessment. This debate has frequently confused the relationship of assumptions and data. Assumptions are, in part, based on a body of scientific information and understanding. Similarly, the use of data often involves assumptions about the appropriate use of such data in a specific context. When assumptions, or an approach to using data, are necessary to calculate a risk measure, the public needs to know which assumption or approach is supported by the greater weight of the scientific evidence. It is also important to provide information on uncertainty and variability.

The section requires risk assessments to provide, among other estimates, risk measures based on the most scientifically supported assumptions, information, and approaches. The section does not preclude the calculation of any risk measure, including "conservative" risk estimates. Such measures are simply additional descriptions of the risk profile. Sole use of compound "conservative" default assumptions, however, without also producing risk measures based on the most scientifically supported assumptions is biased and misleading. Such assessment and characterization practices have been a significant problem with Superfund risk assessments which mislead risk managers and the public. Too frequently, better information and site-specific information have been ignored.

Sensitive Subpopulations and Site-specific Risk Assessment.—Section 108 adds a new subsection (h) to section 121 of CERCLA concerning sensitive subpopulations and site-specific risk assessments. In order to appropriately provide remedial alternatives and sound decisions, the remedial manager must provide or obtain a site-specific risk assessment. Exposure scenarios must be based on the actual or reasonably anticipated situation at or near the site considering reasonably anticipated uses of land, water, and other resources. Highly exposed or highly vulnerable groups may be identified through site-specific risk assessments. This paragraph does not make such groups a default assumption, as risk is a site-specific concept. The reasonably anticipated uses of industrial parks or railroads does not necessarily result in residential exposure scenarios or exposure scenarios for children unless there is evidence in the specific context. At the same time, the President should take into consideration any subsistence fishermen, cultural practices, or identified vulnerable groups in the site-specific risk assessment process. The nature of the actual, scientifically objective risks at the site must inform the remedy selection process. Moreover, the significance of the risk in relationship to risks that may be created by a remedial option must be considered.

Study of Substances and Mixtures.—Section 108 adds a new paragraph (i) to section 121 of CERCLA to provide for a study of substances and mixtures. The Committee intends that this paragraph further the scientific understanding of: the most appropriate approach for assessing and estimating cancer risks from certain chemicals; and how to address chemical mixtures. This information may be useful in future efforts. No action shall be delayed because of the study. Nor is there an exemption from the requirements of new sections 121(g), 121(h), or 121(j) for any risk assessment during the course of the study.

Presentation of Risk Information.—Section 108 also adds a new paragraph (j) to section 121 of CERCLA concerning presentation of

risk information. This paragraph ensures that the presentation of risk information by the President is full, unbiased, transparent, and meaningful.

Section 109. Brownfields grants

Section 109 adds a new section 127 to CERCLA to address brownfields facilities. This section addresses the major impediments to brownfields redevelopment by providing Federal assistance for site assessments and cleanups, and by addressing the CERCLA liability issues that have deterred redevelopment.

New section 127(a) defines brownfields facilities, identifies the entities eligible to receive grants (including States and local governments), and provides other definitions. The definition of brownfields facility specifies what facilities are eligible for assistance under this section. The Committee notes that pilot projects funded under the Brownfields Redevelopment Initiative, established by EPA, have excluded many brownfields sites due to restrictions on the use of money from the Superfund trust fund. In particular, trust fund money may not be used to clean up asbestos, lead based paint, or petroleum. These restrictions are not applicable to grants provided under this section. First, new section 127 operates independent of section 104 of CERCLA, and does not include any of the restrictions on response found in section 104. Second, new section 127 is not funded by the Superfund trust fund, and is not limited to restrictions on the uses of the fund found in section 111 of CERCLA and in the Internal Revenue Code.

New section 127(b) requires the President to establish a program to provide grants for inventory and assessment of brownfield facilities. This subsection includes application requirements and the criteria the President shall use to evaluate the applications. Each grant may not provide more than $200,000 for single brownfield facility.

New section 127(c) requires the President to establish a program to provide grants for capitalization of revolving loan funds. After establishing a revolving loan fund, an eligible entity may make loans for the purpose of carrying out remedial actions at one or more brownfields facilities to a State, a site owner or a site developer, including the eligible entity itself, as long as that entity follows the same rules applicable to other loan recipients, including repayment of the loan in a timely manner.

If the entity receiving a grant under this section is a local government, that local government may set aside 10 percent of the grant for the purpose of developing and implementing a brownfields site remediation program, including health monitoring and enforcement of institutional controls. This set-aside should be considered "seed money" to encourage cities to develop their own in-house expertise and should not be considered a continuing source of funding for city employees.

New section 127(c) includes application requirements and ranking criteria the President shall use to evaluate the applications. The Committee notes that under the ranking criteria, the President evaluates an eligible entity's proposed program for establishing a remediation revolving loan fund, and does not evaluate individual remediation projects. Section 127(c) caps the maximum grant per eligible entity at $1,000,000.

New section 127(d) establishes general provisions applicable to both the brownfields assessment grant program and the brownfields remediation grant program. Under this subsection, the President is authorized to require grant recipients to meet certain terms and conditions. These terms and conditions relate to the eligible entity's proposed program for establishing a revolving loan fund. The authority to include terms and conditions necessary to ensure proper administration of the grants does not give the President authority to condition receipt of a grant on an agreement to allow the President to approve which sites are selected for remediation and to oversee remediation activities.

The Committee notes that the January 1999 *EPA Proposed Guidelines for Brownfields Cleanup Revolving Loan Fund* are not applicable to grants authorized under this section. First, these guidelines provide an extensive role for EPA in overseeing individual cleanup projects. Unlike the Brownfield Revolving Loan Fund pilot projects, the Committee does not anticipate that the U.S. EPA, or any other Federal entity administering the brownfields grant program authorized by this section, will monitor individual projects, develop the scope of work, or oversee operational matters. The Committee intends that the President ensure that these programs meet the requirements of this section, including the requirement to comply with all applicable Federal and State laws, by auditing an appropriate number of grants, and not by overseeing each brownfields program that receives Federal funding. Second, while guidelines include many restrictions and requirements to ensure compliance with the National Contingency Plan (NCP), the NCP is not applicable to grants under this section.

New section 127(e) requires the President to evaluate and approve grants based on specific ranking criteria. Grants under this section are applicable to a particular fiscal year. Nothing in new section 127 prevents an eligible entity from seeking an additional grant in a subsequent fiscal year. However, such a grant application would be evaluated with all other grant applications, based on the ranking criteria, which can take prior funding into account under the criteria related to the need for financial assistance.

New section 127(f) authorizes such sums as may be necessary to carry out this section.

Title II—Expenditures From the Hazardous Substance Superfund

Section 201. Expenditures From the Hazardous Substance Superfund

Section 201 amends section 111 of CERCLA. It creates a new subsection (a) that authorizes direct spending of no more than $250,000,000 per year for Fiscal Years 2000 through 2004 to cover fund share of liability attributable to specified exemptions and obligations in subsection (b). This subsection also authorizes $1,500,000,000 per year in Fiscal Years 2000 through 2002, $1,400,000,000 in Fiscal Year 2003, and $1,350,000,000 in Fiscal Year 2000 for the purposes described in subsection (c), relating to response, removal and remediation, and subsection (d), relating to administration, oversight, research and other costs.

Subsection (b) limits total expenditures from amounts made available to fund shares of liability attributable to specified exemp-

tions and obligations to $250,000,000 per year in Fiscal Years 2000 through 2004. In addition, this subsection allows the President to use funds made available pursuant to subsection (a)(1) for the purposes allowed under subsections (c) and (d), if the President does not have the total amount authorized for such purposes in such fiscal years available for obligation. The President may use this authority only to the extent necessary to bring the amounts available for authorization up to the authorized levels for such fiscal years.

Subsection (c) authorizes funding, subject to appropriation, of the following: (1) government response costs; (2) private response cost claims; (3) acquisition of real estate under section 104; (4) State and local government reimbursement under section 123; and (5) contracts and cooperative agreements under section 104(d).

Subsection (d) authorizes funding, subject to appropriation, of the following: (1) investigation and enforcement; (2) overhead; (3) employee safety programs; (4) grants for technical assistance; (5) worker training and education; (6) ATSDR activities; (7) evaluation costs under section 105(d); (8) contract costs under section 104(a)(1); (9) research and development under section 311; (10) awards under section 109(d); and (11) grants to States to develop comprehensive State ground water protection plans.

Subsection (e) reiterates subsections 111(e)(1) and 111(e)(3) in current law. Claims against the Fund shall only be paid if there is a positive unobligated balance in the Fund. This section also places a limitation on the use of the Fund at Federal facilities, and clarifies that Trust Fund money may not be used for remedial action at facilities that are not on the NPL. This section also deletes subsections 111(j) and (n) related to claims against the Fund arising from the transition of claims from the Clean Water Act to CERCLA, and deletes subsection 107(k) of CERCLA, which has never been funded or implemented.

Section 202. Authorization of appropriations from general revenues

Section 202(a) amends subsection 111(p) to authorize the appropriation of such sums as necessary for each of Fiscal Years 2000 through 2004 from general revenues to the Fund (plus any budget authority that may remain from previous years). Section 202 (b) repeals section 517 of the Superfund Amendments Reauthorization Act (SARA), which is duplicative of section 111(p) of CERCLA.

Section 203. Completion of the National Priorities List

Section 603 authorizes $1 million for a study of the 10–year funding needs for the Superfund program.

Title III—Liability Reform

Section 301. Liability relief for innocent parties

Section 301 amends section 107(b) of CERCLA to create additional defenses to liability for the following classes of innocent parties that are owners or operators of facilities listed on the NPL who did not cause or contribute to the pollution at a Superfund site:

Recipients of Property by Inheritance or Bequest.—Under new section 107(b)(2)(A), an owner or operator of a facility or vessel can establish an affirmative defense to CERCLA liability by showing, by a preponderance of the evidence, that he acquired the property

by inheritance or bequest and that he met all the conditions in new section 107(b)(4), which requires a showing that he did not cause or contribute to the release or threatened release and exercised appropriate care with respect to the hazardous substances. This provision is intended to protect innocent owners or operators whose liability is the result of an inheritance or bequest.

Recipients of Property by Charitable Donation.—Under new section 107(b)(2)(B), an owner or operator of a facility can limit his liability to the lesser of the fair market value of the facility or vessel and the actual proceeds of the sale of the facility, if the following conditions are met. The owner or operator must be a non-profit organization, as defined by the Internal Revenue Service, and the person must meet the requirements in new section 107(b)(4), requiring a showing that he did not cause or contribute to the release or threatened release and exercised appropriate care with respect to the hazardous substances. This provision is intended to protect innocent non-profit owners or operators whose liability is the result of a charitable donation.

Owners or Operators of Rights of Way.—New section 107(b)(2)(C) provides a defense to CERCLA liability for a person whose liability is based solely on his status as an owner or operator of a road, street, pipeline, easement, or other right-of-way over which hazardous substances are transported or are present where that person can establish by a preponderance of the evidence that he did not, by act or omission, cause or contribute to the release or threatened release. This provision is intended to protect innocent owners or operators whose liability is the result of ownership or operation of a right-of-way.

Railroad Owners and Operators of Spur Track.—New section 107(b)(2)(D) provides a defense to CERCLA liability for a person whose liability is based solely on his status as a railroad owner or railroad 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. In order to receive this protection, the railroad owner or operator must show, by a preponderance of the evidence, that the spur track provides access to a main line that is owned or operated by the railroad; that the spur track is no more than 10 miles long; and that the railroad did not cause or contribute to the release or threatened release of hazardous substances at the site. Railroads should not be liable under CERCLA when they are merely carrying out their common carrier responsibilities to serve shippers. This provision is intended to address a situation where a railroad has no ability to control its customers' handling of hazardous substances, and it is the customers' actions that result in releases of hazardous substances creating CERCLA liability. If a railroad is in a position to prevent a hazardous substance release, but fails to exercise due care and thereby contributes to such a release, the railroad would continue to be liable under CERCLA.

Construction Contractors.—New section 107(b)(2)(E) provides a defense to CERCLA liability for construction contractors who can demonstrate based on a preponderance of the evidence that their liability is based solely on construction activities specifically directed by and carried out in accordance with a contract with the owner or operator of the facility; that the contractor did not know

or have reason to know of the presence of hazardous substances at the site; and the person exercised appropriate care with respect to the hazardous substances. This provision is intended to protect innocent construction contractors hired by an owner or operator of a Superfund site to perform construction activities at the site.

Appropriate Care Standard and Safe Harbor.—For the defenses created in this section for which a determination of "appropriate care" is required, new section 107(b)(3)(A) requires that this determination be made on a site-specific basis, taking into consideration the characteristics of the hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary practices at the time of the defendant's acts or omissions. The existing "third-party" defense under CERCLA requires a person to exercise "due care." The Committee intentionally used the term "appropriate care" to establish a different standard of care for those parties whose association with a facility begins only after all disposal or placement of hazardous substances has occurred. New section 107(b)(3)(B) creates a safe harbor under which a party may be deemed to have exercised "appropriate care" where that party takes reasonable steps to stop continuing releases, prevent future releases, and prevent or limit human or natural resource exposure to any previously released substance. In addition, this safe harbor is available if another party is already engaged in a response action—the subsequent party may be deemed to exercise appropriate care by cooperating with the responding party and providing reasonable access.

New section 107(b)(4) specifies the conditions that must be met in order to qualify for the defenses created by in new sections 107(b)(2) (A) and (B). It requires that the person acquire the facility after the disposal or placement of hazardous substances occurred; that the person did not cause or contribute to the release or threatened release; and that the person exercised appropriate care, as defined in new section 107(b)(3) with respect to the hazardous substances. As used in this section, the Committee intends "disposal or placement" to mean active measures taken by the owner or operator, and does not include mere passive migration. The determination of whether a party caused or contributed to the release or threatened release of hazardous substances at a Superfund site should not be construed in a manner that is inconsistent with its ordinary meaning. For instance, the mere fact that a party extracted ground water from a Superfund site does not mean the party caused or contributed to the contamination at the site.

Treatment of Non-Liable Parties. This provision creates a new section 107(b)(5) that requires the Administrator, to the extent practicable, to inform parties that they are exempt from liability, offer such parties written assurances of their exemption status, and eliminate or minimize the need for such parties to retain legal counsel. This provision is intended to assist innocent parties in their interaction with the EPA.

Section 302. Clarifications of certain liability

Amount of Liability.—Section 302(a) clarifies the amount of punitive damages that the President may seek to recover from parties who, without sufficient cause, decline to perform cleanups pursuant to orders under section 104 or 106 of CERCLA.

Clarification of Common Carrier Liability.—Section 302(b) makes a technical amendment to section 107(b)(1)(C), as redesignated, with respect to the ability of railroad common carriers to assert the "third-party" defense. Section 107(b)(1)(C), as amended by section 302, exempts railroads from liability for the release of hazardous substances under the terms of a contract with a shipper who later mishandles the commodity. Section 107(b)(3) of current CERCLA enables an otherwise liable party to defend claims on the basis that any release or threat was due solely to the acts of a third party. This third party defense is not available where a person has a contractual relationship with that third party. However, the contractual relationship limitation does not apply under current law to rail carriers whose sole contractual relationship is a transportation tariff. The amendment to section 107(b)(1)(C) is a technical amendment that provides that the rail exception encompasses railroad transportation contracts, not just tariffs. This amendment is necessary to reflect current practice in the industry. CERCLA was adopted in 1980, the same year the Staggers Rail Act was enacted. Prior to the Staggers Act, railroads transported virtually all of their traffic pursuant to tariffs. Deregulation dramatically changed the railroad transportation system enabling railroads to use contracts individually negotiated with shippers that are tailored to the shippers' needs. Today, most rail shipments move under individual contracts that are filed with the Surface Transportation Board. There is no rational basis for distinguishing between transportation by tariff and transportation under contract.

Other Clarifications.—Section 302(c) makes certain technical modifications to CERCLA section 107. No substantive change to current law is intended.

Section 303. Federal entities and facilities

Section 303 expressly waives the Federal government's sovereign immunity with respect to response or restoration actions relating to the release of hazardous substances, pollutants, or contaminants. Section 303 is modeled on the express waivers of sovereign immunity in section 6001 of the Solid Waste Disposal Act and section 1447 of the Safe Drinking Water Act. The waiver of immunity does not apply to the extent a State is applying standards to the Federal government that are more stringent than those applied to other entities.

Section 304. Liability relief for small businesses, municipal solid waste, sewage sludge, municipal owners and operators, de micromis contributors

Limitation on Small Business Liability.—Section 304(a) amends section 107 of CERCLA to add new subsection (t) to exempt small business concerns from Superfund liability for generator and transporter activities occurring before September 29, 1999. A small business concern is defined as a business with, on average over the 3 years preceding the date the small business concern is notified by the President that the entity is a potentially responsible party, not more than 75 full-time employees and no more than $3,000,000 in gross revenues. The exemption does not apply to a small business concern if its hazardous substances have contributed, or contribute, significantly to the costs of the response action. This new sub-

section recognizes that the cost of pursuing a settlement with these small entities can often exceed the share of response costs that may be attributable to them. Rather than spend resources pursuing such parties, it is more efficient to remove these parties from the liability system and have their share of response costs be paid by the Superfund Trust Fund.

Liability Relief for Municipal Solid Waste and Sewage Sludge.—Section 304(b) amends section 107 of CERCLA to add new subsection (u) to establish exemptions from and limitations on liability with respect to municipal solid waste and sewage sludge disposed of at a landfill facility on the National Priorities List. New subsection (u) provides exemptions and limitations for generators and transporters of municipal solid waste or municipal sewage sludge at landfill facilities.

For municipal solid waste and sewage sludge that was disposed of before the date of enactment, new subsection (u) provides most generators and transporters with an exemption from liability. However, subsection (u) allows the President to hold a person liable under section 107(a)(4) where a person is in the business of transporting municipal solid waste or sewage sludge for disposal and that person transported municipal solid waste or municipal sewage sludge containing hazardous substances that has contributed, or contributes, significantly to the costs of response at the facility. As provided in new section 107(y), liability of these parties is transferred to the Trust Fund. Moreover, all liability for municipal solid waste and sewage sludge at a facility is capped at 10 percent of the response costs. As a result, in any allocation under new section 129, or in any contribution claim against the trust fund under new section 107(y), the commercial hauler's equitable share of response costs due to transporting municipal solid waste or sewage sludge shall be based on its equitable share of up to 10 percent of the total aggregate liability.

On or after the date of enactment, the extent that a person is liable as a generator or transporter for arranging or transporting municipal solid waste or municipal sewage sludge for disposal at a landfill facility on the NPL list is limited; only certain small municipal solid waste generators and transporters are exempted from liability. The Committee intends that the operative date of this paragraph is the date on which the generator arranged, or the transporter transported, municipal solid waste or municipal sewage sludge for disposal at a landfill facility, regardless of the date on which that disposal occurs. The aggregate liability of all other generators and transporters of municipal solid waste and sewage sludge is capped at 10 percent of response costs. The small municipal solid waste generators and transporters who remain exempt from liability are owners, operators, or lessees of residential property, businesses that meet the definition of a small business concern under the Small Business Act and have no more than 100 paid individuals at the relevant location, and non-profit organizations described in section 501(c)(3) of the Internal Revenue Code with no more than 100 paid individuals at the relevant location. The liability of these small municipal solid waste generators as described in this subsection is extinguished, but is not transferred to the trust fund. The President retains the authority to offer settlements to persons based on the average unit cost of remediating

municipal solid waste and municipal sewage sludge in landfills subject to the limitations on liability created by this section.

Mixed Wastes.—New section 107(u) applies only to the portion of a person's waste stream that meets the definition of municipal solid waste and sewage sludge. A person remains subject to liability under section 107(a) for any portion of the person's waste stream that does not meet these definitions. If wastes meeting the definition of municipal solid waste or municipal sewage sludge are collected and disposed of with wastes not meeting these definitions, a person's liability for the wastes that do not meet these definitions, and any equitable allocation of that liability under this Act, shall be based on such wastes only. For example, if a person disposed of 100 cubic yards of material meeting the definition of municipal solid waste and 3 drums of materials that did not meet the definition, the exemptions or limitations on liability under subsection (u) would apply to the portion of the waste stream that consisted of municipal solid waste, even if the three drums were placed in the same dumpster.

Definitions of Municipal Solid Waste and Municipal Sewage Sludge.—Municipal solid waste is defined in new subsection (u) as waste generated by households (including single and multifamily residences, and hotels and motels) and waste materials generated by commercial, institutional, and industrial sources, to the extent that such materials: (1) are essentially the same as waste materials normally generated by households, or (2) are collected and disposed with municipal solid waste and contain no more hazardous substances than would qualify for the de micromis exemption contained in section 304(c) of this Act. For example, an industrial source could dispose of a de micromis amount of hazardous substances along with material that is essentially the same as waste materials generated by households, and all of the wastes would meet the definition of municipal solid waste. The definition of municipal solid waste specifically includes certain items such as food, packaging, containers, and household hazardous waste. This definition specifically excludes waste from manufacturing or processing operations, unless such waste is essentially the same as waste normally generated by households. The Committee intends that wastes from the manufacture or processing of food items be covered by the definition of municipal solid waste, regardless of volume, because the same wastes are generated by households. For example, drums of off-specification chewing gum, or off-specification tomato sauce meet the definition of municipal solid waste, even if they are waste materials generated by a food manufacturing or food processing operation.

Municipal Owners and Operators.—This section creates new subsection 107(v) providing an administrative settlement policy for use by the President with respect to the liability of municipal owners and operators of NPL-listed landfills. This new subsection directs the President to offer municipal owners and operators a settlement on the basis of a payment or other obligation equal in value to 20 percent of the total response costs at the facility. However, this section allows the President to raise that amount up to 35 percent of the response costs if specified conditions are satisfied. This subsection also establishes several conditions for qualifying for the set-

tlement offer, and it includes exceptions that would preclude the availability of the offer.

De Micromis Exemption.—Section 304(c) amends section 107 of CERCLA to add new subsection (w) to exempt generators and transporters from liability if they contribute no more than 110 gallons or 200 pounds of material containing hazardous substances, unless the President determines that such material has contributed, or contributes, significantly to response costs.

Ineligibility for Exemptions.—Section 304(d) amends section 107 to add new subsection (x) to make persons who impede response actions, who knowingly or willfully fail to respond to information requests, or who fail to provide cooperation and facility access, ineligible for the exemptions from and limitations on liability under new subsections (t), (u), (v), and (w) of section 107, section 114(c), and section 128.

Exempt Party Funding; Concluded Actions, and Oversight Costs.—Section 304(e) amends section 107 to add new subsections (y), (z), and (aa). New section 107(y) establishes a mechanism to provide trust fund money to pay for any liability exemptions or limitations. Under subsection (y), the equitable share of liability that is extinguished through an exemption or limitation on liability under new subsections (t), (u), and (v) of section 107, section 114(c), as amended, and section 128 is generally transferred to and assumed by the Trust Fund. There is an exception to this general rule for the liability of small municipal solid waste generators whose liability is extinguished under new section 107(u)(3). No liability is transferred based on that exemption. In addition, the liability extinguished under subsection (w) of this section with respect to de micromis parties is not transferred to the Trust Fund. This subsection makes the trust fund a potentially liable party, subject to a claim for contribution to response costs by other potentially responsible parties under section 113 of CERCLA. The trust fund's share can be established by settlement, by an allocator (at facilities subject to an allocation under new section 131), or by a court. The trust fund's share may only be paid from the separate account established under section 111(a)(1). New section 107(z) specifies that exemptions and limitations on liability do not apply to concluded actions, including settlement or judgments that are approved, or administrative action that becomes effective, not later than 30 days after the date of enactment. New section 107(aa) limits recovery of EPA's oversight costs to 10 percent of the costs of the response action at sites, where the parties disclose their costs to the Administrator. New subsection (aa) provides incentives for EPA to increase its efficiency. It also provides an incentive for private parties to share data with EPA on the costs of response actions.

Section 305. Liability of response action contractors

Section 305 clarifies the liability of Response Action Contractors (RACs) under CERCLA to facilitate the prompt cleanup of hazardous waste sites, including sites on the NPL and brownfields sites. Typically, RACs do not own or operate the sites where the cleanups are performed; they employ highly trained, technically experienced staff to identify the existence of waste at sites and to clean up those wastes. Unfortunately, some courts have allowed

parties who are liable for response costs under CERCLA to bring suit against RACs, drawing cleanup firms into the Superfund liability net without regard to fault or negligence in cleanup activities. Section 307(a) amends section 119(a) of CERCLA by extending the preexisting negligence standard for RACs under Federal law to State law claims. This language ensures that State laws will not be preempted by making section 119 inapplicable in States where the State has enacted a law determining the liability of a response action contractor. Section 307(b) amends section 119(c) to enhance EPA's discretionary authority to provide indemnification for claims brought against RACs. Contractual indemnification of RACs by EPA has generally not been provided in recent years unless the risks involved affect both the market for insurance coverage for the work and the willingness of firms to perform cleanup services. Section 307(c) amends section 119(c)(5) to clarify that the indemnities provided under this section apply to threatened releases, as well as actual releases, consistent with the scope of potential liability under CERCLA.

Section 306. Amendments to Section 122

Final Covenants.—Section 306(a) amends section 122(f) of CERCLA to require the President to issue final covenants not to sue settling parties if such parties perform response actions, there are reasonable assurances for the performance of a response action, and the settling party pays a premium. This provision gives the President authority to provide final covenants not to sue in other circumstances. It also expands the authority of the President to omit reopener provisions in consent decrees if the settlement premium adequately addresses unknown future conditions or remedy failure.

Expedited Final Settlements.—Section 306(b) amends section 122(g) of CERCLA to allow expedited final settlements for parties whose contribution to the release of hazardous substances at the facility is de minimis, and for natural persons, small businesses, and municipalities who can demonstrate a limited ability to pay. This amendment also affords an administrative appeal and judicial review of the President's denial of settlement under this subsection. Under this subsection, the liability of a small business is extinguished if EPA fails to offer a de minimis settlement to the small business within 180 days of determining that its contributions are de minimis, unless the delay was beyond the control of the President.

Definition of Municipality.—Section 306(c) amends section 101 of CERCLA to add a definition of the term "municipality" to the Act.

Section 307. Clarification of liability for recycling transactions

Section 307(a) adds a new section 128 to CERCLA to address certain recycling transactions. Under new section 128(a), a person who arranges for the recycling of a recyclable material by means of a transaction that is covered by this section is not liable as a generator or transporter under CERCLA section 107(a). The requirements of this section establish a safe harbor for certain recycling transactions. If a person meets specified conditions, the person will not be liable as a generator or transporter of a hazardous substance. For all transactions that do not fall within the scope of the

liability protections provided under new section 128, the Committee intends that determinations of liability be made under section 107(a) on a case-by-case basis based on the individual facts and circumstances of each transaction, without regard to the requirements of new section 128.

New section 128(b) defines recyclable material as scrap paper, plastic, glass, textiles, rubber, metal, and spent batteries. This definition excludes certain shipping containers and materials with PCB concentrations in excess of 50 parts per million (ppm).

New section 128(c) sets forth the conditions under which transactions involving scrap paper, scrap plastic, scrap textiles, or scrap rubber will be deemed arranging for recycling.

New section 128(d) sets forth the conditions under which transactions involving scrap metal are deemed arranging for recycling. Scrap metal is defined as pieces of metal parts, or metal pieces that may be combined together with bolts or solders as well as certain metal byproducts from the production of copper and copper-based alloys. Scrap metal does not include materials that the Administrator excludes by regulation.

New section 128(e) sets forth the conditions under which transactions involving batteries are deemed to be arranging for recycling. A person who arranges for the recycling of batteries (other than lead-acid batteries) is potentially covered by the liability protections only if the arrangement took place after the effective date of Federal environmental regulations regarding the storage, transport, management, or other activities associated with recycling batteries and the person was in compliance with such regulations. Such regulations were promulgated by EPA on May 11, 1995, as part of the "Universal Waste Rule," and went into effect on the date of promulgation (60 Fed. Reg. 25492 (May 11, 1995)). As a result, for batteries other than lead-acid batteries, only transactions occurring on or after May 11, 1995, are potentially covered by the liability protections of new section 128.

New section 128(f) provides exclusions from the liability protections of section 128. A person is not protected from liability under this section if the person had an objectively reasonable belief that the recyclable material would not be recycled, the recyclable would be burned as fuel or for energy recovery or incineration, or the recycling facility was not in compliance with law. A person also is ineligible if the person has reason to believe hazardous substances were added to the recyclable material for reasons other than processing for recycling, or failed to exercise reasonable care.

New section 128(g) confirms that this section does not affect the liability of owners and operators. New section 128(h) clarifies that this section does not affect any person's liability under any law other than CERCLA. New section 128(i) clarifies that this section does not affect any defenses or liabilities with respect to any transaction involving a material that is not a recyclable material, as defined in this section. As a result, a person who engages in recycling transactions not covered by new section 128 may prevail on other defenses to CERCLA liability. Moreover, new section 128 does not relieve any plaintiff of the burden of proof that elements of liability are met in any action under this Act.

Service Station Dealers.—Section 307(b) amends section 114(c) of CERCLA to broaden the exemption from liability for service station

dealers who collect used oil for recycling to include used oil recycling by such persons before the March 8, 1993, effective date of the Used Oil Management Standards. The purpose of this amendment to section 114(c) is to protect service station dealers from liability for the public service they have provided by collecting and recycling used oil. This amendment also clarifies that a service station dealer is entitled to the same presumption that applies to oil received from "do-it-yourselfers," namely the presumption that oil which the service station dealer removes from the engine of a light duty motor vehicle or household appliance is not mixed with other hazardous substances.

Section 308. Allocation

Section 308 adds new section 129 to CERCLA to end third-party litigation by requiring all parties to halt their lawsuits and participate in a neutral allocation of response costs. This section also increases the fairness of CERCLA liability by providing parties with the opportunity to settle their liability under CERCLA based on their fair share of response costs.

Purpose.—New section 129(a) defines the purpose of allocation as the determination of the equitable shares of response costs, including the equitable share to be borne by the trust fund, at facilities on the National Priorities List.

Eligible Response Action.—New section 129(b) makes removal or remedial actions at facilities on the National Priorities List eligible for an allocation if the performance of the action is not the subject of a decree or administrative order, there are unrecovered costs of over $2 million, and there are response costs attributable to the trust fund. This subsection excludes chain of title sites from the allocation process (and requirement of a fund share) unless the current owner is insolvent or defunct. This subsection allows consideration of affiliated parties who are in a chain of title or otherwise liable for response costs for the purpose of determining whether the current owner is insolvent or defunct.

Discretionary Allocation Process.—New section 129(c) allows the President to initiate an allocation for any removal or remedial action at a facility on the NPL, including providing a Fund share.

Allocation Process.—New section 129(d) requires the President to ensure that a fair and equitable allocation of response costs is undertaken for eligible removal or remedial actions at an appropriate time by a neutral allocator under a process agreed to by the parties.

Early Offer of Settlement.—New section 129(e) requires the President to make an early offer of settlement that includes a Fund share.

Representation of the United States and Affected States.—New section 129(f) allows the Department of Justice or EPA to participate in the allocation as a representative of the trust fund, and allows any State that may be responsible for response costs as part of a State cost share to participate.

Moratorium on Litigation.—New section 129(g) stays all cost recovery and contribution actions until 150 days after issuance of the allocator's report.

Effect on Principles of Liability.—New section 129(h) clarifies that the allocation process does not modify principles of liability under the Act.

Fund Share.—New section 129(i) requires that the allocator determine the share of response costs to be allocated to the trust fund consisting of costs attributable to insolvent and defunct parties, parties with whom the United States has settled for less than their equitable share based on ability to pay considerations, exempt parties, and the amount attributable to parties whose liability is capped, to the extent that their equitable share exceeds that cap.

Certain Municipal Solid Waste Generators.—New section 129(j) precludes attributing response costs to households, small businesses, and small non-profit municipal solid waste generators who are protected from liability under new subsection 107(u). Similarly, the Committee intends that this section preclude attributing response costs to de micromis parties who are protected from liability under new subsection 107(w).

Unattributable Share.—New section 129(k) allows the equitable share of response costs which cannot be attributed to any party to spread among all parties, but requires that costs attributable to unidentified generators be attributed to identified transporters or identified owners and operators, where such parties are legally responsible for such costs.

Expedited Allocation.—New section 129(l) allows the allocator, at the request of the allocation parties, to provide an estimate of the aggregate Fund share, to assist the parties in reaching settlement with the United States.

Other Settlements.—New section 129(m) ends the allocation process if the parties come forward with a private allocation that covers at least 80 percent of the response costs. This subsection affirms the President's authority under section 122(g) to enter into expedited settlements at any time during an allocation.

Settlements Based on Allocations.—New section 129(n) allows a party to settle based on an equitable share in the allocation report, if the Administrator of EPA and the Attorney General do not reject the allocation report. The Committee expects the parties to agree on a standard for rejection of the allocation as part of the process agreed to by the participants. Further, the Committee expects that rejection of an allocation will be extremely rare. Moreover, if at the time the allocation is complete, the President does not have sufficient funds to obligate the full Fund share established by the allocation, the Committee expects the President to proceed in a manner that preserves the equitable results of the allocation.

Reimbursement of UAO Performance.—New section 129(o) provides reimbursement when performing parties expend more than their allocated share of response costs when complying with an administrative order. This provision is intended to ensure that the President does not use his authority to issue cleanup orders under section 106 of CERCLA to circumvent the President's obligation to provide for a fair and equitable allocation of response costs. Second, it is intended to ensure that the President does not attempt to make orphan share funding available only if the party waives its rights to a challenge.

Post-Settlement Litigation.—New section 129(p) allows the United States to proceed with litigation against non-settling par-

ties. This provision is intended to provide a significant incentive for parties who might otherwise be recalcitrant to agree to conduct a cleanup.

Response Costs.—New section 129(q) states that costs of the allocation process and costs incurred for the Fund share are response costs. This ensures that EPA can seek recovery of these response costs in any post-settlement litigation against recalcitrant parties.

Federal, State, and Local Agencies.—New section 129(r) clarifies that Federal, State, and local agencies are subject to and entitled to the benefits of an allocation to the same extent as any other party.

Source of Funds.—New section 129(s) provides that payments by the Trust Fund or work performed on behalf of the Trust Fund to meet obligations under this section are funded from amounts made available under section 111(a)(1).

Savings Provisions.—New section 129(t) clarifies the President's retained authorities.

Section 309. Standard for cleanup by dry cleaners

Section 309 establishes a national standard for the remediation of dry cleaning solvents in order to address unrealistic cleanup requirement concerns faced by dry cleaners. Since there is no national standard in place, dry cleaners are often confronted with an initial requirement to clean the soil in question to drinking water standards, an unnecessarily difficult and expensive process which is often not practical on a site-specific basis. Section 309 uses the EPA's own Soil Screening Guidance Document to set a standard for dry cleaning solvents equal to the Soil Screening level for inhalation on a site specific basis. This reasonable site-specific standard for soil (a) would not interfere with requiring that drinking water standards be met for ground and surface water used as drinking water in the area and (b) could be made stricter by the EPA or the State agency on a site-specific basis if necessary to protect human health or the environment.

Title IV—Public Health

Section 401. Public health authorities

Disease Registry and Medical Care Providers.—Section 401(a) amends section 104(i)(1) of CERCLA modifying the requirement in current law to establish a disease registry. This section also makes technical amendments regarding referrals to health care providers.

Substance Profiles.—Section 401(b) amends section 104(i)(3) to require that toxicological profiles of hazardous substances be based on scientific developments and peer reviewed data. This section also requires distribution of such profiles.

Determining Health Effects.—Section 401(c) revises aspects of health effects research under section 104(i)(5).

Public Health at NPL Facilities.—Section 401(d) revises section 104(i)(6) to allow preliminary health assessments or health consultations before the Agency for Toxic Substances and Disease Registry (ATSDR) commits to full assessments at sites and requires that such assessments take into account the needs and conditions of the affected community and increase community involvement in health assessments. This provision also requires EPA to place the

highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern, as identified by ATSDR.

Health Studies.—Section 401(e) amends section 104(i)(7)(A) to broaden the information ATSDR may consider before deciding to conduct a health study.

Distribution of Materials to Health Professionals and Medical Centers.—Section 401(f) amends section 104(i)(14) to expand the distribution of health and risk information to the public.

Grants, Contracts, and Community Assistance Activities.—Section 401(g) amends section 104(i)(15) to increase the ability of ATSDR to fund, work with, and serve public or private non-profit entities and communities affected by the release of hazardous substances.

Peer Review Committee.—Section 401(h) amends section 104(i) to add a requirement that ATSDR establish an external peer review committee.

Conforming Amendments.—Section 401(i) makes technical and conforming amendments.

Section 402. Indian health provisions

Section 402 amends section 104(i) of CERCLA to include reference to the Indian Health Service and to require consideration of subsistence activities in public health assessments.

Section 403. Hazard ranking system

Section 403 amends section 105(c) of CERCLA to require the President to place the highest priority on facilities with actual human exposure to releases. This amendment is consistent with the amendment to section 104(i)(6)(a)(iii) made by section 221(d) of the bill. This section also requires EPA to take prior response actions into account when determining whether or not to list a facility on the NPL.

Section 404. Disclosure of releases of hazardous substances at Superfund sites

Section 404 amends section 117 of CERCLA covering public participation to add a new subsection (b) requiring disclosure of information about releases of hazardous substances from sites on the NPL or proposed for listing on the NPL. This provision requires the President to make information about releases of hazardous substances more widely available to the public at various stages of a cleanup, including before and during the removal action, as part of the remedial investigation, as part of the feasibility study, as part of the record of decision, and after completion of construction. The purpose of this section is to provide the public with information about potential risks posed by the site. The Committee expects that this section will be implemented so as to facilitate a better understanding of the magnitude and nature of potential risks associated with Superfund sites, and directs the EPA to provide the best and most accurate information and estimates available in complying with this section. EPA should not disseminate information pursuant to this section for which there is a reasonable basis to conclude that the information presents, or is reasonably likely to present, a misleading picture of the risks posed by the NPL facility. This section does not place any additional burdens on any party that is per-

forming a response action. The source of this information is intended to be data that are already collected as part of the response action. If such data are not readily available, the President is directed to make best estimates.

ADMINISTRATION VIEWS

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, October 12, 1999.

Hon. TOM BLILEY, Jr.,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR CHAIRMAN BLILEY: The Administration has worked diligently to enact responsible Superfund reform legislation for the past six years. As you know, the Administration has implemented three rounds of administrative reforms of the Superfund program that have fundamentally improved program performance resulting in faster, fairer, and more efficient cleanups. The cost and duration of Superfund cleanups has been reduced by 20 percent, while the number of cleanups completed has increased from 65 to 85 per year. Cleanup construction has been completed at 670 Superfund sites and more than 400 additional sites are undergoing cleanup construction. More than 90 percent of all Superfund sites have had cleanup construction completed or are in the midst of cleanup construction. More than three times as many toxic waste sites have been cleaned up during this Administration that were cleaned up in all of the prior years combined.

To build upon this significant progress, the Administration continues to support targeted legislation that encourages the cleanup and development of brownfields and addresses the liability of prospective purchasers, contiguous property owners, truly innocent land owners, small businesses, municipalities, and recyclers. The alternative Superfund bill offered by Representative Towns, which was supported by a large number of the subcommittee members during the Finance and Hazardous Materials Subcommittee markup, is targeted legislation that the Administration can support. We remain hopeful that responsible bipartisan reform legislation can be enacted. Unfortunately, to date, responsible Superfund and brownfield legislation has not been marked up in either the House Transportation and Infrastructure Committee nor the House Commerce Subcommittee on Finance and Hazardous Materials.

Given the significant progress we have been able to achieve in the Superfund program over the past six years, the Administration cannot support legislation that would undermine that progress and therefore must strongly oppose H.R. 2580 as reported by the Subcommittee on Finance and Hazardous Materials.

The version of H.R. 2580 that is scheduled for full Commerce Committee markup will reduce the current pace of cleanup by cutting available cleanup funds and adding unnecessary, time consuming layers of new risk assessment and remedy selection requirements. Further, the bill shifts significant cleanup costs from polluters to the general public. The bill also includes provisions that weaken cleanup standards that help ensure permanent cleanups, fails to protect uncontainmented ground water, and eliminates relevant and appropriate federal and state standards that help tai-

lor Superfund cleanups to meet specific site conditions, particularly the ability to clean up ground water to state drinking water standards.

We are also concerned that Congress has failed to reinstate the lapsed Superfund taxes, which have historically funded the cleanup of toxic waste sites. It is especially irresponsible to force the general public to pay for the hundreds of millions of dollars of special interest liability exemptions in the bill, thereby shifting the cost of toxic waste cleanup from the industrial sectors that contributed to the problem to the general public. A significant portion of the current Superfund budget would be needed to pay for the liability exemptions in the bill.

In addition, rather than encouraging early settlements between the federal government and parties that contributed to the toxic waste problem, the bill actually rewards polluters that refuse to settle and encourages them to identify small parties and entangle them in allocation disputes in order to reduce what large polluters must pay to clean up the site. Further, the bill undermines the federal safety net that protects all Americans, by prohibiting EPA from ordering polluters to clean up high-risk toxic waste sites in states that lack the resources to properly address these sites.

The Administration remains committed to working with Congress to enact responsible Superfund legislation as represented in the alternative bill offered by Representative Towns during the Finance and Hazardous Materials Subcommittee markup.

The Office of Management and Budget advises that there is no objection to the transmission of this letter from the standpoint of the President's program.

Sincerely,

CAROL M. BROWNER.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, October 13, 1999.

Hon. JOHN D. DINGELL,
Ranking Member, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN DINGELL: The Department of Justice has reviewed H.R. 2580, the "Land Recycling Act of 1999," as reported out of the Finance and Hazardous Materials Subcommittee of the House Commerce Committee on September 29, 1999, and strongly oppose this legislation. (An identical letter is being sent to Chairman Thomas J. Bliley, Jr.)

In general, the scope of the bill goes well beyond encouraging brownfields redevelopment, and is inconsistent with the Administration's desire to enact narrow, targeted Superfund legislation in this Congress. In brief, we believe H.R. 2580 would shift cleanup costs to the American taxpayer, unduly restrict the ability of the federal government and citizens to protect public health and the environment, slow cleanups and drag small parties back into the process through the mandatory allocation scheme, roll back the level of protection of cleanups that do occur, provide overly broad liability relief, increase transaction costs.

This letter provides a general overview of our most serious concerns.

THE BILL WOULD SHIFT MAJOR NEW COSTS TO THE TAXPAYER

The Administration has steadfastly supported the "polluter pays" principle as the most equitable financing mechanism for securing cleanup of Superfund sites. Unfortunately, H.R. 2580 would reject that approach and would shift major new costs to the Fund in order to pay for the hundreds of millions of dollars in special interest liability exemptions in the bill. At the same time, Congress has not reinstated the taxes supporting the Superfund program that expired in 1995. As a result, H.R. 2580 would make the American taxpayer—not polluters—pay for these costs.

UNREASONABLE RESTRICTIONS ON FEDERAL AUTHORITIES

We believe the restrictions on federal authorities in section 102 are gravely flawed and would remove the federal safety net that currently protects human health and the environment across the nation pursuant to Superfund. For example, H.R. 2580 extends its broad prohibition on federal enforcement at sites subject to state response actions not only to CERCLA, but also to RCRA abatement and citizen suit authorities. Also, the scope of the enforcement bar is very broad and covers much more than just lightly-contaminated brownfields sites (*i.e.*, NPL-caliber sites would be subject to the bar). What's more, the narrow exceptions to that bar would prevent a federal response in situations that may present an imminent and substantial endangerment to communities near Superfund sites. Although H.R. 2580 contains language that is somewhat different than that found in H.R. 1300, it continues to impose a more stringent standard than the statute's existing "imminent and substantial endangerment" provision, a provision also found in nearly every other federal environmental statute. This new standard will make it more difficult for the federal government to protect human health and the environment, and will lead to years of litigation over its meaning. We also object to the fact that a state can simply certify that its program satisfies insufficiently defined criteria—thereby triggering the overly-broad federal enforcement bar—with no opportunity for EPA to review and evaluate the adequacy of that state program. We strongly oppose this new language that would invite a new round of litigation over its meaning and would create unwarranted risks to public health by barring federal intervention.

In addition, we object to the language in section 102(e) that would eliminate the requirement for any federal permit for response actions that are covered by the federal enforcement bar. Although proponents have likened this provision to section 121(e) of CERCLA, H.R. 2580 would provide none of the protections inherent in the Superfund remedy selection process for determining appropriate cleanup standards, including the opportunity for public participation in the determination of such standards. When combined with the bill's elimination of citizen suit enforcement options and EPA's inability to ensure adequate state public participation procedures under the state program self-certification approach, affected communities may well be left without a voice in the cleanup process.

THE NEW ALLOCATION PROCESS WILL DISCOURAGE SETTLEMENTS AND SLOW CLEANUPS

In my recent letter to the Finance and Hazardous Materials subcommittee regarding H.R. 1300 (attached), I discussed our extensive concerns with the new prescriptive, mandatory allocation process contained in that legislation. We were quite disappointed, then, to see that essentially the same language was included in the bill reported out of the subcommittee on September 29, 1999.

To briefly recap the points made in my earlier letter, we believe this new section is not needed, in light of the significant changes we have made in our enforcement strategy, as a result of our administrative reforms. Furthermore, if enacted, H.R. 2580's allocation system will generate litigation, not settlements, pulling lawyers back into the process and miring cleanup in litigation and transaction costs. It will also drag exempt and already-settled parties (including the smallest parties) through the allocation process and greatly increase their transaction costs. Finally, it will slow down or stop ongoing response actions, and could force the federal government to rely primarily on Fund-lead cleanups to avoid disruptions in the cleanup process.

THE REMEDY PROVISIONS ROLL BACK PROTECTION

We are extremely concerned that Section 108 of the bill erodes protection of human health and the environment. For example, in making the three changes to current CERCLA section 121(b)(1), the bill would dilute the current statute's preference for permanent treatment remedies. In addition, the bill would eliminate the use of "relevant and appropriate requirements" currently included in CERCLA section 122(d). Such changes to the existing remedy selection provisions are unnecessary in light of the Superfund administrative reforms. They also could interfere with EPA's ability to effectively remediate sites the first time around by allowing greater amounts of contamination to remain in the soil and ground water where it can cause a new round of cleanups in the future.

The new "dry cleaners" amendment adopted at the bill's markup before the subcommittee would impose an unsafe national cleanup level for toxic waste at drycleaner sites. The provision adopts an existing EPA guideline designed to assess the need for cleaning up perchloroethylene and other dry cleaning solvents in soil and applies it as the presumptive standard for all environmental media, including groundwater and surface water. Several studies and EPA data show that "perc" is one of the most pervasive contaminants found in groundwater in the U.S. Accordingly, we object to the way this section will make EPA wait until people are actually drinking "perc" contaminated water before the agency can apply a more protective standard. We also object to the burdensome obligations placed on EPA in order to deviate from the statutory standard on a site-by-site basis. Significantly, the current national drinking water requirements are thousands of times lower than the "presumptive" level established in this section.

NEW LIABILITY EXEMPTIONS AND EXPANDED DEFENSES ARE OVER BROAD

The Administration has testified before the Finance and Hazardous Materials Committee several times this year supporting certain narrow, targeted liability relief that we believe is appropriate. Unfortunately, H.R. 2580 would provide numerous new exemptions and defenses from CERCLA liability that are far too broad.

For example, the municipal solid waste (MSW) exemption is not consistent with EPA's recently issued MSW settlement policy and would provide inappropriate relief to large waste generators and commercial haulers. In addition, the bill provides an over broad exemption to small businesses, which could include businesses that contributed large amounts of highly toxic wastes. Furthermore, the bill includes a new administrative appeal mechanism that could keep de minimis settlements tied up in knots, delaying liability resolution for years for deserving parties while other parties argue and litigate over EPA's decision on eligibility.

H.R. 2580 WOULD RESULT IN A SIGNIFICANT INCREASE IN LITIGATION

As I have already discussed in this letter and in my recent letter to the subcommittee on H.R. 1300, we strongly oppose legislation that will increase transaction costs. Unfortunately, H.R. 2580 will initiate another litigation feeding frenzy—from challenges to the allocation process to litigation over remedies and revisions to the National Contingency Plan, from litigation over affirmative defenses and exemptions to challenges to risk assessment procedures. The bill will invite a new round of expensive litigation over what is meant by all of its new terms and requirements. Rather than alleviating the concerns expressed by many Members of Congress over transaction costs, this bill will exacerbate the problem as courts will be asked to review and revise eighteen years of established case law.

I hope our analysis of this bill is helpful, and would be pleased to discuss these and other more detailed concerns with you further. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

JOYCE E. PETERS,
Counsel.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

DEFINITIONS

SEC. 101. For purpose of this title—

(1) * * *

* * * * * * *

(35)(A) The term "contractual relationship", for the purpose of section [107(b)(3)] *107(b)(1)(C)* includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

(i) * * *

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section [107(b)(3)] *107(b)(1)(C)* (a) and (b).

(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry *(as specified in section 107(o))* into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(C) Nothing in this paragraph or in section [107(b)(3)] *107(b)(1)(C)* shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section [107(b)(3)] *107(b)(1)(C)* shall be available to such defendant.

* * * * * * *

(39) The term "municipality" means a political subdivision of a State, including a city, county, village, town, township, borough, parish, school district, sanitation district, water district, or other public entity performing local governmental functions. The term also includes a natural person acting in the capacity

of an official, employee, or agent of any entity referred to in the preceding sentence in the performance of governmental functions.

* * * * * * *

RESPONSE AUTHORITIES

SEC. 104. (a) * * *

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(i)(1) There is hereby established within the Public Health Service an agency, to be known as the Agency for Toxic Substances and Disease Registry, which shall report directly to the Surgeon General of the United States. The Administrator of said Agency shall, with the cooperation of the Administrator of the Environmental Protection Agency, the Commissioner of the Food and Drug Administration, the Directors of the National Institute of Medicine, National Institute of Environmental Health Sciences, National Institute of Occupational Safety and Health, Centers for Disease Control and Prevention, the Administrator of the Occupational Safety and Health Administration, the Administrator of the Social Security Administration, the Secretary of Transportation, *the Director of the Indian Health Service,* and appropriate State and local health officials, effectuate and implement the health related authorities of this Act. In addition, said Administrator shall—

[(A) in cooperation with the States, establish and maintain a national registry of serious diseases and illnesses and a national registry of persons exposed to toxic substances;**]**

(A) in cooperation with the States, for scientific purposes and public health purposes, establish and maintain a national registry of persons exposed to toxic substances;

* * * * * * *

(E) either independently or as part of other health status survey, conduct periodic survey and screening programs to determine relationships between exposure to toxic substances and illness. **[**In cases of public health emergencies, exposed persons shall be eligible for admission to hospitals and other facilities and services operated or provided by the Public Health Service.**]**

In cases of public health emergencies, exposed persons shall be eligible for referral to licensed or accredited health care providers.

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(3)*(A)* Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

[(A)**]** *(i)* An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels

of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

[(B)] *(ii)* A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

[(C)] *(iii)* Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

[Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.]

(B) Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles prepared under this paragraph shall be for those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared or for substances not on the list but which have been found at facilities for which there has been a response action under this Act and which have been determined by ATSDR to be of health concern. Profiles required under this paragraph shall be revised and republished, as appropriate, based on scientific development and shall be provided to the States, including State health departments, tribal health officials, and local health departments, and made available to other interested parties.

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(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA *and the Director of the Indian Health Service* and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research [designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance.] *conducted directly or by means such as cooperative agreements and grants with appropriate public and nonprofit institutions. The research shall be designed to determine*

the health effects of the substance and techniques for development of methods to determine such health effects. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

(i) * * *

* * * * * * *

(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; [and]

(iv) laboratory and other studies to develop innovative techniques for predicting organ-specific, site-specific, and system-specific acute and chronic toxicity; and

[(iv)] *(v)* where there is a possibility of obtaining human data, the collection of such information.

* * * * * * *

[(6)(A) The Administrator of ATSDR shall perform a *public* health assessment for each facility on the National Priorities List established under section 105. Such *public* health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.]

(6)(A)(i) The Administrator of ATSDR shall perform a preliminary public health assessment or health consultation for each facility on the National Priorities List, including those facilities owned by any department, agency, or instrumentality of the United States, and those sites that are the subject of a petition under subparagraph (B). The preliminary public health assessment or health consultation shall be commenced as soon as practicable after each facility is proposed for inclusion on the National Priorities List or the Administrator of ATSDR accepts a petition for a public health assessment. If the Administrator of ATSDR, in consultation with local public health officials, determines that the results of a preliminary public health assessment or health consultation indicate the need for a public health assessment, the Administrator of the ATSDR shall conduct the public health assessment of those sites posing a health hazard. The results of the public health assessment should be considered in selecting the remedial action for the facility.

(ii) The Administrator of ATSDR, in cooperation with States, shall design public health assessments that take into account the needs and conditions of the affected community.

(iii) The Administrator of EPA shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or adverse health effects as identified in a public health assessment con-

ducted by the Administrator of ATSDR or are reasonably anticipated based on currently known facts.

* * * * * * *

(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest *where low population density is not used as an excluding risk factor*, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

(D)*(i)* Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

(ii) The President and the Administrator of ATSDR shall develop strategies to obtain relevant on-site and off-site characterization data for use in the public health assessment. The President shall, to the maximum extent practicable, provide the Administrator of ATSDR with the data and information necessary to make public health assessments sufficiently prior to the choice of remedial actions to allow the Administrator of ATSDR to complete these assessments.

(iii) Where appropriate, the Administrator of ATSDR shall provide to the President, as soon as practicable after site discovery, recommendations for sampling environmental media for hazardous substances of public health concern. To the extent feasible, the President shall incorporate such recommendations into the President's site investigation activities.

(iv) In order to improve community involvement in public health assessments, the Administrator of ATSDR shall carry out each of the following duties:

(I) Collect from community advisory groups, from State and local public health authorities, and from other sources in communities affected or potentially affected by releases of hazardous substances data regarding exposure, relevant human activities, and other factors.

(II) Design public health assessments that take into account the needs and conditions of the affected community. Community-based research models, local expertise, and local health resources should be used in designing the public health assessment. In developing such designs, emphasis shall be placed on collection of actual exposure data, and sources of multiple exposure shall be considered.

(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and

shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection. *If the Administrator of ATSDR or the Administrator of EPA does not act on the recommendations of the State, the Administrator of ATSDR or EPA must respond in writing to the State or tribe as to why the Administrator of ATSDR or EPA has not acted on the recommendations.*

(F) For the purposes of this subsection and section 111(c)(4), the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, **[**and**]** food chain contamination*, and any other pathways resulting from subsistence activities*), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question**[**.**]***, and may give special consideration, where appropriate, to any practices of the affected community that may result in increased exposure to hazardous substances, pollutants, or contaminants, such as subsistence hunting, fishing, and gathering.*

* * * * * * *

[(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.**]**

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a public health assess-

ment or on the basis of other appropriate information, the Administrator of ATSDR shall conduct a human health study of exposure or other health effects for selected groups or individuals in order to determine the desirability of conducting full scale epidemiologic or other health studies of the entire exposed population.

* * * * * * *

[(14) In the implementation of this subsection and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.]

(14) EDUCATIONAL MATERIALS.—In implementing this subsection and other health-related provisions of this Act the Administrator of ATSDR, in cooperation with the States, shall—

(A) assemble, develop as necessary, and distribute to the State and local health officials, tribes, medical colleges, physicians, nursing institutions, nurses, and other health professionals and medical centers appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of prevention, diagnosis, and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed under paragraph (2)) through means the Administrator of ATSDR considers appropriate; and

(B) assemble, develop as necessary, and distribute to the general public and to at-risk populations appropriate educational materials and other information on human health effects of hazardous substances.

[(15)] *(15) GRANTS, CONTRACTS, AND COMMUNITY ASSISTANCE.—(A)* The activities of the Administrator of ATSDR described in this subsection and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through [cooperative agreements with States (or political subdivisions thereof)] *grants, cooperative agreements, or contracts with States (or political subdivisions thereof), other appropriate public authorities, public or private institutions, colleges, universities, and professional associations* which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

(B) When a public health assessment is conducted at a facility on the National Priorities List, or a facility is being evaluated for inclusion on the National Priorities List, the Administrator of ATSDR may provide the assistance specified in this paragraph to public or private nonprofit entities, individuals, and community-based groups that may be affected by the release or threatened release of hazardous substances in the environment.

(C) The Administrator of ATSDR, pursuant to the grants, cooperative agreements, and contracts referred to in this paragraph, is au-

thorized and directed to provide, where appropriate, diagnostic services, health data registries, and preventative public health education to communities affected by the release of hazardous substances.

(16) *PERSONNEL*.—The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

(17) *AUTHORITIES*.—In accordance with section 120 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

(18) *POLLUTANTS AND CONTAMINANTS*.—If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.

(19) PEER REVIEW COMMITTEE.—The Administrator of ATSDR shall establish an external peer review committee of qualified health scientists who serve for fixed periods and meet periodically to—

(A) provide guidance on initiation of studies;

(B) assess the quality of study reports funded by the agency; and

(C) provide guidance on effective and objective risk characterization and communication.

The peer review committee may include additional specific experts representing a balanced group of stakeholders on an ad hoc basis for specific issues. Meetings of the committee should be open to the public.

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NATIONAL CONTINGENCY PLAN

SEC. 105. (a) REVISION AND REPUBLICATION.—Within one hundred and eighty days after the enactment of this Act, the President shall, after notice and opportunity for public comments, revise and republish the national contingency plan for the removal of oil and hazardous substances, originally prepared and published pursuant to section 311 of the Federal Water Pollution Control Act, to reflect and effectuate the responsibilities and powers created by this Act, in addition to those matters specified in section 311(c)(2). Such revision shall include a section of the plan to be known as the national hazardous substance response plan which shall establish procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants, which shall include at a minimum:

(1) * * *

* * * * * * *

(8)(A) * * *

(B) based upon the criteria set forth in subparagraph (A) of this paragraph, the President shall list as part of the plan na-

tional priorities among the known releases or threatened releases throughout the United States and shall revise the list, *subject to subsection (h),* no less often than annually. Within one year after the date of enactment of this Act, and annually thereafter, each State shall establish and submit for consideration by the President priorities for remedial action among known releases and potential releases in that State based upon the criteria set forth in subparagraph (A) of this paragraph. In assembling or revising the national list, the President shall consider any priorities established by the States. To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as the "top priority among known response targets", and, to the extent practicable, shall include among the one hundred highest priority facilities one such facility from each State which shall be the facility designated by the State as presenting the greatest danger to public health or welfare or the environment among the known facilities in such State. A State shall be allowed to designate its highest priority facility only once. Other priority facilities or incidents may be listed singly or grouped for response priority purposes;

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(c) HAZARD RANKING SYSTEM.—

(1) * * *

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(5) RISK PRIORITIZATION.—In setting priorities under subsection (a)(8), the President shall place highest priority on facilities with releases of hazardous substances which result in actual ongoing human exposures at levels of public health concern or demonstrated adverse health effects as identified in a public health assessment conducted by the Agency for Toxic Substances and Disease Registry or are reasonably anticipated based on currently known facts.

(6) PRIOR RESPONSE ACTION.—Any evaluation under this section shall take into account all prior response actions taken at a facility.

* * * * * * *

(h) ADDITIONS TO NPL.—(1) The President may add a facility to the National Priorities List only after requesting and obtaining the concurrence of the Governor of the State in which the facility is located. If the Governor assures the President that the State is addressing, or will address, the site under State authority, and the Governor does not concur in the listing of the site, the President shall not list the site.

(2) Notwithstanding paragraph (1), the President may add a facility to the National Priorities List if—

(A) the release or threatened release affects public health or the environment in more than one State, unless the Governors of each such State fail to concur, upon request by the President, in the listing of the site; or

(B) the President finds that the State where the facility is located is a major potentially responsible party at that facility.

* * * * * * *

LIABILITY

SEC. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner [and] *or* operator of a vessel or a facility,

* * * * * * *

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected [by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—] *by such person—*

from which there is a release, or a threatened release, that causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any [other] necessary costs of response incurred by any [other] person*, other than the United States, a State, or an Indian tribe,* consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 104(i).

(5) The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

[(b) There shall be] *(b) DEFENSES TO LIABILITY.—*

(1) IN GENERAL.—There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

[(1)] *(A)* an act of God;

[(2)] *(B)* an act of war;

[(3)] *(C)* an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defend-

ant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

[(4)**]** *(D)* any combination of the foregoing paragraphs.

(2) LIABILITY RELIEF FOR INNOCENT PARTIES.—

(A) RECIPIENTS OF PROPERTY BY INHERITANCE OR BEQUEST.—There shall be no liability under subsection (a) for a person whose liability is based solely on the person's status as an owner or operator of a facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of paragraph (4) and that the person acquired the property by inheritance or bequest.

(B) RECIPIENTS OF PROPERTY BY CHARITABLE DONATION.—Liability under subsection (a) shall be limited to the lesser of the fair market value of the facility or vessel and the actual proceeds of the sale of the facility for a person whose liability is based solely on the person's status as an owner or operator of the facility or vessel and who can establish by a preponderance of the evidence that the person meets the requirements of paragraph (4) and that the person holding title, either outright or in trust, to the vessel or facility is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and holds such title as a result of a charitable donation that qualifies under section 170, 2055, or 2522 of such Code.

(C) OWNERS OR OPERATORS OF RIGHTS-OF-WAY.—There shall be no liability under subsection (a) for a person whose liability is based solely on ownership or operation of a road, street, pipeline, or other right-of-way, easement, or public transportation route (other than railroad rights-of-way and railroad property) over which hazardous substances are transported or otherwise are present if such person can establish by a preponderance of the evidence that the person did not, by any act or omission, cause or contribute to the release or threatened release.

(D) RAILROAD OWNERS OR OPERATORS OF SPUR TRACK.—There shall be no liability under subsection (a) for a person whose liability is based solely on the status of the person as a railroad owner or railroad 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 the railroad owner or operator can establish by a preponderance of the evidence that—

(i) the spur track provides access to a main line or branch line track that is owned or operated by the railroad owner or operator;

(ii) the spur track is 10 miles long or less; and

(iii) the railroad owner or operator did not cause or contribute to a release or threatened release of the hazardous substances for which liability is alleged under subsection (a).

(E) CONSTRUCTION CONTRACTORS.—There shall be no liability under subsection (a) for a person who is a construction contractor (other than a response action contractor covered by section 119) if such person can establish by a preponderance of the evidence that—

(i) the person's liability is based solely on construction activities that were specifically directed by and carried out in accordance with a contract with an owner or operator of the facility;

(ii) the person did not know or have reason to know of the presence of hazardous substances at the facility concerned before beginning construction activities; and

(iii) the person exercised appropriate care with respect to the hazardous substances discovered in the course of performing the construction activity, including precautions against foreseeable acts of third parties, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the person's acts or omissions.

(3) APPROPRIATE CARE.—

(A) SITE-SPECIFIC BASIS.—The determination whether or not a person has exercised appropriate care with respect to hazardous substances within the meaning of paragraph (4)(C) shall be made on a site-specific basis taking into consideration the characteristics of the hazardous substances, in light of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the defendant's acts or omissions.

(B) SAFE HARBOR.—A person shall be deemed to have exercised appropriate care within the meaning of paragraph (4)(C) if—

(i) the person took 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, or

(ii) in any case in which the release or threatened release of hazardous substances is the subject of a response action by persons authorized to conduct the response action at the facility or vessel, the person provides access for and all reasonable cooperation with the response action.

(4) REQUIREMENTS.—The requirements referred to in paragraph (2)(A) and (B) are that a person's liability is based solely on the person's status as an owner or operator of a facility or

vessel and that the person can establish by a preponderance of the evidence that—

(A) the person acquired the facility or vessel after the disposal or placement of the hazardous substances for which liability is alleged under subsection (a);

(B) the person did not, by any act or omission, cause or contribute to the release or threatened release of such hazardous substances; and

(C) the person exercised appropriate care with respect to such hazardous substances.

(5) TREATMENT OF NON-LIABLE PARTIES.—The Administrator shall seek to minimize the administrative and legal burdens on parties that are not liable pursuant to this section. To the extent practicable, the Administrator shall—

(A) inform such parties that they are exempted from liability pursuant to this section, and offer them written assurances establishing their exempt status; and

(B) eliminate or minimize any need for such parties to retain legal counsel in connection with administrative or legal proceedings concerning the facility at issue.

(c)(1) * * *

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(3) If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 104 or 106 of this Act, such person may be liable to the United States for punitive damages in an amount [at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action.] *up to three times the amount of such response costs.* The President is authorized to commence a civil action against any such person to recover the punitive damages, which shall be in addition to any costs recovered from such person pursuant to section 112(c) of this Act. Any moneys received by the United States pursuant to this subsection shall be deposited in the Fund.

* * * * * * *

[(k)(1) The liability established by this section or any other law for the owner or operator of a hazardous waste disposal facility which has received a permit under subtitle C of the Solid Waste Disposal Act, shall be transferred to and assumed by the Post-closure Liability Fund established by section 232 of this Act when—

[(A) such facility and the owner and operator thereof has complied with the requirements of subtitle C of the Solid Waste Disposal Act and regulations issued thereunder, which may affect the performance of such facility after closure; and

[(B) such facility has been closed in accordance with such regulations and the conditions of such permit, and such facility and the surrounding area have been monitored as required by such regulations and permit conditions for a period not to exceed five years after closure to demonstrate that there is no substantial likelihood that any migration offsite or release from confinement of any hazardous substance or other risk to public health or welfare will occur.

[(2) Such transfer of liability shall be effective ninety days after the owner or operator of such facility notifies the Administrator of the Environmental Protection Agency (and the State where it has an authorized program under section 3006(b) of the Solid Waste Disposal Act) that the conditions imposed by this subsection have been satisfied. If within such ninety-day period the Administrator of the Environmental Protection Agency or such State determines that any such facility has not complied with all the conditions imposed by this subsection or that insufficient information has been provided to demonstrate such compliance, the Administrator or such State shall so notify the owner and operator of such facility and the administrator of the Fund established by section 232 of this Act, and the owner and operator of such facility shall continue to be liable with respect to such facility under this section and other law until such time as the Administrator and such State determines that such facility has complied with all conditions imposed by this subsection. A determination by the Administrator or such State that a facility has not complied with all conditions imposed by this subsection or that insufficient information has been supplied to demonstrate compliance, shall be a final administrative action for purposes of judicial review. A request for additional information shall state in specific terms the data required.

[(3) In addition to the assumption of liability of owners and operators under paragraph (1) of this subsection, the Post-closure Liability Fund established by section 232 of this Act may be used to pay costs of monitoring and care and maintenance of a site incurred by other persons after the period of monitoring required by regulations under subtitle C of the Solid Waste Disposal Act for hazardous waste disposal facilities meeting the conditions of paragraph (1) of this subsection.

[(4)(A) Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall conduct a study and shall submit a report thereon to the Congress on the feasibility of establishing or qualifying an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. Such study shall include a specification of adequate and realistic minimum standards to assure that any such privately placed insurance will carry out the purposes of this subsection in a reliable, enforceable, and practical manner. Such a study shall include an examination of the public and private incentives, programs, and actions necessary to make privately placed insurance a practical and effective option to the financing system for the Post-closure Liability Fund provided in title II of this Act.

[(B) Not later than eighteen months after the date of enactment of this Act and after a public hearing, the President shall by rule determine whether or not it is feasible to establish or qualify an optional system of private insurance for postclosure financial responsibility for hazardous waste disposal facilities to which this subsection applies. If the President determines the establishment or qualification of such a system would be infeasible, he shall promptly publish an explanation of the reasons for such a determination. If the President determines the establishment or qualification of such a system would be feasible, he shall promptly publish notice of such determination. Not later than six months after

an affirmative determination under the preceding sentence and after a public hearing, the President shall by rule promulgate adequate and realistic minimum standards which must be met by any such privately placed insurance, taking into account the purposes of this Act and this subsection. Such rules shall also specify reasonably expeditious procedures by which privately placed insurance plans can qualify as meeting such minimum standards.

[(C) In the event any privately placed insurance plan qualifies under subparagraph (B), any person enrolled in, and complying with the terms of, such plan shall be excluded from the provisions of paragraphs (1), (2), and (3) of this subsection and exempt from the requirements to pay any tax or fee to the Post-closure Liability Fund under title II of this Act.

[(D) The President may issue such rules and take such other actions as are necessary to effectuate the purposes of this paragraph.

[(5) SUSPENSION OF LIABILITY TRANSFER.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

[(6) STUDY OF OPTIONS FOR POST-CLOSURE PROGRAM.—

[(A) STUDY.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

[(B) PROGRAM ELEMENTS.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

[(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

[(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

[(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

[(C) ASSESSMENTS.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for dif-

ferent classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

[(i) the current and future financial capabilities of facility owners and operators;

[(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

[(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

[(D) PROCEDURES.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

[(E) CONSIDERATION OF OPTIONS.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mechanisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

[(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

[(ii) voluntary risk pooling by owners and operators;

[(iii) legislation to require risk pooling by owners and operators;

[(iv) modification of the Post-Closure Liability Trust Fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

[(v) private insurance;

[(vi) insurance provided by the Federal Government;

[(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

[(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

[(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.]

* * * * * * *

(o) INNOCENT LANDOWNERS.—

(1) CONDUCT OF ENVIRONMENTAL ASSESSMENT.—A person who has acquired real property shall have made all appropriate inquiry within the meaning of subparagraph (B) of section 101(35) if he establishes that, within 180 days prior to the time of acquisition, an environmental site assessment of the real property was conducted that meets the requirements of this subsection.

(2) DEFINITION OF ENVIRONMENTAL SITE ASSESSMENT.—For purposes of this subsection, the term "environmental site assessment" means an assessment conducted in accordance with the standards set forth in the American Society for Testing and Materials (ASTM) Standard E1527–94, titled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" or with alternative standards issued by rule by the Administrator or promulgated or developed by others and designated by rule by the Administrator. Before issuing or designating alternative standards, the Administrator shall first conduct a study of commercial and industrial practices concerning environmental site assessments in the transfer of real property in the United States. Any such standards issued or designated by the Administrator shall also be deemed to constitute commercially reasonable and generally accepted standards and practices for purposes of this paragraph. In issuing or designating any such standards, the Administrator shall consider requirements governing each of the following:

(A) Interviews of owners, operators, and occupants of the property to determine information regarding the potential for contamination.

(B) Review of historical sources as necessary to determine previous uses and occupancies of the property since the property was first developed. For purposes of this subparagraph, the term "historical sources" means any of the following, if they are reasonably ascertainable: recorded chain of title documents regarding the real property, including all deeds, easements, leases, restrictions, and covenants, aerial photographs, fire insurance maps, property tax files, USGS 7.5 minutes topographic maps, local street directories, building department records, zoning/land use records, and any other sources that identify past uses and occupancies of the property.

(C) Determination of the existence of recorded environmental cleanup liens against the real property which have arisen pursuant to Federal, State, or local statutes.

(D) Review of reasonably ascertainable Federal, State, and local government records of sites or facilities that are likely to cause or contribute to contamination at the real property, including, as appropriate, investigation reports for such sites or facilities; records of activities likely to cause or contribute to contamination at the real property, including landfill and other disposal location records, underground storage tank records, hazardous waste handler and generator records and spill reporting records; and such other reasonably ascertainable Federal, State, and local government environmental records which could reflect inci-

dents or activities which are likely to cause or contribute to contamination at the real property.

(E) A visual site inspection of the real property and all facilities and improvements on the real property and a visual inspection of immediately adjacent properties, including an investigation of any hazardous substance use, storage, treatment, and disposal practices on the property.

(F) Any specialized knowledge or experience on the part of the defendant.

(G) The relationship of the purchase price to the value of the property if uncontaminated.

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

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

A record shall be considered to be "reasonably ascertainable" for purposes of this paragraph if a copy or reasonable facsimile of the record is publicly available by request (within reasonable time and cost constraints) and the record is practically reviewable.

(3) MAINTENANCE OF INFORMATION.—No presumption shall arise under paragraph (1) unless the defendant has maintainedy a compilation of the information reviewed and gathered in the course of the environmental site assessment.

(p) BONA FIDE PROSPECTIVE PURCHASER.—(1) Notwithstanding paragraphs (1) through (4) of subsection (a), a person who does not impede the performance of a response action or natural resource restoration at a facility shall not be liable to the extent liability at such facility is based solely on paragraph (1) of subsection (a) for a release or threat of release from the facility, and the person is a bona fide prospective purchaser of the facility.

(2) For purposes of this subsection, the term "bona fide prospective purchaser" means a person who acquires ownership of a facility after the date of enactment of this subsection, or a tenant of such a person, who can establish each of the following by a preponderance of the evidence:

(A) All active disposal of hazardous substances at the facility occurred before that person acquired the facility.

(B) The person made all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted commercial and customary standards and practices. Standards described in subsection (o)(2) (relating to innocent landowners) shall satisfy the requirements of this subparagraph. In the case of property for residential or other similar use, purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.

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

(D) The person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop on-going releases, prevent threatened future re-

leases of hazardous substances, and prevent or limit human or natural resource exposure to hazardous substances previously released into the environment.

(E) The person provides full cooperation, assistance, and facility access to persons authorized to conduct 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) The person is not affiliated with any other person liable for 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.

(q) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—(1) In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (p), and the conditions described in paragraph (2) are met, the United States shall have a lien upon such facility for such unrecovered costs. Such lien—

(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 property;

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

(C) shall be subject to the requirements for notice and validity established in paragraph (3) of subsection (l); and

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

(2) The conditions referred to in paragraph (1) are the following:

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

(B) Such response action increases the fair market value of the facility above the fair market value of the facility that existed within 6 months before the response action was taken.

(r) INNOCENT GOVERNMENTAL ENTITIES.—There shall be no liability under subsection (a) for any State or local government if such liability is based solely on—

(1) the granting of a license or permit to conduct business; or

(2) the State or local government's status as an owner or operator of the facility or vessel, and the State or local government—

(A) acquired the facility or vessel by escheat or through any other involuntary transfer or through the exercise of eminent domain, and

(B) establishes by a preponderance of the evidence that it—

(i) acquired the facility or vessel after the disposal or placement of the hazardous substances for which liability is alleged;

(ii) did not, by any act or omission, cause or contribute to the release or threatened release of such hazardous substances; and

(iii) exercised appropriate care with respect to such hazardous substances taking into consideration the characteristics of such hazardous substances, in light

of all relevant facts, circumstances, and generally accepted good commercial and customary standards and practices at the time of the defendant's acts or omissions.

(s) CONTIGUOUS PROPERTIES.—(1) A person (other than the United States or a department, agency, or instrumentality of the United States) who 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 such release shall not be liable under paragraph (1) or 2 of subsection (a) by reason of such ownership or operation solely by reason of such contamination if such person—

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

(B) provides full cooperation, assistance, and facility access to persons authorized to conduct 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; and

(C) is not affiliated with any other person liable for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship.

(2) The President may issue an assurance of no enforcement action under this Act to any such person and may grant any such person protection against cost recovery and contribution actions pursuant to section 113(f)(2). Such person may also petition the President to exclude from the description of a National Priorities List site such contiguous real property, if such property is or may be contaminated solely by ground water that flows under such property and is not used as a source of drinking water. The President may grant such a petition pursuant to such procedures as he deems appropriate.

(t) LIMITATION ON LIABILITY FOR SMALL BUSINESSES.—

(1) IN GENERAL.—With respect to actions taken before September 29, 1999, no small business concern shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a facility or vessel on the National Priorities List.

(2) LIMITATION.—Paragraph (1) shall not apply to an action brought by the President against a small business concern if the hazardous substances attributable to the small business concern have contributed, or contribute, significantly to the costs of the response action at the facility.

(3) SMALL BUSINESS CONCERN DEFINED.—In this subsection, the term "small business concern" means a business entity that on average over the previous 3 years preceding the date of notification by the President that the business entity is a potentially responsible party—

(A) has no more than 75 full-time employees or the equivalent thereof; and

(B) has $3,000,000 or less in gross revenues.

(u) LIABILITY EXEMPTIONS AND LIMITATIONS FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—

(1) PRE-ENACTMENT ACTIVITIES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that the person arranged or transported municipal solid waste or municipal sewage sludge prior to the date of enactment of this paragraph for disposal at the landfill facility.

(B) EXCEPTION.—Notwithstanding subparagraph (A), if the President determines that a person transported material containing municipal solid waste or municipal sewage sludge to a landfill facility that has contributed, or contributes, significantly to the costs of response at the facility and such person is engaged in the business of transporting waste materials, such person may be liable under subsection (a)(4). The liability of such person shall be subject to the aggregate limits on liability for municipal solid waste set forth in paragraph (2). Any determination of such person's equitable share of response costs shall be determined on the basis of such person's equitable share of the aggregate amount of response costs attributable to municipal solid waste under paragraph (2).

(2) POST-ENACTMENT ACTIVITIES.—

(A) IN GENERAL.—To the extent that a person or group of persons is liable under subsection (a)(3) or (a)(4) for arranging or transporting municipal solid waste or municipal sewage sludge for disposal at a landfill facility on the National Priorities List on or after the date of enactment of this paragraph, and is not exempt from liability under paragraph (3), the total aggregate liability for all such persons or groups of persons for response costs at such a landfill facility shall not exceed 10 percent of such costs.

(B) EXPEDITED SETTLEMENTS.—The President may offer a person subject to a limitation on liability under subparagraph (A) an expedited settlement based on the average unit cost of remediating municipal solid waste and municipal sewage sludge in landfills in lieu of the aggregate 10 percent limitation on liability provided by subparagraph (A).

(3) SPECIAL RULE.—No person shall be liable under subsection (a)(3) or (a)(4) for response costs or damages at a landfill facility on the National Priorities List to the extent that—

(A) the materials that the person arranged or transported for disposal consist of municipal solid waste; and

(B) the person is—

(i) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

(ii) a business entity that employs no more than 100 paid individuals and is a small business concern as defined under the Small Business Act (15 U.S.C. 631 et seq.) from which was generated all of the entity's municipal solid waste with respect to the facility; or

(iii) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code if such organiza-

tion employs no more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

(4) MIXED WASTES.—Liability for wastes that do not fall within the definition of municipal solid waste under paragraph (5)(A) and are collected and disposed of with municipal solid wastes shall be governed by section 107(a) and any applicable exemptions or limitations on liability without regard to the wastes covered by paragraph (5)(A).

(5) DEFINITIONS.—In this section, the following definitions apply:

(A) MUNICIPAL SOLID WASTE.—The term "municipal solid waste" means waste materials generated by households, including single and multifamily residences, and hotels and motels, and waste materials generated by commercial, institutional, and industrial sources, to the extent that such materials—

(i) are essentially the same as waste materials normally generated by households, or

(ii) are collected and disposed of with other municipal solid waste, and contain hazardous substances that would qualify for the de micromis exemption under section 107(w).

The term includes food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, wooden pallets, cardboard, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators; solid waste from the extraction, beneficiation, and processing of ores and minerals; or waste from manufacturing or processing operations (including pollution control) that is not essentially the same as waste normally generated by households.

(B) MUNICIPAL SEWAGE SLUDGE.—The term "municipal sewage sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by (i) a publicly owned treatment works, (ii) a federally owned treatment works, or (iii) a treatment works that, without regard to ownership, would be considered to be a publicly owned treatment works and is principally treating municipal waste water or domestic sewage.

(v) MUNICIPAL OWNERS AND OPERATORS.—

(1) IN GENERAL.—A municipality that is liable for response costs under paragraph (1) or (2) of subsection (a) on the basis of ownership or operation of a municipal landfill that is listed on the National Priorities List on or before September 1, 1999 (as identified by the President), shall be eligible for a settlement under this subsection.

(2) SETTLEMENT AMOUNT.—(A) The President shall offer a settlement to a party with respect to such liability on the basis of a payment or other obligation equivalent in value to no more

than 20 percent of the total response costs in connection with the facility. The President may increase this percentage to no more than 35 percent of the total response costs in connection with the facility if the President determines—

(i) the municipality exacerbated environmental contamination or exposure with respect to the facility; or

(ii) the municipality, during the period of ownership or operation of the facility, received operating revenues substantially in excess of the sum of the waste system operating costs plus 20 percent of total estimated response costs in connection with the facility.

(B) Such a settlement shall pertain to only the party's liability under paragraph (1) or (2) of subsection (a).

(3) PERFORMANCE OF RESPONSE ACTIONS.—Subject to the limitations of paragraph (2), the President may require, as a condition of a settlement with a municipality under this subsection, that the municipality perform, or participate in the performance of, the response actions at the site.

(4) JOINT OWNERSHIP OR OPERATION.—A combination of 2 or more municipalities that jointly owned or operated the facility at the same time or during continuous operations under municipal control, shall be considered a single owner/operator for the purpose of calculating a settlement offer pursuant to this subsection.

(5) WAIVER OF CLAIMS.—The President may require, as a condition of a settlement under this subsection, that the municipality waive some or all of the claims or causes of action that such municipality may have against other potentially responsible parties relating to the site, including claims for contribution under section 113.

(6) EXCEPTIONS.—The President may decline to offer a settlement under this subsection where the President determines—

(A) there is only municipal solid waste or sewage sludge at the facility;

(B) all other identified potentially responsible parties are insolvent, defunct, or eligible for a settlement under this subsection or under section 122(g);

(C) the municipality has failed to comply fully and completely with information requests, administrative subpoenas, or discovery requests issued by the United States; or

(D) the municipality has impeded or is impeding, through action or inaction, the performance of a response action or a natural resource restoration with respect to the facility.

(7) EXPIRATION OF OFFER.—The President's obligation to offer a settlement under this section shall expire if the municipality to which the offer is made fails to accept such an offer within a reasonable time period.

(w) DE MICROMIS EXEMPTION.—

(1) IN GENERAL.—In the case of a facility or vessel listed on the National Priorities List, no person shall be liable under subsection (a)(3) or (a)(4) if no more than 110 gallons or 200 pounds of materials containing hazardous substances at the facility or vessel is attributable to such person, and the acts on

which liability is based took place before the date of enactment of this subsection.

(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that the material described in paragraph (1) has contributed, or contributes, significantly to the costs of response at the facility.

(x) INELIGIBILITY FOR EXEMPTIONS OR LIMITATIONS.—

(1) IMPEDING RESPONSE OR RESTORATION.—The exemptions and limitations set forth in subsections (t), (u), (v), and (w) and sections 114(c) and 128 shall not apply to any person with respect to a facility if such person impedes the performance of a response action or natural resource restoration at the facility.

(2) FAILURE TO RESPOND TO INFORMATION REQUEST.—The exemptions and limitations set forth in subsections (t), (u), (v), and (w) and sections 114(c) and 128 shall not apply to any person who—

(A) willfully fails to submit a complete and timely response to an information request under section 104(e); or

(B) knowingly makes any false or misleading material statement or representation in any such response.

(3) FAILURE TO PROVIDE COOPERATION AND FACILITY ACCESS.—The limitation set forth in subsection (v) shall not apply to any owner or operator of a facility who does not provide all reasonable cooperation and facility access to persons authorized to conduct response actions at the facility.

(y) EXEMPT PARTY FUNDING.—

(1) EXEMPT PARTY FUNDING.—Except as provided in paragraph (2), the equitable share of liability under section 107(a) for any release or threatened release of a hazardous substance from a facility or vessel on the National Priorities List that is extinguished through an exemption or limitation on liability under subsection (t), (u), or (v) of this section, section 114(c), or section 128 shall be transferred to and assumed by the Trust Fund.

(2) CERTAIN MSW GENERATORS.—Paragraph (1) shall not apply to the equitable share of liability of any person who would have been liable under subsection (a)(3) or (4) but for the exemption from liability under subsection (u)(3).

(3) SOURCE OF FUNDS.—Payments made by the Trust Fund or work performed on behalf of the Trust Fund to meet the obligations under paragraph (1) shall be funded from amounts made available by section 111(a)(1).

(z) EFFECT ON CONCLUDED ACTIONS.—The exemptions from, and limitations on, liability provided under subsections (t), (u), (v), and (w) and sections 114(c) and 128 shall not affect any settlement or judgment approved by a United States District Court not later than 30 days after the date of enactment of this subsection or any administrative action against a person otherwise covered by such exemption or limitation that becomes effective not later than 30 days after such date of enactment.

(aa) LIMITATION ON RECOVERY OF OVERSIGHT COSTS.—

(1) IN GENERAL.—Costs of oversight of a response action shall not be recoverable under this section from a person referred to in paragraph (2) to the extent that such costs exceed 10 percent of the costs of the response action.

(2) ACCOUNTING OF RESPONSE COSTS.—Paragraph (1) shall apply only to a person who provides the Administrator with an accounting of the direct and indirect costs that the person incurred in conducting the response action. The Administrator may require an independent audit of the costs from such person.

* * * * * * *

USES OF FUND

SEC. 111. [(a) IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986 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 such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99–160 (relating to payment to the Hazardous Substances Trust Fund). The President shall use the money in the Fund for the following purposes:

[(1) Payment of governmental response costs incurred pursuant to section 104 of this title, including costs incurred pursuant to the Intervention on the High Seas Act.

[(2) Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official.

[(3) Payment of any claim authorized by subsection (b) of this section and finally decided pursuant to section 112 of this title, including those costs set out in subsection 112(c)(3) of this title.

[(4) Payment of costs specified under subsection (c) of this section.

[(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

[(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.

The President shall not pay for any administrative costs or expenses out of the Fund unless such costs and expenses are reasonably necessary for and incidental to the implementation of this title.

[(b)(1) IN GENERAL.—Claims asserted and compensable but unsatisfied under provisions of section 311 of the Clean Water Act, which are modified by section 304 of this Act may be asserted against the Fund under this title; and other claims resulting from a release or threat of release of a hazardous substance from a vessel or a facility may be asserted against the Fund under this title

for injury to, or destruction or loss of, natural resources, including cost for damage assessment: *Provided, however,* That any such claim may be asserted only by the President, as trustee, for natural resources over which the United States has sovereign rights, or natural resources within the territory or the fishery conservation zone of the United States to the extent they are managed or protected by the United States, or by any State for natural resources within the boundary of that State belonging to, managed by, controlled by, or appertaining to the State, or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation.

[(2) LIMITATION ON PAYMENT OF NATURAL RESOURCE CLAIMS.—

[(A) GENERAL REQUIREMENTS.—No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107.

[(B) DEFINITION.—As used in this paragraph, the term "natural resource claim" means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.

[(c) Uses of the Fund under subsection (a) of this section include—

[(1) The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a release of a hazardous substance.

[(2) The costs of Federal or State or Indian tribe efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of a release of a hazardous substance.

[(3) Subject to such amounts as are provided in appropriation Acts, the costs of a program to identify, investigate, and take enforcement and abatement action against releases of hazardous substances.

[(4) Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases.

[(5) Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and needed to supplement equipment and services available through contractors or other non-Federal entities, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces,

emergency task forces, or other response teams under the national contingency plan.

[(6) Subject to such amounts as are provided in appropriation Acts, the costs of a program to protect the health and safety of employees involved in response to hazardous substance releases. Such program shall be developed jointly by the Environmental Protection Agency, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health and shall include, but not be limited to, measures for identifying and assessing hazards to which persons engaged in removal, remedy, or other response to hazardous substances may be exposed, methods to protect workers from such hazards, and necessary regulatory and enforcement measures to assure adequate protection of such employees.

[(7) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

[(8) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

[(9) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

[(10) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

[(11) LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursements to local governments under section 123, except that during the 8-fiscal year period beginning October 1, 1986, not more than 0.1 percent of the total amount appropriated from the Fund may be used for such reimbursements.

[(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $10,000,000 for each of

[(13) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d).

[(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).

[(d)(1) No money in the Fund may be used under subsection (c)(1) and (2) of this section, nor for the payment of any claim under subsection (b) of this section, where the injury, destruction, or loss of natural resources and the release of a hazardous sub-

stance from which such damages resulted have occurred wholly before the enactment of this Act.

[(2) No money in the Fund may be used for the payment of any claim under subsection (b) of this section where such expenses are associated with injury or loss resulting from long-term exposure to ambient concentrations of air pollutants from multiple or diffuse sources.

[(e)(1) Claims against or presented to the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. Such claims become valid only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

[(2) In any fiscal year, 85 percent of the money credited to the Fund under title II of this Act shall be available only for the purposes specified in paragraphs (1), (2), and (4) of subsection (a) of this section. No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.

[(3) No money in the Fund shall be available for remedial action, other than actions specified in subsection (c) of this section, with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

[(4) Paragraphs (1) and (4) of subsection (a) of this section shall in the aggregate be subject to such amounts as are provided in appropriation Acts.]

(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE SUPERFUND.—

(1) SUBSECTION (b) EXPENDITURES.—The following amounts of amounts appropriated to the Hazardous Substance Superfund after January 1, 2000, pursuant to section 9507(b) of the Internal Revenue Code of 1986, and of amounts credited under section 9602(b) of such Code with respect to those appropriated amounts, shall be available for the purposes specified in subsection (b):

(A) $250,000,000 for fiscal year 2000.
(B) $250,000,000 for fiscal year 2001.
(C) $250,000,000 for fiscal year 2002.
(D) $250,000,000 for fiscal year 2003.
(E) $250,000,000 for fiscal year 2004.

Such funds shall remain available until expended.

(2) SUBSECTIONS (c) AND (d) EXPENDITURES.—There is authorized to be appropriated from the Hazardous Substance Superfund established pursuant to section 9507(b) of the Internal Revenue Code of 1986 for the purposes specified in subsections (c) and (d) of this section not more than the following amounts:

(A) $1,500,000,000 for fiscal year 2000.

(B) $1,500,000,000 for fiscal year 2001.
(C) $1,500,000,000 for fiscal year 2002.
(D) $1,400,000,000 for fiscal year 2003.
(E) $1,350,000,000 for fiscal year 2004.

(b) PAYMENTS RELATED TO CERTAIN REDUCTIONS, LIMITATIONS, AND EXEMPTIONS.—

(1) FUNDING OF EXEMPT PARTY AND FUND SHARE.—The President may use amounts in the Fund made available by subsection (a)(1) for funding the equitable share of liability attributable to exempt parties under section 107(y) and obligations incurred by the President to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under section 129.

(2) LIMITATIONS.—

(A) FUNDING.—Amounts made available by subsection (a)(1) for the purposes of this subsection shall not exceed the following:

(i) $250,000,000 for fiscal year 2000.
(ii) $250,000,000 for fiscal year 2001.
(iii) $250,000,000 for fiscal year 2002.
(iv) $250,000,000 for fiscal year 2003.
(v) $250,000,000 for fiscal year 2004.

(B) ELIGIBLE COSTS.—No funds made available under paragraph (1) may be used for payment of, or reimbursement for, any portion of attorneys' fees that do not constitute necessary costs of response consistent the national contingency plan.

(C) ADDITIONAL PURPOSES.—

(i) IN GENERAL.—If, in any of fiscal years 2000 through 2004, the Administrator does not have available for obligation for the purposes of subsections (c) and (d) the amount specified for the fiscal year in clause (iii), the Administrator, subject to clause (ii), may use funds provided under subsection (a)(1) for such purposes.

(ii) LIMITATION.—The total amount of funds provided under subsection (a)(1) that the Administrator may use for the purposes of subsections (c) and (d) may not exceed the amount specified for the fiscal year in clause (iii) less the amount which (but for this subparagraph) would be available to the Administrator in such fiscal year for such purposes.

(iii) AMOUNTS.—The amounts specified in this clause are $1,500,000,000 for each of fiscal years 2000 through 2002, $1,400,000,000 for fiscal year 2003, and $1,350,000,000 for fiscal year 2004.

(c) RESPONSE, REMOVAL, AND REMEDIATION.—The President may use amounts in the Fund appropriated under subsection (a)(2) for costs of response, removal, and remediation (and administrative costs directly related to such costs), including the following:

(1) GOVERNMENT RESPONSE COSTS.—Payment of governmental response costs incurred pursuant to section 104, including costs incurred pursuant to the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(2) PRIVATE RESPONSE COST CLAIMS.—Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 105, if such costs are approved under such plan, are reasonable in amount based on open and free competition or fair market value for similar available goods and services, and are certified by the responsible Federal official.

(3) ACQUISITION COSTS UNDER SECTION 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

(4) STATE AND LOCAL GOVERNMENT REIMBURSEMENT.—Reimbursement to States and local governments under section 123; except that during any fiscal year not more than 0.1 percent of the total amount appropriated under subsection (a)(2) may be used for such reimbursements.

(5) CONTRACTS AND COOPERATIVE AGREEMENTS.—Payment for the implementation of any contract or cooperative agreement under section 104(d).

(d) ADMINISTRATION, OVERSIGHT, RESEARCH, AND OTHER COSTS.—The President may use amounts in the Fund appropriated under subsection (a)(2) for the following costs (and administrative costs directly related to such costs):

(1) INVESTIGATION AND ENFORCEMENT.—The costs of identifying, investigating, and taking enforcement action against releases of hazardous substances.

(2) OVERHEAD.—

(A) IN GENERAL.—The costs of providing services, equipment, and other overhead related to the purposes of this Act and section 311 of the Federal Water Pollution Control Act and needed to supplement equipment and services available through contractors and other non-Federal entities.

(B) DAMAGE ASSESSMENT CAPABILITY.—The costs of establishing and maintaining damage assessment capability for any Federal agency involved in strike forces, emergency task forces, or other response teams under the National Contingency Plan.

(3) EMPLOYEE SAFETY PROGRAMS.—The cost of maintaining programs otherwise authorized by this Act to protect the health and safety of employees involved in response to hazardous substance releases.

(4) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).

(5) ATSDR ACTIVITIES.—Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, public health assessments, and other activities authorized by section 104(i).

(6) EVALUATION COSTS UNDER PETITION PROVISIONS OF SECTION 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

(7) CONTRACT COSTS UNDER SECTION 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1)

to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

(8) RESEARCH, DEVELOPMENT, AND DEMONSTRATION COSTS UNDER SECTION 311.—The cost of carrying out section 311 (relating to research, development, and demonstration).

(9) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d) (relating to providing information concerning violations).

(10) COMPREHENSIVE STATE GROUND WATER PROTECTION PLANS.—Costs of providing assistance to States to develop comprehensive State ground water protection plans to the extent such costs do not exceed $3,000,000 in the aggregate in a fiscal year.

(e) OTHER LIMITATIONS.—

(1) LIMITATIONS ON PAYMENTS OF CLAIMS.—Claims against or presented to the Fund shall not be valid or paid in excess of the total unobligated balance in the Fund at any one time. Such claims become valid and are payable only when additional money is collected, appropriated, or otherwise added to the Fund. Should the total claims outstanding at any time exceed the current balance of the Fund, the President shall pay such claims, to the extent authorized under this section, in full in the order in which they were finally determined.

(2) REMEDIAL ACTIONS AT FEDERALLY OWNED FACILITIES.—No money in the Fund shall be available for costs of remedial action, other than costs specified in subsection (d), with respect to federally owned facilities; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving ground water contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party.

(3) REMEDIAL ACTIONS AT FACILITIES NOT LISTED ON NPL.—No money in the Fund shall be available for response actions that are not removal actions under section 101(23) with respect to any facility that is not listed on the National Priorities List.

* * * * * * *

[(j) The President shall use the money in the Post-closure Liability Fund for any of the purposes specified in subsection (a) of this section with respect to a hazardous waste disposal facility for which liability has transferred to such fund under section 107(k) of this Act, and, in addition, for payment of any claim or appropriate request for costs of response, damages, or other compensation for injury or loss under section 107 of this Act or any other State or Federal law, resulting from a release of a hazardous substance from such a facility.]

* * * * * * *

[(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

[(1) SECTION 311(b).—For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, 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) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

[(2) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

[(A) For the fiscal year 1987, $3,000,000.

[(B) For the fiscal year 1988, $10,000,000.

[(C) For the fiscal year 1989, $20,000,000.

[(D) For the fiscal year 1990, $30,000,000.

[(E) For each of the fiscal years 1991, 1992, 1993, and 1994, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

[(3) SECTION 311(d).—For each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).]

* * * * * * *

(p) GENERAL REVENUE SHARE OF SUPERFUND.—

[(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

[(A) For fiscal year 1987, $212,500,000.

[(B) For fiscal year 1988, $212,500,000.

[(C) For fiscal year 1989, $212,500,000.

[(D) For fiscal year 1990, $212,500,000.

[(E) For fiscal year 1991, $212,500,000.

[(F) For fiscal year 1992, $212,500,000.

[(G) For fiscal year 1993, $212,500,000.

[(H) For fiscal year 1994, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.]

(1) IN GENERAL.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund such sums as may be necessary for each of fiscal years 2000 through 2004.

* * * * * * *

CLAIMS PROCEDURE

SEC. 112. (a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—No claim may be asserted against the Fund pursuant to section [111(a)] *111(c)* unless such claim is presented in the first instance

to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

* * * * * * *

[(f) DOUBLE RECOVERY PROHIBITED.—Where the President has paid out of the Fund for any response costs or any costs specified under section 111(c) (1) or (2), no other claim may be paid out of the Fund for the same costs.]

* * * * * * *

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) * * *

* * * * * * *

(c) RECYCLED OIL.—

(1) SERVICE STATION DEALERS, ETC.—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

(A) is not mixed with any other hazardous substance, and

(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable [authorities.] *authorities that were in effect on the date of such activity.*

* * * * * * *

(2) PRESUMPTION.—Solely for the purposes of this subsection, [a service station dealer may presume that] a small quantity of used oil [is not mixed with] *is presumed to be not mixed with* other hazardous substances if it—

[(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

[(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.]

(A) has been removed from the engine of a light duty motor vehicle or household appliance by the owner of such vehicle or appliance and is presented by such owner to the dealer for collection, accumulation, and delivery to an oil recycling facility; or

(B) has been removed from such an engine or appliance by the dealer for collection, accumulation, and delivery to an oil recycling facility.

* * * * * * *

[(4) EFFECTIVE DATE.—The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act.]

* * * * * * *

SEC. 117. PUBLIC PARTICIPATION *AND DISCLOSURE*.

(a) * * *

* * * * * * *

(f) DISCLOSURE OF RELEASES OF HAZARDOUS SUBSTANCES AT SUPERFUND SITES.—

(1) INFORMATION.—The President shall make the following information available to the public as provided in paragraph (2) about releases of hazardous substances, pollutants, and contaminants from facilities that have been listed or proposed for listing on the National Priorities List at the following stages of a response action:

(A) REMOVAL ACTIONS.—A best estimate of the releases from the facility before the removal action is taken, during the period of the removal action, and that are expected after the removal action is completed.

(B) REMEDIAL INVESTIGATION.—As part of the requirements for the remedial investigation, a summary and best estimate of the releases from the facility.

(C) FEASIBILITY STUDY.—As part of the feasibility study, a summary and best estimate of the releases that are expected both during and at the conclusion of each remedial option that is considered.

(D) RECORD OF DECISION.—As part of the record of decision, a summary and best estimate of the releases that are expected both during and at the conclusion of implementation of the selected remedy.

(E) CONSTRUCTION COMPLETION.—After construction of the remedy is complete and during operation and maintenance, a best estimate of the releases from the facility.

(2) AVAILABILITY OF INFORMATION.—Information provided under this subsection shall be made available to the residents of the communities surrounding the covered facility, to police, fire, and emergency medical personnel in the surrounding communities, and to the general public. To improve access to such information by Federal, State, and local governments and researchers, such information may be provided to the general public through electronic or other means. Such information shall be expressed in common units and a common format.

(3) SOURCE OF INFORMATION AND METHODS OF COLLECTION.—Nothing in this subsection shall require the collection of any additional data beyond that already collected as part of the re-

sponse action. If data are not readily available, the information provided under this subsection shall be based on best estimates.

* * * * * * *

SEC. 119. RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

(1) RESPONSE ACTION CONTRACTORS.—A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this **[**title or under any other Federal law**]** *title, under any other Federal law, or under the law of any State or political subdivision of a State* to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release. *Notwithstanding the preceding sentence, this section shall not apply in determining the liability of a response action contractor under the law of any State or political subdivision thereof if the State has enacted a law determining the liability of a response action contractor.*

(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct. *Such conduct shall be evaluated based on the generally accepted standards and practices in effect at the time and place that the conduct occurred.*

(b) SAVINGS PROVISIONS.—

(1) LIABILITY OF OTHER PERSONS.—The defense provided by section **[**107(b)(3)**]** *107(b)(1)(C)* shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

(c) INDEMNIFICATION.—

(1) IN GENERAL.—The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct. *Any such agreement may apply to claims for negligence arising under Federal law or under the law of any State or political subdivision of a State.*

* * * * * * *

(5) LIMITATIONS.—

(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release *or threatened release* of any hazardous substance or pollutant or contaminant if

such release *or threatened release* arises out of response action activities.

* * * * * * *

[SEC. 120. FEDERAL FACILITIES.]

SEC. 120. FEDERAL ENTITIES AND FACILITIES.

(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

[(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.**]**

(1) IN GENERAL.—(A) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the United States shall be subject to, and comply with, this Act and all other Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provision for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), regarding response or restoration actions related to the release or potential release of hazardous substances, pollutants, or contaminants in the same manner, and to the same extent, as any nongovernmental entity is subject to such requirements, including enforcement and liability under sections 106 and 107 of this title and the payment of reasonable service charges.

(B) The Federal, State, interstate, and local substantive and procedural requirements referred to in subparagraph (A) include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties and fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence or any reasonable service charge).

(C) The reasonable service charges referred to in this paragraph include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a State, interstate, or local response program.

(D) Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any injunctive relief.

(E) No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal or State law regarding response or restoration actions relating to

the release or potential release of hazardous substances, pollutants, or contaminants, with respect to any act or omission within the scope of their official duties. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any such Federal or State law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States shall be subject to any such sanction.

(F) The waiver of sovereign immunity provided in this paragraph shall not apply to the extent a State law would apply any standard or requirement to such Federal department, agency, or instrumentality in a manner that is more stringent than such standard or requirement would be applied to any other person.

(G)(i) The Administrator may issue an order under section 106 of this Act to any department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action would be initiated against any other person.

(ii) No administrative order issued to such department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(iii) Unless a State law in effect on the date of enactment of the KLand Recycling Act of 1999, or a State constitution, requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) of this section shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(H) Each such department, agency, and instrumentality shall have the right to contribution protection set forth in section 113, when such department, agency, or instrumentality resolves its liability under this Act.

* * * * * * *

(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility *(other than the indemnification requirements of section 119)*. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

[(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) when such facilities are not included

on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.]

SEC. 121. CLEANUP STANDARDS.

(a) * * *

(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment *to the extent practicable, considering the nature and timing of reasonably anticipated uses of land, water, and other resources. The preferences for treatment or permanent solutions in this paragraph shall not apply to a treatment option or permanent solution that would increase risk to the community or to workers' health.* The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) * * *

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the [maximum] extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

* * * * * * *

(d) DEGREE OF CLEANUP.—(1) * * *

(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

(i) * * *

* * * * * * *

is legally applicable to the hazardous substance or pollutant or contaminant concerned or [is relevant and appropriate] under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable [or relevant and appropriate] standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains

Maximum Contaminant [Level Goals] *Levels* established under the Safe Drinking Water Act [and water quality criteria established under section 304 or 303 of the Clean Water Act, where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release] *where such levels are relevant and appropriate under the circumstances of the release or threatened release, considering the timing of any reasonably anticipated use of water as drinking water and reasonable points of compliance*.

(B)[(i) In determining whether or not any water quality criteria under the Clean Water Act is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.]

[(ii)] For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

[(I)] *(i)* there are known and projected points of entry of such groundwater into surface water; and

[(II)] *(ii)* on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

[(III)] *(iii)* the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

* * * * * * *

(g) RISK ASSESSMENT AND CHARACTERIZATION PRINCIPLES.—Risk assessments and characterizations conducted for remedial actions subject to this section, and for other significant Federal actions under this Act, shall—

(1) provide scientifically objective assessments, estimates, and characterizations which neither minimize nor exaggerate the nature and magnitude of risks to human health and the environment;

(2) be based on the best available scientific and technical information, including data on bioavailability and site-specific information; and

(3) be based on an analysis of the weight of the scientific evidence that supports conclusions about a problem's potential risk to human health and the environment.

(h) SENSITIVE SUBPOPULATIONS AND SITE-SPECIFIC RISK ASSESSMENT.—The President shall use site-specific risk assessment that meets the requirements of the principles set forth in subsection (g) to—

(1) determine the nature and extent of risk to human health and the environment;

(2) identify groups which are currently or would be highly exposed or highly susceptible (A) to contamination from the site based on current and reasonably anticipated uses of land, water, and other resources at or around the site, or (B) to risks arising from implementation of a remedial option;

(3) assist in establishing remedial objectives for the facility respecting releases or threatened releases, and in identifying geographic areas or exposure pathways of concern; and

(4) evaluate alternative remedial actions for the facility to determine their risk reduction benefits and assist in selecting the remedial action for the facility that meets the criteria of paragraph (1) of subsection (b).

(i) STUDY OF SUBSTANCES AND MIXTURES.—(1) The President shall conduct a study of the cancer potency values of 12 hazardous substances listed under paragraph (2) of section 104(i) that are frequently found to pose significant risks at National Priorities List facilities. The study may also include a review of other health effects values. The President shall not include a substance in the study under this subsection if such substance is under scientific reevaluation pursuant to title XIV of the Safe Drinking Water Act.

(2) The President shall make a scientifically objective assessment of different methodologies for determining the health effects of chemical mixtures at relevant doses based on reasonable exposure scenarios at National Priorities List facilities.

(3) For purposes of such study and assessments, within 30 days after the date of the enactment of this subsection, the President shall obtain public comments on such study and assessments. Not later than 15 months after the date of the enactment of this subsection, the President shall publish a draft of such assessments. After receiving such comments on such draft assessments, and after external peer review, but within 2 years after the date of the enactment of this subsection, the President shall complete the study and publish the assessments under this subsection. The publication of the final assessments shall be considered final agency action.

(4) The study and assessments under this subsection shall include a discussion, to the extent relevant, of both laboratory and epidemiological data of sufficient quality which finds, or fails to find, a significant correlation between health risks and a potential toxin. Where conflicts among such data appear to exist, or where animal data are used as a basis to assess human health risks, the study and assessments shall include discussion of differences in study designs, comparative physiology, routes of exposure, bioavailability, pharmacokinetics, and any other relevant and significant factor.

(5) Where the study and assessment involve application of any significant assumption, inference, or model, the President shall—

(A) state the weight of scientific evidence supporting a selection relative to other plausible alternatives;

(B) fully describe any model used in the risk assessment and make explicit the assumptions incorporated in the model; and

(C) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

(6) To the extent scientifically appropriate, the President shall include, among other estimates or health effects values, estimates of

risks or health effects values, using the most plausible assumptions, given the weight of the scientific information available to the President. Where significant assumptions have substantially similar scientific support, the President shall provide a description of the range of estimates or values.

(j) PRESENTATION OF RISK INFORMATION.—(1) The President, in carrying out his responsibilities under this Act, shall ensure that the presentation of information on risk is unbiased and informative. The results of any facility-specific risk evaluation shall contain an explanation that clearly communicates the risks at the facility, and shall—

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

(B) present, to the extent feasible—

(i) the scientifically objective distribution of exposure estimates,

(ii) estimates, including estimates, of exposure and risk using the most plausible assumptions given the weight of current scientific information available to the President,

(iii) groups identified through site specific risk assessment which are currently or would be highly exposed or highly susceptible (I) to contamination from the site based on current and reasonably anticipated uses of land, water, and other resources at or around the site, or (II) to risks arising from implementation of a remedial option, and

(iv) a statement of the nature and magnitude of the scientific uncertainties associated with such estimates;

(C) include the size of the population potentially at risk from releases from the facility (based on the current or reasonably anticipated future uses of the land, water, or other resources), the exposure scenario used for each estimate, and the likelihood that such potential exposures will occur; and

(D) compare risks with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparison of those risks with other similar risks regulated by Federal agencies resulting from comparable activities and exposure pathways.

Comparisons under subparagraph (D) should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks.

(2) To the maximum extent practicable, documents made available to the general public which purport to describe the degree of risk to human health shall, at a minimum, provide information specified in paragraph (1) or a meaningful reference to such information in another document reasonably available to the public.

SEC. 122. SETTLEMENTS.

(a) * * *

* * * * * * *

(f) COVENANT NOT TO SUE.—

[(1) DISCRETIONARY COVENANTS.—The President may, in his discretion, provide any person with a covenant not to sue con-

cerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

[(A) The covenant not to sue is in the public interest.

[(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

[(D) The response action has been approved by the President.

[(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.]

(1) FINAL COVENANTS.—The President shall offer potentially responsible parties who enter into settlement agreements that are in the public interest a final covenant not to sue concerning any liability to the United States under this Act, including a covenant with respect to future liability, for response actions or response costs addressed in the settlement, if all of the following conditions are met:

(A) The settling party agrees to perform, or there are other adequate assurances of the performance of, a final remedial action authorized by the Administrator for the release or threat of release that is the subject of the settlement.

(B) The settlement agreement has been reached prior to the commencement of litigation against the settling party under section 106 or 107 of this Act with respect to this facility.

(C) The settling party waives all contribution rights against other potentially responsible parties at the facility.

(D) The settling party (other than a small business) pays a premium that compensates for the risks of remedy failure; future liability resulting from unknown conditions; and unanticipated increases in the cost of any uncompleted response action, unless the settling party is performing the response action. The President shall have sole discretion to determine the appropriate amount of any such premium, and such determinations are committed to the President's discretion. The President has discretion to waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.

(E) The remedial action does not rely on institutional controls to ensure continued protection of human health and the environment.

(F) The settlement is otherwise acceptable to the United States.

(2) SPECIAL COVENANTS NOT TO SUE.—In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of [remedial] *response* action—

(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the re-

quirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed [remedial] *response* action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

* * * * * * *

[(3) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

[(4) FACTORS.—In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

[(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

[(B) The nature of the risks remaining at the facility.

[(C) The extent to which performance standards are included in the order or decree.

[(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

[(E) The extent to which the technology used in the response action is demonstrated to be effective.

[(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

[(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.]

(3) DISCRETIONARY COVENANTS.—For settlements under this Act for which covenants under paragraph (1) are not available, the President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, if the covenant not to sue is in the public interest. Such covenants shall be subject to the requirements of paragraph (5). The President may include any conditions in such covenant not to sue, including the additional condition referred to in paragraph (5). In determining whether such conditions or covenants are in the public interest, the President shall consider the nature and scope of the commitment by the settling party under the settlement, the effectiveness and reliability of the response action, the nature of the risks remaining at the facility, the strength of evidence, the likelihood of cost recovery, the reliability of any response action or actions to restore, replace, or acquire the equivalent of injured natural resources, the extent to which performance standards are included in the order or decree, the extent to which the technology used in the response

action is demonstrated to be effective, and any other factors relevant to the protection of human health and the environment.

[(5)] *(4)* SATISFACTORY PERFORMANCE.—Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

[(6)] *(5)* ADDITIONAL CONDITION FOR FUTURE LIABILITY.—(A) Except for the portion of the [remedial] *response* action which is subject to a covenant not to sue under paragraph [(2)] *(1) or (2)* or under subsection (g) (relating to [de minimis settlements] *de minimis and other expedited settlements pursuant to subsection (g) of this section*), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time [the President certifies under paragraph (3) that remedial action has been completed at the facility concerned] *that the response action that is the subject of the settlement agreement is selected*.

(B) [In extraordinary circumstances, the] *The* President may determine, after assessment of relevant factors such as [those referred to in paragraph (4) and] volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) [if other terms,], *if the agreement containing the covenant not to sue provides for payment of a premium to address possible remedy failure or any releases that may result from unknown conditions, and if other terms,* conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

(C) The President is authorized to include any provisions allowing future enforcement action under section 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment. *The President may waive or reduce the premium payment for persons who demonstrate an inability to pay such a premium.*

[(g) DE MINIMIS SETTLEMENTS.—

[(1) EXPEDITED FINAL SETTLEMENT.—Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

[(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

[(i) The amount of the hazardous substances contributed by that party to the facility.

[(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

[(B) The potentially responsible party—

[(i) is the owner of the real property on or in which the facility is located;

[(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

[(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

[(2) COVENANT NOT TO SUE.—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

[(3) EXPEDITED AGREEMENT.—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.]

(g) EXPEDITED FINAL SETTLEMENT.—

(1) PARTIES ELIGIBLE FOR EXPEDITED SETTLEMENT.—The President shall, as promptly as possible, offer to reach a final administrative or judicial settlement with potentially responsible parties who, in the judgment of the President, meet the following conditions for eligibility for an expedited settlement in subparagraph (A) or (B):

(A) The potentially responsible party's individual contribution to the release of hazardous substances at the facility as an owner or operator, arranger for disposal, or transporter for disposal is de minimis. The contribution of hazardous substance to a facility by a potentially responsible party is de minimis if both of the following conditions are met:

(i) The contribution of materials containing hazardous substances that the potentially responsible party arranged or transported for treatment or disposal, or that were treated or disposed during the potentially responsible party's period of ownership or operation of the facility, is minimal in comparison to the total volume of materials containing hazardous substances at the facility. Such individual contribution is presumed to be minimal if it is not more than 1 percent of the total volume of such materials, unless the Administrator identifies a different threshold based on site-specific factors.

(ii) Such hazardous substances do not present toxic or other hazardous effects that are significantly greater

than those of other hazardous substances at the facility.

(B)(i) The potentially responsible party is a natural person, a small business, or a municipality and can demonstrate to the United States an inability or limited ability to pay response costs. A party who enters into a settlement pursuant to this subparagraph shall be deemed to have resolved its liability under this Act to the United States for all matters addressed in the settlement.

(ii) For purposes of this subparagraph, the following provisions apply:

(I) In the case of a small business, the President shall take into consideration the ability to pay of the business, if requested by the business. The term "ability to pay" means the President's reasonable expectation of the ability of the small business to pay its total settlement amount and still maintain its basic business operations. Such consideration shall include the business's overall financial condition and demonstrable constraints on its ability to raise revenues.

(II) Any business requesting such consideration shall promptly provide the President with all relevant information needed to determine the business's ability to pay.

(III) If the President determines that a small business is unable to pay its total settlement amount immediately, the President shall consider alternative payment methods as may be necessary or appropriate. The methods to be considered may include installment payments to be paid during a period of not to exceed 10 years and the provision of in-kind services.

(iii) Any municipality which is a potentially responsible party may submit for consideration by the President an evaluation of the potential impact of the settlement on essential services that the municipality must provide, and the feasibility of making delayed payments or payments over time. If a municipality asserts that it has additional environmental obligations besides its potential liability under this Act, then the municipality may create a list of the obligations, including an estimate of the costs of complying with such obligations.

(iv) Any municipality which is a potentially responsible party may establish an inability to pay through an affirmative showing that such payment of its liability under this Act would either—

(I) create a substantial demonstrable risk that the municipality would default on existing debt obligations, be forced into bankruptcy, be forced to dissolve, or be forced to make budgetary cutbacks that would substantially reduce current levels of protection of public health and safety; or

(II) necessitate a violation of legal requirements or limitations of general applicability concerning the assumption and maintenance of fiscal municipal obligations.

(v) This subparagraph does not limit or affect the President's authority to evaluate any person's ability to pay or to enter into settlements with any person based on that person's inability to pay.

(2) BASIS OF DETERMINATION.—

(A) IN GENERAL.—Any person who enters into a settlement pursuant to this subsection shall provide any information requested by the President in accordance with section 104(e). The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the President at the time the determination is made.

(B) DECISION OF NONQUALIFICATION; APPEAL.—

(i) DECISION OF NONQUALIFICATION.—If the President determines that a party does not qualify for a settlement under this subsection, the President shall notify the party, in writing, within 90 days after the later of—

(I) a request by the party for settlement under this subsection; or

(II) the receipt of all information required by the President from the requesting party to make a determination under this paragraph,

stating the reasons for denial. If the President does not notify the party within such 90-day period, the request is deemed denied.

(ii) APPEAL.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, a denial of settlement under this subsection may be appealed.

(II) AUTHORITY OF ENVIRONMENTAL APPEALS BOARD.—The Environmental Appeals Board of the Environmental Protection Agency is authorized to adjudicate denials of settlement under this subsection. Within 60 days of the date on which notice of denial is received, a denial of settlement may be appealed to the Board. The Board may consider whether the President has followed the provisions of this Act but shall not determine questions regarding liability.

(III) PROCEDURAL RULES.—In any appeal made pursuant to this clause, the documents submitted by the requester under clause (i)(II) are not confidential. If a requester agrees not to contest the share of liability under section 107 assigned by the President, the appeal shall include only a determination of the requester's ability to pay its allocated share.

(C) JUDICIAL PROCEDURES.—In reviewing a proposed settlement under this subsection, a United States district court shall give deference to the President's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person who challenges a proposed settlement bears the burden of proving that the proposed settlement does not meet applicable legal

standards for court approval. If a settlement is reached with a requester, the confidential information supplied to the President under this subsection may be submitted under seal to the court for in camera review.

(3) ADDITIONAL FACTORS RELEVANT TO SETTLEMENTS WITH MUNICIPALITIES.—In any settlement with a municipality pursuant to this Act, the President may take additional equitable factors into account in determining an appropriate settlement amount, including the limited resources available to that party, and any in-kind services that the party may provide to support the response action at the facility. In considering the value of in-kind services, the President shall consider the fair market value of those services.

(4) CONSENT DECREE OR ADMINISTRATIVE ORDER.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed **[**$500,000**]** *$2,000,000* (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

[(5) EFFECT OF AGREEMENT.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.**]**

(5) SMALL BUSINESS DEFINED.—In this section, the term "small business" refers to any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. 631 et seq.).

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(7) DEADLINE.—If the President does not make a settlement offer to a small business on or before the 180th day following the date of the President's determination that such small business is eligible for an expedited settlement under this subsection, or on or before the 180th day following the date of the enactment of this paragraph, whichever is later, such small business shall have no further liability under this Act, unless the failure to make a settlement offer on or before such 180th day is due to circumstances beyond the control of the President.

(8) PREMIUMS.—In any settlement under this Act with a small business, the President may not require the small business to pay any premium over and above the small business's share of liability.

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SEC. 127. BROWNFIELDS GRANTS.

(a) DEFINITIONS.—In this section, the following definitions apply:

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

(A) site inventories;

(B) investigation and identification of the extent of contamination;

(C) design and performance of a response action; or

(D) monitoring of natural resources.

(2) BROWNFIELD FACILITY.—

(A) IN GENERAL.—The term "brownfield facility" means real property with respect to which expansion, development, or redevelopment is complicated by the presence or potential presence of a hazardous substance.

(B) EXCLUDED FACILITIES.—The term "brownfield facility" does not include—

(i) any portion of real property that is the subject of an ongoing removal or planned removal under section 104;

(ii) any portion of real property that is listed or has been proposed for listing on the National Priorities List;

(iii) any portion of real property with respect to which a cleanup is proceeding under a permit, an administrative order, or a judicial consent decree entered into by the United States or an authorized State 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 the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(iv) a facility that is owned or operated by a department, agency, or instrumentality of the United States, except a facility located on lands held in trust for an Indian tribe; or

(v) a portion of a facility for which 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.—

(A) IN GENERAL.—The term "eligible entity" means—

(i) a State or a political subdivision of a State, including—

(I) a general purpose unit of local government; and

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

(ii) a redevelopment agency that is chartered or otherwise sanctioned by a State or other unit of government; and

(iii) an Indian tribe.

(B) EXCLUDED ENTITIES.—The term "eligible entity" does not include any entity that is not in full compliance with

the requirements of an administrative order, judicial consent decree, or closure plan under a permit which has been issued or entered into by the United States or an authorized State 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 the Safe Drinking Water Act (42 U.S.C. 300f et seq.) with respect to the real property or portion thereof which is the subject of the order, judicial consent decree, or closure plan.

(b) BROWNFIELD ASSESSMENT GRANT PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities for inventory and assessment of brownfield facilities.

(2) ASSISTANCE FOR SITE ASSESSMENT.—On approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for developing an inventory and conducting an assessment of 1 or more brownfield facilities.

(3) APPLICATIONS.—

(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection for 1 or more brownfield facilities.

(B) APPLICATION REQUIREMENTS.—An application for a grant under this subsection shall include information relevant to the ranking criteria established under paragraph (4) for the facility or facilities for which the grant is requested.

(4) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

(A) The demonstrated need for Federal assistance.

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

(C) The estimated extent to which a grant would facilitate the identification of or facilitate a reduction in health and environmental risks.

(D) The potential to stimulate economic development of the area, 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 grant to create new or expand existing business and 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.

(E) 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.

(F) The extent to which the site assessment and subsequent development involves the active participation and support of the local community.

(5) MAXIMUM GRANT AMOUNT PER FACILITY.—A grant made to an eligible entity under this subsection shall not exceed $200,000 with respect to any brownfield facility covered by the grant.

(c) BROWNFIELD REMEDIATION GRANT PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—The President shall establish a program to provide grants to eligible entities to be used for capitalization of revolving loan funds for remedial actions at brownfield facilities.

(2) ASSISTANCE FOR SITE REMEDIATION.—Upon approval of an application made by an eligible entity, the President may make grants to the eligible entity to be used for establishing a revolving loan fund. Any fund established using such grants shall be used to make loans to a State, a site owner, or a site developer for the purpose of carrying out remedial actions at 1 or more brownfield facilities.

(3) APPLICATIONS.—

(A) IN GENERAL.—Any eligible entity may submit an application to the President, in such form as the President may require, for a grant under this subsection.

(B) APPLICATION REQUIREMENTS.—An application under this section shall include information relevant to the ranking criteria established under paragraph (4).

(4) RANKING CRITERIA.—The President shall establish a system for ranking grant applications submitted under this subsection that includes the following criteria:

(A) The adequacy of the financial controls and resources of the eligible entity to administer a revolving loan fund in accordance with this title.

(B) The ability of the eligible entity to monitor the use of funds provided to loan recipients under this title.

(C) The ability of the eligible entity to ensure that a remedial action funded by the grant will be conducted under the authority of a State cleanup program that ensures that the remedial action is protective of human health and the environment.

(D) The ability of the eligible entity to ensure that any cleanup funded under this Act will comply with all laws that apply to the cleanup.

(E) The need of the eligible entity for financial assistance to clean up brownfield sites that are the subject of the application, taking into consideration the financial resources available to the eligible entity.

(F) The ability of the eligible entity to ensure that the applicants repay the loans in a timely manner.

(G) The plans of the eligible entity for using the grant to stimulate economic development or creation of recreational areas on completion of the cleanup.

(H) The plans of the eligible entity for using the grant to stimulate the availability of other funds for environmental

remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

(I) The plans of the eligible entity for using the grant to facilitate a reduction of health and environmental risks.

(J) The plans of the eligible entity for using the grant for remediation and subsequent development that involve the active participation and support of the local community.

(5) MAXIMUM GRANT AMOUNT.—A grant made to an eligible entity under this subsection may not exceed $1,000,000.

(d) GENERAL PROVISIONS.—

(1) PROHIBITION.—No part of a grant under this section may be used for the payment of penalties, fines, or administrative costs.

(2) AUDITS.—The President shall audit an appropriate number of grants made under subsections (b) and (c) to ensure that funds are used for the purposes described in this section.

(3) AGREEMENTS.—

(A) TERMS AND CONDITIONS.—Each grant made under this section shall be subject to an agreement that—

(i) requires the eligible entity to comply with all applicable Federal and State laws;

(ii) requires the eligible entity to use the grant exclusively for the purposes specified in subsection (b)(2) or (c)(2);

(iii) in the case of an application by a State under subsection (c)(3), requires payment by the State of a matching share, of at least 50 percent of the amount of the grant, from other sources of funding;

(iv) requires that grants under this section will not supplant State or local funds normally provided for the purposes specified in subsection (b)(2) or (c)(2); and

(v) contains such other terms and conditions as the President determines to be necessary to ensure proper administration of the grants.

(B) LIMITATION.—The President shall not place terms or conditions on grants made under this section other than the terms and conditions specified in subparagraph (A).

(4) LEVERAGING.—An eligible entity that receives a grant under this section may use the funds for part of a project at a brownfield facility for which funding is received from other sources, including other Federal sources, but the grant shall be used only for the purposes described in subsection (b)(2) or (c)(2).

(e) APPROVAL.—

(1) INITIAL GRANT.—Before the expiration of the fourth quarter of the first fiscal year following the date of the enactment of this section, the President shall make grants under this section to eligible entities and States that submit applications, before the expiration of the second quarter of such year, that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(4).

(2) SUBSEQUENT GRANTS.—Beginning with the second fiscal year following the date of enactment of this section, the President shall make an annual evaluation of each application received during the prior fiscal year and make grants under this

section to the eligible entities and States that submit applications during the prior year that the President determines have the highest rankings under the ranking criteria established under subsection (b)(4) or (c)(4).

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section such sums as may be necessary. Such funds shall remain available until expended.

SEC. 128. RECYCLING TRANSACTIONS.

(a) LIABILITY CLARIFICATION.—(1) As provided in subsections (b), (c), (d), and (e), a person who arranged for the recycling of recyclable material shall not be liable under paragraph (3) or (4) of section 107(a) with respect to such material.

(2) A determination whether or not any person shall be liable under paragraph (3) or (4) of section 107(a) for any material that is not a recyclable material as that term is used in subsections (b), (c), (d), or (e) of this section shall be made, without regard to subsection (b), (c), (d), or (e) of this section.

(b) RECYCLABLE MATERIAL DEFINED.—For purposes of this section, the term "recyclable material" means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber, scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include—

(1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

(2) any item of material that contained PCBs at a concentration in excess of 50 ppm or any new standard promulgated pursuant to applicable Federal laws.

(c) TRANSACTIONS INVOLVING SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER.—

(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

(A) The recyclable material met a commercial specification grade.

(B) A market existed for the recyclable material.

(C) A substantial portion of the recyclable material was made available for use as a feedstock for the manufacture of a new saleable product.

(D) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

(E) For transactions occurring on or after the 90th day following the date of the enactment of this section, the per-

son exercised reasonable care to determine that the facility where the recyclable material would be handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a "consuming facility") was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

(2) REASONABLE CARE.—For purposes of this subsection, "reasonable care" shall be determined using criteria that include—

(A) the price paid in the recycling transaction;

(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material; and

(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with the recyclable materials shall be deemed to be a substantive provision.

(d) TRANSACTIONS INVOLVING SCRAP METAL.—

(1) IN GENERAL.—Transactions involving recyclable materials that consist of scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator issues under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) after the date of the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

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

(2) MELTING OF SCRAP METAL.—For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as "sweating").

(3) SCRAP METAL DEFINED.—In this subsection, the term "scrap metal" means—

(A) bits and pieces of metal parts (such as bars, turnings, rods, sheets, and wire) or metal pieces that may be combined together with bolts or soldering (such as radiators, scrap automobiles, and railroad box cars) which when worn or superfluous can be recycled; and

(B) notwithstanding paragraph (1)(C), metal byproducts of the production of copper and copper based alloys that—

(i) are not the sole or primary products of a secondary production process,

(ii) are not produced separately from the primary products of a secondary production process,

(iii) are not and have not been stored in a pile or surface impoundment, and

(iv) are sold to another recycler that is not speculatively accumulating such byproducts,

except for any scrap metal that the Administrator excludes from this definition by regulation.

(e) TRANSACTIONS INVOLVING BATTERIES.—

(1) IN GENERAL.—Transactions involving recyclable materials that consist of spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction—

(A) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries but did not recover the valuable components of such batteries; and

(B)(i) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(ii) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries and the person was in compliance with such regulations or standards and any amendments thereto; or

(iii) with respect to transactions involving other spent batteries, Federal environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries and the person was in compliance with such regulations or standards and any amendments thereto.

(2) RECOVERY OF VALUABLE BATTERY COMPONENTS.—For purposes of paragraph (1)(A), a person who, by contract, arranges or pays for processing of batteries by an unrelated third person and receives from such third person materials reclaimed from

such batteries shall not thereby be deemed to recover the valuable components of such batteries.

(f) EXCLUSIONS.—

(1) IN GENERAL.—The exemptions set forth in subsections (c), (d), and (e) shall not apply if—

(A) the person had an objectively reasonable basis to believe at the time of the recycling transaction that—

(i) the recyclable material would not be recycled;

(ii) the recyclable material would be burned as fuel or for energy recovery or incineration; or

(iii) for transactions occurring on or before the 90th day following the date of the enactment of this section, the consuming facility was not in compliance with a substantive (not a procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

(2) OBJECTIVELY REASONABLE BASIS.—For purposes of paragraph (1)(A), an objectively reasonable basis for belief shall be determined using criteria that include the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) TREATMENT OF CERTAIN REQUIREMENTS AS SUBSTANTIVE PROVISIONS.—For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(g) EFFECT ON OWNER LIABILITY.—Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a).

(h) RELATIONSHIP TO LIABILITY UNDER OTHER LAWS.—Nothing in this section shall affect—

(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); or

(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(i) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

(1) affect any defenses or liabilities of any person to whom subsection (a)(1) does not apply; or

(2) create any presumption of liability against any person to whom subsection (a)(1) does not apply.

SEC. 129. ALLOCATION.

(a) PURPOSE OF ALLOCATION.—The purpose of an allocation under this section is to determine an equitable allocation of the costs of a removal or remedial action at a facility on the National Priorities List that is eligible for an allocation under this section, including the share to be borne by the Trust Fund under subsection (i).

(b) ELIGIBLE RESPONSE ACTION.—

(1) IN GENERAL.—A removal or remedial action is eligible for an allocation under this section if the action is at a facility on the National Priorities List and if—

(A) the performance of the removal or remedial action is not the subject of an administrative order or consent decree as of September 29, 1999;

(B) the President's estimate of the costs for performing such removal or remedial action that have not been recovered by the President as of September 29, 1999, exceeds $2,000,000; and

(C) there are response costs attributable to the Fund share under subsection (i).

(2) EXCLUDED RESPONSE ACTIONS.—

(A) CHAIN OF TITLE SITES.—Notwithstanding paragraph (1), a removal or remedial action is not eligible for an allocation if—

(i) the facility is located on a contiguous area of real property under common ownership or control; and

(ii) all of the parties potentially liable for response costs are current or former owners or operators of such facility,

unless the current owner of such facility is insolvent or defunct.

(B) CURRENT OWNER.—If the current owner of the property on which the facility is located is not liable under section 107(b)(2), the owner immediately preceding such owner shall be considered to be the current owner of the property for purposes of subparagraph (A).

(C) AFFILIATED PARTIES.—If the current owner is affiliated with any other person through any direct or indirect familial relationship or any contractual, corporate, or financial relationship other than that created by instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services, and such other person is liable for response costs at the facility, such other person's assets may be considered assets of the current owner when determining under subparagraph (A) whether the current owner is insolvent or defunct.

(c) DISCRETIONARY ALLOCATION PROCESS.—Notwithstanding subsection (b), the President may initiate an allocation under this section for any removal or remedial action at a facility listed on the National Priorities List and may provide a Fund share under subsection (i).

(d) ALLOCATION PROCESS.—For each eligible removal or remedial action, the President shall ensure that a fair and equitable allocation of liability is undertaken at an appropriate time by a neutral allocator selected by agreement of the parties under such process or procedures as are agreed by the parties. An allocation under this section shall apply to subsequent removal or remedial actions for a facility unless the allocator determines that the allocation should address only one or more of such removal or remedial actions.

(e) EARLY OFFER OF SETTLEMENT.—As soon as practicable and prior to the selection of an allocator, the President shall provide an estimate of the aggregate Fund share in accordance with subsection (i). The President shall offer to contribute to a settlement of liability for response costs on the basis of this estimate.

(f) REPRESENTATION OF THE UNITED STATES AND AFFECTED STATES.—The Administrator or the Attorney General, as a representative of the Fund, and a representative of any State that is or may be responsible pursuant to section 104(c)(3) for any costs of a removal or remedial action that is the subject of an allocation shall be entitled to participate in the allocation proceeding to the same extent as any potentially responsible party.

(g) MORATORIUM ON LITIGATION.—

(1) MORATORIUM ON LITIGATION.—No person may commence any civil action or assert any claim under this Act seeking recovery of any response costs, or contribution toward such costs, in connection with any response action for which the President has initiated an allocation under this section, until 150 days after issuance of the allocator's report or of a report under this section.

(2) STAY.—If any action or claim referred to in paragraph (1) is pending on the date of enactment of this section or on the date of initiation of an allocation, such action or claim (including any pendant claim under State law over which a court is exercising jurisdiction) shall be stayed until 150 days after the issuance of the allocator's report or of a report under this section, unless the court determines that a stay will result in manifest injustice.

(3) TOLLING OF LIMITATIONS PERIOD.—Any applicable limitations period with respect to actions subject to paragraph (1) shall be tolled from the earlier of—

(A) the date of listing of the facility on the National Priorities List, where such listing occurs after the date of enactment of this section; or

(B) the commencement of the allocation process pursuant to this section, until 180 days after the President rejects or waives the President's right to reject the allocator's report.

(h) EFFECT ON PRINCIPLES OF LIABILITY.—The allocation process under this section shall not be construed to modify or affect in any way the principles of liability under this title as determined by the courts of the United States.

(i) FUND SHARE.—For each removal or remedial action that is the subject of an allocation under this section, the allocator shall determine the share of response costs, if any, to be allocated to the Fund. The Fund share shall consist of the sum of following amounts:

(1) The amount attributable to the aggregate share of response costs that the allocator determines to be attributable to parties who are not affiliated with any potentially responsible party and whom the President determines are insolvent or defunct.

(2) The amount attributable to the difference in the aggregate share of response costs that the allocator determines to be attributable to parties who have resolved their liability to the United States under section 122(g)(1)(B) (relating to limited ability to pay settlements) for the removal or remedial action and the amount actually assumed by those parties in any settlement for the response action with the United States.

(3) Except as provided in subsection (j), the amount attributable to the aggregate share of response costs that the allocator determines to be attributable to persons who are entitled to an exemption from liability under subsection (t) or (u) of section 107 or section 114(c) or 128 at a facility or vessel on the National Priorities List.

(4) The amount attributable to the difference in the aggregate share of response costs that an allocator determines to be attributable to persons subject to a limitation on liability under section 107(u) or 107(v) and the amount actually assumed by those parties in accordance with such limitation.

(j) CERTAIN MSW GENERATORS.—Notwithstanding subsection (i)(3), the allocator shall not attribute any response costs to any person who would have been liable under section 107(a)(3) or 107(a)(4) but for the exemption from liability under section 107(u)(3).

(k) UNATTRIBUTABLE SHARE.—The share attributable to the aggregate share of response costs incurred to respond to materials containing hazardous substances for which no generator, transporter, or owner or operator at the time of disposal or placement, can be identified shall be divided pro rata among the potentially responsible parties and the Fund share determined under subsection (i).

(l) EXPEDITED ALLOCATION.—At the request of the potentially responsible parties or the United States, to assist in reaching settlement, the allocator may, prior to reaching a final allocation of response costs among all parties, first provide an estimate of the aggregate Fund share, in accordance with subsection (i), and an estimate of the aggregate share of the potentially responsible parties.

(m) SETTLEMENT BEFORE ALLOCATION DETERMINATION.—

(1) SETTLEMENT OF ALL REMOVAL OR REMEDIAL COSTS.—A group of potentially responsible parties may submit to the allocator a private allocation for any removal or remedial action that is within the scope of the allocation. If such private allocation meets each of the following criteria, the allocator shall promptly adopt it as the allocation report:

(A) The private allocation is a binding allocation of at least 80 percent of the past, present, and future costs of the removal or remedial action.

(B) The private allocation does not allocate any share to any person who is not a signatory to the private allocation.

(C) The signatories to the private allocation waive their rights to seek recovery of removal or remedial costs or contribution under this Act with respect to the removal or remedial action from any other party at the facility.

(2) OTHER SETTLEMENTS.—The President may use the authority under section 122(g) to enter into settlement agreements with respect to any response action that is the subject of an allocation at any time.

(n) SETTLEMENTS BASED ON ALLOCATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the President shall accept an offer of settlement of liability for response costs for a removal or remedial action that is the subject of an allocation if—

(A) the offer is made within 90 days after issuance of the allocator's report; and

(B) the offer is based on the share of response costs specified by the allocator and such other terms and conditions (other than the allocated share of response costs) as are acceptable to the President.

(2) REJECTION OF ALLOCATION REPORT.—The requirement of paragraph (1) to accept an offer of settlement shall not apply if the Administrator and the Attorney General reject the allocation report.

(o) REIMBURSEMENT FOR UAO PERFORMANCE.—

(1) REIMBURSEMENT.—The Administrator shall enter into agreements to provide mixed funding to reimburse parties who satisfactorily perform, pursuant to an administrative order issued under section 106, a removal or remedial action eligible for an allocation under subsection (b) for the reasonable and necessary costs of such removal or remedial action to the extent that—

(A) the costs incurred by a performing party exceed the share of response costs assigned to such party in an allocation that is performed in accordance with the provisions of this section;

(B) the allocation is not rejected by the United States; and

(C) the performing party, in consideration for such reimbursement—

(i) agrees not to contest liability for all response costs not inconsistent with the National Contingency Plan to the extent of the allocated share;

(ii) receives no covenant not to sue; and

(iii) waives contribution rights against all parties who are potentially responsible parties for the response action, as well as waives any rights to challenge any settlement the President enters into with any other potentially responsible party.

(2) OFFSET.—Any reimbursement provided to a performing party under this subsection shall be subject to equitable offset or reduction by the Administrator upon a finding of a failure to perform any aspect of the remedy in a proper and timely manner.

(3) TIME OF PAYMENT.—Any reimbursement to a performing party under this subsection shall be paid after work is com-

pleted, but no sooner than completion of the construction of the remedial action and, subject to paragraph (5), without any increase for interest or inflation.

(4) LIMIT ON AMOUNT OF REIMBURSEMENT.—The amount of reimbursement under this subsection shall be further limited as follows:

(A) Performing parties who waive their right to challenge remedy selection at the end of the moratorium following allocation shall be entitled to reimbursement of actual dollars spent by each such performing party in excess of the party's share and attributable by the allocator to the Fund share under subsection (i).

(B) Performing parties who retain their right to challenge the remedy shall be reimbursed (i) for actual dollars spent by each such performing party, but not to exceed 90 percent of the Fund share, or (ii) an amount equal to 80 percent of the Fund share if the Fund share is less than 20 percent of responsibility at the site.

(5) REIMBURSEMENT OF SHARES ATTRIBUTABLE TO OTHER PARTIES.—If reimbursement is made under this subsection to a performing party for work in excess of the performing party's allocated share that is not attributable to the Fund share, the performing party shall be entitled to all interest (prejudgment and post judgment, whether recovered from a party or earned in a site account) that has accrued on money recovered by the United States from other parties for such work at the time construction of the remedy is completed.

(6) REIMBURSEMENT CLAIMS.—The Administrator shall require that all claims for reimbursement be supported by—

(A) documentation of actual costs incurred; and

(B) sufficient information to enable the Administrator to determine whether such costs were reasonable.

(7) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.

(p) POST-SETTLEMENT LITIGATION.—Following expiration of the moratorium periods under subsection (g), the United States may request the court to lift the stay and proceed with an action under this Act against any potentially responsible party that has not resolved its liability to the United States following an allocation, seeking to recover response costs that are not recovered through settlements with other persons. All such actions shall be governed by the principles of liability under this Act as determined by the courts of the United States.

(q) RESPONSE COSTS.—

(1) DESCRIPTION.—The following costs shall be considered response costs for purposes of this Act:

(A) Costs incurred by the United States and the court of implementing the allocation procedure set forth in this section, including reasonable fees and expenses of the allocator.

(B) Costs paid from amounts made available under section 111(a)(1).

(2) SETTLED PARTIES.—Any costs of allocation described in paragraph (1)(A) and incurred after a party has settled all of its liability with respect to the response action or actions that

are the subject of the allocation may not be recovered from such party.

(r) FEDERAL, STATE, AND LOCAL AGENCIES.—All Federal, State, and local governmental departments, agencies, or instrumentalities that are identified as potentially responsible parties shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination provided by this section to the same extent as any other party.

(s) SOURCE OF FUNDS.—Payments made by the Trust Fund, or work performed on behalf of the Trust Fund, to meet obligations incurred by the President under this section to pay a Fund share or to reimburse parties for costs incurred in excess of the parties' allocated shares under subsections (e), (m), (n), or (o) shall be funded from amounts made available by section 111(a)(1).

(t) SAVINGS PROVISIONS.—Except as otherwise expressly provided, nothing in this section shall limit or affect the following:

(1) The President's—

(A) authority to exercise the powers conferred by sections 103, 104, 105, 106, 107, or 122;

(B) authority to commence an action against a party where there is a contemporaneous filing of a judicial consent decree resolving that party's liability;

(C) authority to file a proof of claim or take other action in a proceeding under title 11, United States Code;

(D) authority to file a petition to preserve testimony under Rule 27 of the Federal Rules of Civil Procedure; or

(E) authority to take action to prevent dissipation of assets, including actions under chapter 176 of title 28, United States Code.

(2) The ability of any person to resolve its liability at a facility to any other person at any time before or during the allocation process.

(3) The validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree issued, signed, lodged, or entered, before the date of enactment of this paragraph with respect to liability under this Act, or authority to modify any such order, judgment, or decree with regard to the response action addressed in the order, judgment or decree.

(4) 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.

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SECTION 517 OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) * * *

[(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

[(1) 1987, $250,000,000,

[(2) 1988, $250,000,000,
[(3) 1989, $250,000,000,
[(4) 1990, $250,000,000,
[(5) 1991, $250,000,000,
[(6) 1992, $250,000,000,
[(7) 1993, $250,000,000
[(8) 1994, $250,000,000, and
[(9) 1995, $250,000,000.[,]
plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.]

* * * * * * *

SECTION 9507 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Hazardous Substance Superfund" (hereinafter in this section referred to as the "Superfund"), consisting of such amounts as may be—

(1) appropriated to the Superfund as provided in this section,

(2) appropriated to the Superfund pursuant to [section 517(b) of the Superfund Revenue Act of 1986] *section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p))*, or

* * * * * * *

ADDITIONAL VIEWS

THE ADMINISTRATION ADVOCACY PAPERS MISINFORM

I believe it is necessary to provide additional views to the Committee report in order to identify what I believe to be dubious claims by the Clinton Administration as part of their effort to oppose passage of H.R. 2580. These views focus on two examples of biased and inaccurate information. These EPA documents were designed and used by Administration officials in visits with Members of Congress prior to the Committee's markup of H.R. 2580, as amended (the Oxley substitute). The EPA documents are styled, "Key Problems with the Oxley Amendment to H.R. 2580" and "Top Reasons for Administrator Support of the Towns Amendment, The Community Revitalization and Brownfields Cleanup Act of 1999"

A. THE ADMINISTRATION IGNORES THE SIMILARITIES BETWEEN THE OXLEY SUBSTITUTE AND THE TOWNS SUBSTITUTE

In the two EPA documents, the Administration repeatedly ignores the strong similarities between the Oxley substitute to H.R. 2580 and the Towns substitute (H.R. 1750). First, the Administration claims that provisions in the Towns substitute are beneficial components of reform, but fails to mention that H.R. 2580 has substantially similar provisions. This results in an Administration document that selectively understates similarities between the two bills. For example, in the first bullet under the heading styled "[H.R. 1750] Promotes Brownfields Redevelopment through Targeted Liability Relief," the Administration states that the Towns' substitute "provides liability relief to prospective purchasers, and contiguous landowners whose property is contaminated from releases on adjoining property." The Administration fails to mention that H.R. 2580 also provides similar innocent party relief for prospective purchasers and contiguous property owners. Similarly, under the header "[H.R. 1750] Preserves the Principle that Polluters Should Pay for Cleanup While Providing Relief for Small Parties," the Administration provides three bullets that point out that the Towns' substitute exempts de micromis parties, small businesses, homeowners, and non-profit organizations that generated or transported trash, and provides liability relief to eligible post-consumer recyclable materials. Yet again, the Administration fails to mention that H.R. 2580 also provides identical or similar provisions.

In addition, the Administration praises the Towns substitute for codifying the municipal settlement policy, while criticizing the Oxley substitute which also provides needed relief to these parties. It is inappropriate for the Administration to claim that H.R. 2580's municipal solid waste provisions constitute "special interest exemptions" under such circumstances. Similarly, under the heading

styled "Key Problems with Oxley Amendments to H.R. 2580," the Administration claims that "[H.R. 2580] Fails to reinstate the Superfund tax, giving polluters a tax holiday of about $4 million/day." This statement is wrong at several levels. First, the corporate environmental income taxes and the petrochemical feedstock taxes which expired in 1995 are not taxes based on pollution. Is the Administration's definition of "polluter" any corporations which have income? Second, H.R. 2580 does not address taxes, rather it is merely silent on this matter. Third, the Administration fails to point out that the Towns substitute does not provide for reinstatement of the Superfund taxes.

Similarly, the Administration alleges that "[H.R. 2580] fails to protect clean groundwater by allowing contamination to migrate if the groundwater is not currently used." However, the Administration fails to point out that using this measure, the current Superfund program and statute also fails. Under current law, standards apply where applicable, relevant and appropriate under the circumstances of the release or threatened release. Nothing in the statute defines what these circumstances are. Moreover, nothing prohibits migration of contamination in appropriate circumstances. Indeed, natural attenuation is a method which allows contamination to migrate for certain purposes and this method has been chosen by EPA in numerous circumstances. Nothing in current law prevents this practice and H.R. 2580 does no more or less than current law on this point.

B. THE ADMINISTRATION'S DESIRE TO OPPOSE CURRENT BIPARTISAN SUPERFUND REFORM EFFORTS HAS RESULTED IN INCONSISTENCIES IN ITS POSITION ON SUPERFUND REFORM

The Administration's attack on H.R. 2580, alleging that it will "weaken public health protections," flies in the face of its prior positions and legislative proposals for Superfund reform. Indeed, Administrator Browner stated to Congress in 1995 that "The Administration supports the elimination of relevant and appropriate requirements because they have proven to be a source of delay and unnecessary expense in selecting remedies." In 1997, EPA again stated "[T]he Administration does support some flexibility regarding requirements that have been traditionally referred to as 'relevant and appropriate.' As a result, the Administration supports removing the statutory requirement to comply with these requirements." In addition, removal of these requirements has been part of Minority proposals, including H.R. 3595 as introduced in 1998 during the 105th Congress. Apparently, in the Administration's view, these statutory provisions have needed to be changed for the several years but, inexplicably, not as part of bipartisan Superfund reform in the 106th Congress.

C. THE ADMINISTRATION CONTINUES TO PROVIDE MISINFORMATION ABOUT THE ANTICIPATED PROCEDURAL AND SUBSTANTIVE IMPACTS OF H.R. 2580

Finally, the Administration presents an incomplete view of the procedural and substantive effects of H.R. 2580, because it avoids properly framing the scope of particular provisions. For example, H.R. 2580 prevents EPA from overriding State cleanup decisions by

limiting EPA's authority where there has been a State cleanup. However, this is subject to reopener provisions, including a reopener that allows EPA to exercise its authority where there is an emergency to public health and the environment and the State is not addressing the problem. Despite these reopeners, the Administration claims that "[H.R. 2580] restricts EPA from ordering polluters to clean up high risk toxic waste sites * * *" Meanwhile, when describing H.R. 1750, the Administration argues that the analogous point is a valuable component of H.R. 1750, "[H.R. 1750] limits federal actions where cleanups are performed in compliance with good state response programs." Although there are differences in how the two bills approach the finality issue, rather than briefly describing the differences, the Administration has resorted to rhetoric.

The Administration's mischaracterization of H.R. 2580 is prevalent. For example, the Administration claims that "[H.R. 2580] diverts authorized cleanup dollars to pay for special interest liability exemptions and mandatory allocations which will mean fewer cleanups." In fact, the authorizations for cleanup funds in H.R. 2580 clearly state that the direct spending authorization for liability relief can be diverted to other program purposes, in specific circumstances. Furthermore, the direct spending allocations are distinct from the discretionary program authorizations. In fact, it is not credible to assert that H.R. 2580 will divert money away from cleanups. Because of its brownfields and liability reforms, less money will go towards litigation costs and more money will be available to be used for cleanups.

These documents represent but two examples of inaccurate and biased characterizations of H.R. 2580, which should be rejected.

MICHAEL G. OXLEY.

ADDITIONAL VIEWS

On May 11, 1999, I introduced H.R. 1750, the "Community Revitalization and Brownfield Cleanup Act of 1999" to promote the assessment, remediation, and redevelopment of brownfield sites. I am pleased that this legislation has attracted the support of President Clinton, the National Realty Committee, mayors of major cities, and 170 Members of Congress.

In late July, my colleague on the Committee, Mr. Greenwood, introduced H.R. 2580 which covered the same scope of brownfield issues and certain additional issues involving remedy selection.

Almost immediately after the Subcommittee on Finance and Hazardous Materials' August 4, 1999 hearing on these brownfield bills, we engaged in bipartisan discussions in an attempt to resolve the differences in our two bills. I felt that a bipartisan product could be developed around a brownfields bill and certain broadly supported liability relief for small business, municipalities, and legitimate scrap recyclers, but without engaging in the debates that surround reauthorization of the Superfund taxes.

Unfortunately, the attempt to develop this bipartisan product was unsuccessful. There is however, potential in the future for developing a narrowly focused bipartisan product. At the Committee markup I offered a substitute which embodies the principals of my bill and other targeted reforms. I was pleased that all of my Democratic colleagues voted for this proposal.

EDOLPHUS TOWNS.

DISSENTING VIEWS

The Superfund program is no longer the program of the early 1980s, when in its infancy it was plagued by malfeasance and intentional efforts on the part of a hostile Administration to hamper the progress of cleanup. As a result of this "go slow" approach, the goal of which was to terminate the program after its initial five-year authorization, remedial construction had been completed at only eight sites by the end of 1985. After the comprehensive reauthorization of the statute in 1986, it took until 1990 for the final regulations implementing the program to take effect.

Now, after three rounds of Administrative reforms implemented by the Clinton Administration, the program has seen its greatest success to date. Any legislative proposals for change must reflect the realities of the Superfund program today, taking into account these key administrative reforms and the progress in site cleanups that has been achieved. Our goal is to expeditiously complete cleanups at Superfund National Priority List (NPL) sites. In that context we support provisions to promote redevelopment of brownfields including liability protections for innocent landowners, new purchasers and developers, and contiguous property owners, as well as brownfields grants to local governments. We also support consensus-based targeted reforms for municipalities, small business, and legitimate recyclers.

For more than five years, we have sought to exempt from liability small businesses and residential homeowners who merely sent trash to a local landfill. There is no reason to continue to hold a restaurant or other small business that only sent "chicken bones" or trash to the local landfill hostage to a broader and controversial agenda pushed by special interests which have yet to meet their cleanup responsibilities.

At several times during the Superfund debate, the Minority has been accused of pursuing the perfect while sacrificing the good. Unfortunately, H.R. 2580 is neither the perfect, nor the good. The bill undermines the "polluter pays" principle and shifts hundreds of millions of dollars of polluter liability to state and federal taxpayers. It undermines the basic protections to human health and the environment that we have long believed should be ensured the citizens and communities affected by Superfund sites. Further, the bill undermines one of the most effective aspects of the law to date—prevention of future Superfund sites and brownfield sites.

We have not attempted in these views to identify every provision in H.R. 2580 about which we have concerns. During the hastily scheduled markups at Subcommittee and the full Committee, within a three-week period H.R. 2580 grew from 32 pages to 136 pages. The Administration was not involved in the formulation of the bill. By embarking on this partisan approach we fear the Majority has missed a real opportunity to strengthen brownfields revitalization,

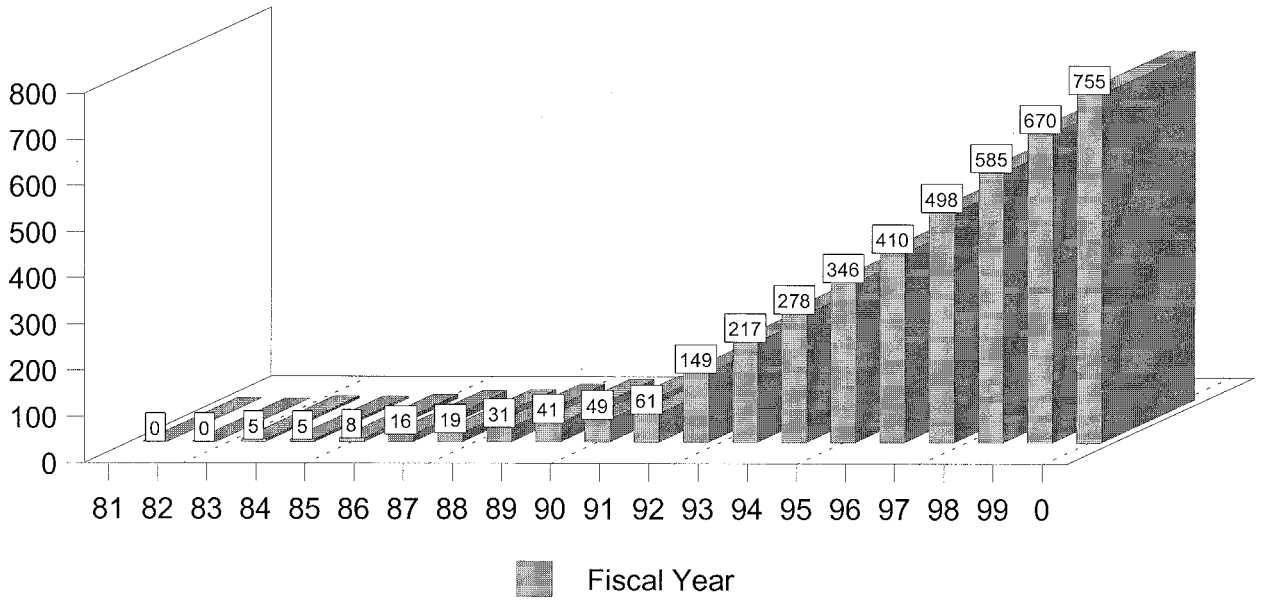
codify successful EPA reforms, and make targeted changes, all on a bipartisan basis.

PROGRESS OF THE SUPERFUND PROGRAM

Cleanup construction has been completed at more than three times as many toxic waste sites under the Administration of President Clinton than were completed in all the prior years combined. According to the Environmental Protection Agency (EPA): Cleanup construction has been completed at 670 Superfund sites and more than 400 additional sites are undergoing cleanup construction; more than 90 percent of all Superfund sites have had cleanup construction completed or are in the midst of cleanup construction; and the number of cleanups completed has increased from 65 to 85 per year.

Progress of Cleanup is Accelerated

More Than Three Times the Number of Construction Completions in the Past Six Years (Through FY98) Than the First 12 Years Combined



This significant progress has been recognized by states, industry, and the General Accounting Office (GAO). In its July 1999 report (GAO/RCED–99–245) on the status of the Superfund program, the GAO released the following findings:

> At half the sites, cleanups had been completed or all remedies were in place to achieve cleanup.
>
> At sites where cleanups were not complete, a significant amount of work already had been accomplished, and the remainder of the work was scheduled to be completed in the near future.
>
> At sites where cleanups were not complete, two-thirds of the required work was underway or done.

Business groups also have noted the significant progress that has been achieved in cleaning up Superfund sites:

> The Federal hazardous site cleanup program established by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund) is expected to achieve its goal of restoring the highest priority cleanup sites to environmental health within the next three to five years. (U.S. Chamber of Commerce, June 21, 1999.)
>
> Additionally, nearly 90 percent of all non-federal sites on the NPL are undergoing cleanup activities, and 60 percent of them will be finished by the end of this Congress. (National Association of Manufacturers, October 12, 1999.)

The Subcommittee also received testimony from state officials that the Superfund program has hit its stride and is doing a good job in remediating the NPL sites.

> With 90% of all NPL sites having signed records of decision, we felt a discussion on remedy selection changes would not be appropriate. EPA has done a good job in diligently working to remediate the 1,300 or so sites listed on the NPL. (Testimony of Claudia Kerbawy on behalf of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) before the Subcommittee on Finance and Hazardous Materials, March 23, 1999.)

We believe that at this point, any changes to the program that would undermine the rapid progress that has been achieved in completing cleanups is counterproductive and unwise.

THE DEMOCRATIC ALTERNATIVE

During the Committee markup, Mr. Towns of New York offered a Democratic alternative that promotes the development of brownfield sites and addresses the liability concerns of municipal governments, small business, and legitimate recyclers. The Democratic alternative also directs that a study of the future revenue needs of the Superfund program be completed by May 1, 2000.

The brownfields provisions in the Democratic alternative are taken from H.R. 1750, which is supported by the National Realty Committee, National Association of Counties and other local government organizations, Mayor Archer of Detroit, Mayor Rendell of Philadelphia, Mayor Webb of Denver, Mayor Harmon of St. Louis,

Mayor Murphy of Pittsburgh, Mayor James of Newark, Mayor Bollwage of Elizabeth, New Jersey, and 170 Members of Congress. President Clinton also has expressed his strong support for the brownfield provisions in the Democratic alternative.

Brownfield sites are parcels of land that contain abandoned or under-used commercial or industrial facilities, which may include associated rivers, streams or lakes, and mine-scarred land.

The Democratic alternative contains the following provisions which will promote the development of brownfield properties:

Grants To Local Governments and Redevelopment Authorities.—To facilitate environmental cleanup, the Democratic alternative authorizes grants of up to $500,000 annually to a local government to assess contamination at a site. Also, depending on the particular site circumstances, the Democratic alternative authorizes grants of $500,000 to $1,000,000 to allow local governments and redevelopment authorities to capitalize revolving loan funds for actual cleanup of brownfield properties.

The Democratic alternative builds on the successful brownfields grant program administered by the EPA, but authorizes higher grant amounts than awarded under current practice and reduces the administrative burden on local governments from the grant application process.

Liability Protection For Prospective Purchasers.—The Democratic alternative provides that a new purchaser or developer of contaminated property will not be liable under Superfund if he performs a due diligence inspection of the property, provides access to persons performing the cleanup, and is not affiliated with the person who is responsible for creating the contamination. The purchaser does not have to perform the cleanup himself.

Innocent Landowner Protection.—The Democratic alternative establishes criteria to provide certainty to persons who are innocent landowners. The Democratic alternative adopts the environmental assessment standards established by the American Society for Testing and Materials which are widely supported and used by the real estate industry and regulators today.

Contiguous Property Owner Protection.—The Democratic alternative creates a defense to liability for a landowner, (1) where the contamination came from adjoining property and (2) the landowner did not cause or contribute to the contamination on the adjoining property, and (3) the landowner takes appropriate care with regard to the contamination.

Certainty Provisions.—In addition to the liability relief provided above, in a state that has a qualified voluntary cleanup program, the Democratic alternative limits the federal government's ability to sue any person associated with contaminated property cleanup under the state program. The only exceptions are: (1) where the site may pose an imminent and substantial endangerment to health or the environment, (2) the state requests that the federal government take action, (3) conditions were unknown at the time of the cleanup and those conditions indicate that the cleanup is not protective of human health or the environment, or (4) cleanup of the site is no longer protective because of a change in use of the site.

The Subcommittee on Finance and Hazardous Materials received testimony at its August 4, 1999, hearing from local officials and community representatives indicating that states vary widely in the technical expertise, resources, staffing, statutory authority, and commitment necessary to ensure that brownfields cleanups are adequately protective of public health and the environment. The local government officials and community representatives both urged the Subcommittee to adopt an approval process for states to demonstrate that their programs meet certain criteria before limiting federal enforcement authority.

The amendment authorizes $15 million each year for five years to assist the states in developing voluntary cleanup programs and "grandfathers" existing agreements between the states and the EPA with respect to voluntary cleanup programs.

Municipal Liability.—Nine local government organizations led by the League of Cities, National Association of Counties, and the National Association of Towns and Townships testified to the needs of local governments for municipal Superfund liability relief at the Committee's hearing on September 22, 1999. These local government organizations requested that the Subcommittee legislatively ratify the municipal settlement policy adopted by the EPA in February 1998. Local governments testified that the municipal settlement policy provides a "reasonable and fair rate" based on landfill closure costs.

Liability Relief For Small Business.—The Democratic alternative provides liability relief for small business by: (1) exempting from Superfund liability small businesses or homeowners who only sent municipal solid waste to the local landfill, (2) establishing in law an "ability to pay" policy, and (3) exempting any party who sent a very small (de micromis) quantity of hazardous substances to a site unless that waste contributes or could contribute significantly to the costs of cleanup.

For more than five years we have consistently supported an exemption for small businesses like restaurants or print shops which merely sent trash to local landfills. In the 105th Congress, Representatives Stupak and Goodling cosponsored legislation, H.R. 2485, to exempt small businesses who sent trash to the local landfill from Superfund liability and from the fear of being sued by major polluters at the site. Unfortunately, the leadership of the Committee was unwilling to consider this bipartisan consensus legislation. The Democratic alternative provides immediate relief for small business owners like Barbara Williams in Gettysburg, Pennsylvania who disposed of nothing more toxic than household trash and does so without placing the burden of proof on a small business to qualify for the exemption.

Liability Clarification For Recycling Transactions.—The Democratic alternative is intended to promote the recycling of used materials because such recycling promotes waste minimization and the conservation of natural resources. At the same time, the Democratic alternative is intended to retain sufficient conditions to ensure protection of human health and the environment. It also is intended to remove disincentives to recycling because of potential CERCLA liability and thereby level the playing field for the use of virgin materials versus scrap materials. The Democratic alter-

native is designed to promote environmentally responsible recycling by encouraging persons to demonstrate the recycling transaction is not a sham for the treatment or disposal of hazardous substances. It also is intended to encourage parties to take affirmative actions to determine that the facilities to which they send recyclable materials are in compliance with environmental laws.

The Democratic alternative closely tracks the widely supported historical compromise language that has most recently been introduced by the Senate Majority and Minority Leaders on August 4, 1999, as S. 1528.

To address the important issue of future revenue needs of the federal Superfund program the Democratic alternative directs the Administrator of the EPA to arrange for an independent analysis of the projected 10-year costs to complete cleanups of the facilities on the NPL and cleanup costs for sites likely to be added to the federal Superfund program.

H.R. 2580

The bill reported by the Committee is deeply flawed and will undermine important statutory protections. Rather than crafting targeted changes which have a broad consensus to improve the program, as the Democratic alternative does, H.R. 2580 rolls back important environmental standards to protect ground water and achieve permanent cleanups, undermines the "polluter pays" principle, delays rather than maintains the current pace of cleanups, increases transaction costs, and deprives communities and local governments of a federal safety net where an imminent and substantial endangerment to human health or the environment may be presented.

ROLLBACK OF ENVIRONMENTAL PROTECTIONS IN H.R. 2580

The Superfund program was established in 1980 in response to public concern over the potential harm to human health of substances released from chemical spills and hazardous waste sites such as Love Canal, New York and Valley of the Drums, Kentucky. The Agency For Toxic Substances and Disease Registry recently reported that 1.3 million children under the age of six live within one mile of a Superfund site. Contaminated ground water is a problem at more than 85 percent of Superfund sites. At more than 90% of NPL sites, one or more operable ground water wells is located within one mile of a site, and at 82% of NPL sites ground water is withdrawn for drinking purposes within three miles of the site. Existing drinking water wells were either contaminated or threatened by continued plume migration at 499 sites.

H.R. 2580 Will Lead to Inadequate Cleanup of Contaminated Ground Water and Allow Clean Ground Water To Become Contaminated.—Nearly 120 million Americans, about half the population, rely on ground water as a primary source of drinking water. About 100 million of these consumers are served by community water systems using ground water for all or most of their water supply. In rural areas, reliance on ground water for drinking water can be as high as 95% of the population. Between 1970 and 1990, Alaska, Arizona, California, Florida, Kentucky, and Missouri all doubled their use of ground water for public water supply.

We are concerned that a number of provisions of H.R. 2580, both individually and collectively, will result in inadequate cleanup of contaminated ground water and contamination of clean ground water, including ground water that may be used for drinking water.

First, H.R. 2580 eliminates a provision of current law (CERCLA Section 121((d)(2)(A)) that requires cleanups of hazardous substances to meet any state or federal environmental standard that is "relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance."

Both state and federal officials have informed the Committee that "relevant and appropriate" requirements are an important threshold criterion in remedy selection, particularly with regard to state drinking water standards, solid and hazardous waste laws, and mining reclamation standards. They have urged that these standards be retained.

Where a state has a more stringent maximum contaminant level (MCL) for ground water than the federal MCL, such as benzene in California, or there is a state MCL for a contaminant but no federal MCL for the same contaminant, those state standards have been used as "relevant and appropriate" to insure the protectiveness of the cleanup.

The Association of Metropolitan Water Agencies, representing the Nation's largest drinking water providers, and the American Water Works Association, representing drinking water supply professionals throughout the country, have urged the Committee to retain the "relevant and appropriate" requirements of current law. In their words, relevant and appropriate requirements are "a key tool in protecting human health and ensuring that consumers are not forced to pay for treatment of water contaminated by hazardous waste." (See October 8, 1999 letter from the Association of Metropolitan Water Agencies and American Water Works Association to the Honorable John D. Dingell.)

Many other situations have come to our attention where "relevant and appropriate" requirements have been very useful in avoiding disputes over whether a state standard is legally applicable and in providing standards which ensure protectiveness at sites. For example, standards established under the Uranium Mill Tailings Control Act for cleanup of radium and thorium in soil at designated processing or depository sites have been utilized as "relevant and appropriate" standards at Superfund sites with similar types of radiation conditions. Landfill design standards established under the Resource Conservation and Recovery Act (RCRA), particularly for landfill capping, closure, and leachate collection, have also frequently been used as "relevant and appropriate."

Second, during the Committee consideration of H.R. 2580, Representative Stupak unsuccessfully offered an amendment to correct a serious deficiency in Section 309 which establishes new remediation levels for dry cleaning solvents. The adoption of Section 309 during Subcommittee markup—without any legislative hearing on the merits—results in a much less protective cleanup standard for three contaminants used as dry cleaning solvents: tetrachloroethylene (also known as perchclorethylene (PCE), carbon tetrachloride, and trichchloroethylene (TCE). These contaminants

also are used as solvents for many other industrial operations. These three chemicals are among the most prevalent found at Superfund sites. According to the EPA, TCE has been found as a contaminant in at least 852 sites and in the ground water at 336 sites. PCE has been found in the ground water of at least 170 NPL sites and overall at 771 NPL sites. Carbon Tetrachloride has been found in the ground water in at least 68 sites, and found as a contaminant in at least 326 sites. Each of the contaminants is classified as a possible or probable human carcinogen.

According to the EPA and state officials, the remediation levels established in Section 309 do not protect ground waters that are potential sources of drinking water because the bill prohibits the use of cleanup levels other than the soil concentrations developed in the EPA's 1996 Soil Screening Guidance for estimating risks from the inhalation of contaminants. According to the EPA, the inappropriate use of the soil screening levels is not protective of human health or the environment when used as a remediation level for ground water. For example, the inhalation soil screening value for Tetrachloroethylene (PCE) of 11 milligrams per kilogram, if used as a cleanup standard for ground water, would equate to 11 milligrams per liter, which is more than two thousand times less stringent than the MCL established by the Safe Drinking Water Act of .005 milligrams per liter. With respect to potential drinking water sources, the standard established by H.R. 2580 for Trichloroethylene (TCE) is 1,000 times less protective than current law and for Carbon Tetrachloride, 60 times less protective than current law.

Officials who manage state cleanup programs have strongly objected to the separate cleanup criteria for dry cleaning solvents in correspondence submitted to the Committee.

> There is no valid technical reason for treating carcinogenic compounds released from dry cleaners any differently than the release of the same compounds from other sources or than the release of other carcinogenic compounds. It is a generally held view among our members that the basis for these separate criteria is not good science. We think this provision would disrupt cleanup of numerous releases being addressed across the country under state and federal authorities using sound science. The change in cleanup criteria proposed in the current version of H.R. 2580 has not been subject to the appropriate toxicological and scientific review that should be accorded matters of public health, and we believe would effectively preempt state cleanup criteria for this significant class of contaminants. We strongly oppose these disturbing provisions restricting cleanup standards for dry cleaning solvents, and urge you to eliminate it from the final House version of this bill. (October 27, 1999, letter from Michael Kelly, President, Association of State and Territorial Solid Waste Management officials.)

We cannot support the dramatic weakening of cleanup standards with respect to three of the most serious and prevalent contaminants at Superfund sites, particularly where there have been no

hearings or presentation of facts to justify such a change in law. Nor can we support eliminating the use of state and federal environmental requirements which are both "relevant and appropriate" to the circumstances of the contamination at a site.

At the Subcommittee on Finance and Hazardous Materials hearing on September 22, 1999, the Assistant Administrator in charge of EPA's Superfund program identified several other provisions in H.R. 2580 that could result in inadequate protection of ground water. According to the EPA, H.R. 2580 replaces the current Superfund program goal to restore contaminated ground water to beneficial uses, wherever practicable, with a much lower standard. H.R. 2580 protects ground water only for its "reasonably anticipated use" rather than its "current or potential beneficial use." According to EPA, changing the existing regulatory standard in this manner may create a perception of a bias against protecting uncontaminated ground water. The Association of Metropolitan Water Agencies and the American Water Works Association expressed similar concerns and urged the Committee "to remain consistent with EPA's policy and retain the emphasis on beneficial use." (See October 8, 1999 letter from the Association of Metropolitan Water Agencies and the American Water Works Association to the Honorable John D. Dingell.) In testimony at the September 22, 1999 Subcommittee hearing, state officials also expressed their preference for EPA's current requirement that contaminated ground water be restored to beneficial uses whenever practicable, and that uncontaminated ground water be protected. The Subcommittee was informed that this is a particularly critical issue for arid western states where ground water resources are scarce. Further, EPA officials testified that by including the term "reasonable point of compliance," H.R. 2580 invites disputes over whether drinking water standards should be met in the ground water or at the tap, potentially delaying cleanup and leaving valuable ground water resources unprotected.

Third, in their letter of October 8, 1999, the Association of Metropolitan Water Agencies and American Water Works Association urged "the Committee to include language directing, at a minimum, that uncontaminated ground water be protected." At the Committee markup, Representative Pallone offered an amendment to achieve this objective in remedies selected under the Superfund program as follows:

> A remedial action shall protect uncontaminated ground water and surface water unless it is technically infeasible, or unless limited migration of contamination is necessary to facilitate restoration of ground water to beneficial use.

Failure to prevent migration can create conditions that are orders of magnitude more costly to address than preventing migration in the first place. For example, at the Newmark Groundwater Contamination site in Southern California an 8-square-mile plume is threatening hundreds of municipal drinking water wells serving over half-a-million people. EPA is spending $20 million to stop the spread of contamination at this site. By stopping the spread of this contamination, nearly 100 wells will be protected, saving over $200 million in total potential wellhead treatment costs.

The amendment does not direct that uncontaminated ground water be kept clean where to do so is impossible, or where limited migration is necessary to facilitate the restoration of ground water. However, keeping uncontaminated ground water clean should be a vital objective when selecting remedial actions. The importance of preventing the spread of contaminants was recognized by the National Research Counsel in its report "Alternatives for Ground Water Cleanup":

> Ground water contamination problems may become increasingly complex with the passage of time because of the potential for contaminants to migrate and accumulate in less accessible zones. Measures to remove contaminants from zones where the release occurred and to contain contaminants that cannot be removed should be taken as soon as possible after the contamination occurs. (National Research Council Report entitled "Alternatives For Ground Water Cleanup", July 1994.)

We cannot support a bill such as H.R. 2580 that weakens current protectiveness standards for cleanups and fails to protect uncontaminated ground water.

Weakening the Preferences for Permanent Remedies and Treatment for the Most Toxic Wastes.—Current law in Section 121(b) contains a preference for remedial actions to use treatment techniques which permanently and significantly reduce the volume, toxicity or mobility of hazardous substances. Under this standard, the EPA employs the preference for treatment for the most toxic or mobile hazardous substances at a site. In addition, Section 121(b) of current law provides that Superfund remedial actions utilize permanent solutions to the maximum extent practicable.

These preferences have been in the Superfund statute since 1986. Over 2,000 remedial actions have been selected using these criteria. They have been very important in addressing ground water contamination and in selecting remedies so that Superfund sites are returned to beneficial use for the economic benefit of the community. According to the EPA, major reuse—either economic or recreational—is occurring at more than 160 Superfund sites that either have undergone completion of construction or have remedial construction activities underway. These include industrial parks, commercial facilities (like K-Marts and Home Depots), little league ball parks, community recreational centers, residential housing, and wildlife sanctuaries.

Section 108 of H.R. 2580 strikes the word "maximum" from the preference for permanent remedies. This change effectively eliminates the importance of selecting permanent remedies and permanent protection for communities. Similarly, H.R. 2580 contains language that modifies and weakens the preference for treatment by adding qualifying phrases like "to the extent practicable" and other conditions. These changes will provide new litigation opportunities for those who wish to challenge remedies where the preference for treatment has been considered.

Opposition to these changes has come from federal and state officials, citizens who reside near Superfund sites, and the Association

of Metropolitan Water Agencies and the American Water Works Association:

> These changes weaken the preference for treatment and permanence by focusing on current uses rather than possible future uses of a site. The amendments also protect only the reasonably anticipated uses of groundwater and make no provision for protecting unused groundwater that has not yet been contaminated. California's State Superfund Program would be constrained by these changes, limiting California's ability to protect its resources for future, yet unplanned uses. (October 12, 1999, letter from Winston H. Hickox, Agency Secretary, California EPA)
>
> And we further object to the bill's devaluation of permanent remediation solutions by striking the word "maximum" from CERCLA Section 121(b)(1), in which the President is directed to select remedial actions that utilize permanent "solutions to the *maximum* extent practicable." (Emphasis added.) The association believes it is extremely important that there be a continuation of the current policy's general preference for treatment and permanence. (October 8, 1999, letter from the Association of Metropolitan Water Agencies and the American Water Works Association)
>
> Congress should maintain the federal commitment to permanency in treatment. Permanent solutions to improperly dispose of hazardous waste should be accorded preference over attempts to control access or exposure to such waste. Long term economic redevelopment efforts will be hurt by a policy that defers actual site cleanups." (National Conference of State Legislators, CERCLA Section, Hazardous Waste Management Policy, March 1998)

The preferences for treatment and permanence in current law are also strongly supported by the EPA, the American Public Health Association, the Environmental Defense Fund and other national environmental organizations, and citizens and community groups who have testified at Committee hearings.

Inadequate Protection of Children, Pregnant Women and Adversely Affected Subpopulations.—Over 2,000 cleanup decisions have become final using the statutory criteria from the 1986 comprehensive reauthorization of the Superfund statute and the implementing regulations. In 1989, the EPA issued two volumes of "Risk Assessment Guidance For Superfund" followed by three volumes of peer reviewed guidelines detailing various factors used in assessing exposure as well as a volume setting forth the process for designing and conducting ecological risk assessments. This extensive body of guidelines considers the toxic exposure for not only the average adult male, but also for more at-risk groups, such as children and pregnant women.

H.R. 2580 would unnecessarily raise doubts about the current risk assessment practices by establishing a new set of risk assessment criteria in Section 108. These new criteria in our view are unnecessary and fail to adequately insure that health risk assessments consider the effect of hazardous substances on children,

pregnant women, the elderly, and other individuals with a history of serious illness that are identifiable as being at greater risk of adverse health effects due to exposure to hazardous substances than the general population. H.R. 2580 merely provides that a risk assessment identify groups which would be highly exposed or highly susceptible to contamination from the site. Mere identification of groups fails to explicitly address and insure that the effects of hazardous substances on children, pregnant women, or the elderly are actually considered in a health risk assessment.

Representative Capps offered an amendment to ensure that the health risk assessments conducted at Superfund sites remain protective. The amendment was taken from the new, recently enacted California Superfund law and provides that a health risk assessment shall consider the effect of hazardous substances on children, pregnant woman, the elderly, and other subpopulations at greater risk. Unfortunately, the Majority rejected the amendment on a party-line vote. We remain concerned that the new risk assessment principles and provisions of Section 108 will spawn new litigation and legal challenges but will not adequately address the special needs of children, pregnant women, and the elderly.

Representative Waxman offered an amendment which would facilitate risk assessments by generating information on toxic chemicals in communities. The amendment was based on H.R. 1657, bipartisan legislation introduced by Representatives Waxman and Saxton, currently cosponsored by over 130 Members. The amendment requires disclosure of toxic chemcial use and is based on state laws in New Jersey and Massachusetts. Superfund sites and facilities reporting to the Toxics Release Inventory (TRI) for a given toxic chemical also report (1) the number of facility employees exposed to the toxic chemical, and (2) the amount of the toxic chemical that the facility ships in and out, stores on-site, produces, consumes, and recycles. The amendment provided that facilities may withhold from public disclosure toxic chemical use information that constitutes a legitimate trade secret. The Majority rejected the amendment along a largely party-line vote.

H.R. 2580 UNDERMINES THE "POLLUTER PAY" PRINCIPLE

H.R. 2580 shifts polluter liability to state and federal taxpayers. H.R. 2580 in Section 202 authorizes all of the funding for the Superfund program to come from general revenues. This is a departure from the current statute and all previous reauthorization proposals which capped the amount from general revenues at $250 million per year. Further, the bill contains no tax title to raise revenue for Superfund cleanups. Historically, these revenues have been raised for the Superfund Trust Fund from excise taxes on petroleum and chemicals in addition to a corporate environmental tax. These taxes expired on December 31, 1995, and have not been renewed.

H.R. 2580 does, however, contain numerous overly broad liability exemptions and other provisions that shift hundreds of millions of dollars of polluter liabilities directly to the Trust Fund. One such provision in Section 304(b) exempts large commercial waste haulers and other parties from liability for sending municipal solid waste or municipal sewage sludge to a landfill on the NPL. Other provi-

sions contain a mandatory allocation system (Section 308) and a transfer of private rights of contribution (Section 304(e)) which shift millions of dollars of polluter liability costs to the Trust Fund. The Committee has not produced any cost estimate of the liability exemptions or limitations on the cost-shifts from the mandatory allocation system. However, the costs of major exemptions and contribution claim payments in H.R. 2580 have been preliminarily estimated by the EPA to range from $372–450 million per year.

H.R. 2580 provides direct spending of $250 million per year for fiscal years 2000 through 2004 to pay for these cost-shifts. However, the Office of Management and Budget informed the Committee that H.R. 2580 would impose costs on the Superfund Trust Fund in excess of the level of direct spending included in the bill by a "significant margin." The Office of Management and Budget also observed that the bill failed to offset the increased direct spending and that if enacted the bill's net costs could contribute to a sequester of mandatory programs. (See October 12, 1999 letter from Jacob J. Lew, Office of Management and Budget, to the Honorable John D. Dingell.)

Both state and federal officials have criticized the overly broad liability exemptions and the shift of these polluter liabilities to the public at large. On October 13, 1999, the Department of Justice informed the Committee that H.R. 2580 rejects the "polluter pay" principle and would shift major new costs to the Fund in order to pay for the hundreds of millions of dollars in special interest liability exemptions in the bill. (See October 13, 1999 letter from Ms. Joyce E. Peters, Department of Justice Office of Legislative Affairs, to the Honorable John D. Dingell.)

H.R. 2580 also imposes an arbitrary 10% cap on the recovery of oversight costs by the states or the federal government. Representative Engel offered an amendment to remove the arbitrary 10% limitation during markup by the Subcommittee on Finance and Hazardous Materials. The amendment was rejected on a party-line vote.

While the Democratic alternative provides liability clarifications and relief for new purchasers, innocent landowners, contiguous property owners, small businesses, municipal governments and legitimate recyclers, it does so without shifting costs to taxpayers and without creating controversial and overly broad liability exemptions. We also fear that H.R. 2580 creates the real possibility that these excessive liability exemptions or limitations and the resulting claims will diminish the cleanup funding necessary to maintain the current pace of cleanups.

We strongly agree with the position of the National Conference of State Legislators that any changes to the law should maintain the "polluter pays" principle and should not result in increased allocation of public funds for site cleanups. (See September 28, 1999 letter from Beverly Gard, Chair, NCSL Environment Committee to the Honorable John D. Dingell.) Unquestionably, H.R. 2580 undermines the "polluter pays" principle.

SLOWING CLEANUPS, INCREASED LITIGATION, AND INCREASED TRANSACTION COSTS

Numerous witnesses testified at the Subcommittee hearings that provisions in H.R. 2580 would likely hinder cleanup progress and increase transaction costs, including costs to small parties. Assistant Attorney General of the State of New York, Gordon J. Johnson, on behalf of the National Association of Attorneys General, testified that the mandatory process for allocating liability among responsible parties created by the bill "will likely delay cleanups and substantially increase costs." He also raised the concerns that "the bill may well require that liability disputes be resolved first, while cleanups wait until later."

In responding to a question from Representative Engel at the Subcommittee hearing, Mr. Johnson further explained the reason for his concerns:

> Mandatory allocation we think under this statute will become a trial. It will not result necessarily in settlements. When allocations are made mandatory, parties are more likely to await its results rather than make an effort to truly settle the case and end it. Why not wait and see what happens as a result of the allocation before coming forward with a settlement proposal?
>
> Mandatory allocation we think will just inevitably lead to trial-like allocations rather than a reduction in transaction costs in settlements. And this is particularly pertinent here because PRP's ordered to clean up a site will get reimbursed by the fund, and thus removing [SIC] any incentive that they currently have to settle.
>
> Under current law, EPA can provide mixed funding for PRP's who agree to settle their liability. However, if they know that they don't have to make a settlement in order to be reimbursed for any excess costs, PRP's are not going to be settling. That means that the fund is going to have to pay for cleanups. There is going to be a lot more orders. Cleanups will be delayed. And the whole process of resolving cases by settlement and getting cleanups to move forward quickly will be delayed.

Federal agencies charged with administering the program have expressed similar concerns about the structure of the mandatory one-size fits all allocation process established by Section 308 of H.R. 2580. Under current law, the United States resolves most of its CERCLA claims through settlement, not litigation. Approximately 70% of all cleanups are performed by potentially responsible parties through such settlements.

At the Subcommittee hearing, EPA officials testified that the bill would severely reduce or eliminate the incentives in current law for parties to reach agreement at the negotiating table, and to move quickly to cleanup absent adversarial, unilateral orders. Of particular concern was the testimony that the requirement to allocate shares for the response action will result in dragging exempt or settled parties back through the allocation process, even if they had previously settled. Over 18,000 de minimus parties have settled their liability to date.

Under H.R. 2580, the Fund is responsible for the share of exempt parties, as well as insolvent or defunct parties. We are concerned that the structure of Section 308 places a premium on these parties and encourages other responsible parties subject to the allocation to perform a "witch hunt" to identify such parties in order to reduce their share. This result is not speculative; it actually occurred at allocations that the EPA has pilot tested over the past five years. For example, at the South 8th Street landfill in Arkansas, the parties responsible for the pollution named an additional 2,500 parties, most based on the appearance of a person's name in the phone book for the years the facility was in operation. The EPA later found there was no basis in law or fact for naming these parties as potentially liable. An allocation system structured to create incentives to drag parties who were never liable or who have settled their liability back into a mandatory trial-like allocation system is sure to increase, rather than decrease, transaction costs.

Over the past four years, the Administration has made significant improvements in adopting a more equitable enforcement approach through its administrative reforms. In 1996, the EPA adopted a policy to provide orphan share compensation at each eligible site where there are insolvent or defunct parties. Compensation through settlement has been provided at 96 sites in the amount of approximately $176 million in recognition of the shares attributable to insolvent and defunct parties. This compensation took the form of compromises of past costs and future oversight costs which preserved the Trust Fund in order to maintain the current rate of cleanups. According to the EPA, in the overwhelming majority of cases, settlement occurred, issues were resolved up front, and parties agreed to not drag the cleanup decision through years of litigation. We endorse this very successful administrative reform which avoids delaying cleanups or increasing transaction costs while providing equitable relief where appropriate.

Other provisions in H.R. 2580 were also identified at the Subcommittee hearing as the source of time-consuming and costly litigation when the meaning and relevance of new terms are fought over in the courts. One example cited was the new terminology regarding ground water and risk assessments. According to the EPA, new risk provisions in Section 108 will require consideration of information, regardless of reliability, quality, or whether the information is representative of site conditions. Defining when assessments are "scientifically objective" or if the scientific and technical information is the "best available" will likely lead to extensive debates and unnecessary litigation. As to the entirety of Section 108, the vague and ambiguous risk concepts will lead to greater delay as parties wrangle over interpretation of these new principles and standards meant to effect every cleanup.

THE BROAD PROHIBITION ON ENFORCEMENT AND CITIZEN RIGHTS UNDERMINES CLEANUP PROTECTION FOR COMMUNITIES

H.R. 2580 repeals citizen rights and re-writes well-settled case law, under the guise of brownfields redevelopment. That is not the action our communities have asked us to take. Although intended to facilitate the cleanup and redevelopment of brownfields, which far outnumber National Priorities List sites, the implementation of

Title I of H.R. 2580 is likely to result in more sites left temporarily stabilized, or only partially remediated. Cities, as well as those who value non-urban greenfields, will suffer the consequence of properties not cleaned to reuseable standards. The result: the perpetuation of brownfields. And for the very citizens who have been plagued by these properties, H.R. 2580 severely limits their rights to seek assistance from the federal government, or to take citizen action at a contaminated site that may continue to present a danger to their community.

We have heard testimony that potential Superfund liability chills redevelopment of brownfields. We also have seen in the Conference of Mayors 1998 report that the number one impediment to redevelopment is the need for cleanup funds. Among other concerns is the need for environmental assessments, market conditions, neighborhood conditions and community concerns ("Recycling America's Land," January 1998). What we can conclude is that there is no such thing as a "typical" brownfield site nor is there one problem common to all sites. They vary widely in origin, size, extent of contamination, marketability and location. In large part, they have not been inventoried, assessed or catalogued. Given this circumstance, it is difficult to create one template designed to provide redevelopment incentives for such a wide variety of sites that pose a wide variety of challenges for developers. Our task is to strike a balance between the desire to provide redevelopment incentives that will work for such a variety of sites, while at the same time maintaining the assurance to affected citizens that these sites will no longer threaten the health of the community. We do not believe H.R. 2580 strikes that balance.

We support Superfund liability clarifications for innocent landowners, contiguous property owners and bona fide prospective purchasers, although we would prefer slightly different language than that contained in sections 105, 106 and 107 of H.R. 2580. With these liability clarifications, we believe the concerns about "certainty" with regard to Superfund liability have been addressed for the parties who may be reluctant to acquire someone else's mess. The developer of a site who performs due diligence and discovers contamination, but did not create the contamination, and who is willing to provide access to a person who may remediate the site, will know that he does not face Superfund liability. The landowner who did not know of contamination when he acquired his property, but had performed due diligence at the time of his purchase, will know that he does not face Superfund liability. The landowner whose property is contaminated by migration of pollution from contiguous property will know that he does not face Superfund liability. These parties can own and acquire property without fear of liability for the contamination that defines a brownfields site.

The remainder of the debate over "certainty" applies only to the parties who do not qualify for these exemptions: the parties who did not act responsibly to perform due diligence; the parties who will not provide access for cleanup; the parties who knew of the contamination at the time they acquired the property and have not yet acted to clean it up, or the parties who were responsible for the contamination in the first place. These are the very parties who should be responsible for addressing the mess they create, yet, in

H.R. 2580 these parties are rewarded with a broad assurance that neither the federal government nor any other person will take any administrative or judicial action against them so long as a state cleanup has been initiated, but not necessarily completed, on their property.

We fear that this bill's prohibition on the President's (including EPA and resource trustee's) and any other person's ability to act in virtually any circumstance is so restrictive as to provide incentives for incomplete or shoddy cleanup. State officials have said that the federal liability system contained in current law is integral to their ability to obtain cleanup from responsible parties at state hazardous waste sites. (See "Hazardous Waste Sites: State Cleanup Practices," GAO/RCED–99–39, December 1998.) Even when the state does not threaten to notify the President (usually the EPA) of a problematic site, the fact that the state could do so often brings the parties together to work out a cleanup plan with the state. This cooperative effort between the states and the responsible parties, fostered in part by the very existence of federal law, is one of the most productive aspects of current law. Unfortunately, H.R. 2580 undermines that mechanism.

First, in H.R. 2580, the President, and any other person, is broadly prohibited from acting under CERCLA or RCRA with respect to a release or threatened release at a facility that is, or has been, the subject of a response action pursuant to a state program. The prohibition could be read to attach to an entire facility that is or has been the subject of state action, even if a large part of that facility was not touched by the state response action. Clearly, the language expressly prohibits action even where a response action has begun but has never been completed. We fear that this provision provides incentives for half-finished cleanups.

Second, by extending the scope of the prohibition to actions under section 7002(a)(1)(B) or section 7003 of RCRA, H.R. 2580 eliminates the EPA's authority to act with regard to petroleum substances as well as solid and hazardous wastes. We strongly oppose this loophole. For example, EPA not only has used this authority to address petroleum that has leaked out of tanks and infiltrated sewers, streams and groundwater, but also to respond to tire fires. Tires do not qualify as hazardous wastes, but when burned they release dangerous pollutants.

In addition, the prohibition against actions under section 7002(a)(1)(B), pertaining to citizen suits, is an unwarranted abrogation of a core intent of the RCRA statute. We wish to emphasize that the intent of section 7002(a)(1)(B) is not to confer authority to EPA, but instead to confer to a citizen the statutory right to take action against a person, including the United States or another government instrumentality or agency, who has contributed to the past or present mishandling of solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. We have heard no testimony that the repeal of these citizen rights is necessary for brownfields redevelopment. To the contrary, we are seeking to assist the citizens plagued with abandoned and contaminated properties that pose not only a threat to their economic well-being, but also to their health.

Under current law, a citizen seeking to bring an action under section 7002(a)(1)(B) must notify the state. No action may be commenced if the state has commenced and is diligently prosecuting an action under RCRA, or is performing an action under section 104 of CERCLA or is pursuing a remedial action under CERCLA (see RCRA section 7002(b)(2)(A)–(C)). Thus, in current law there exists a mechanism for a state to preempt a citizen action, if the state so chooses, by taking action at the site. The case has not been made that this provision of current law chills a state's ability to assume the lead decision making role at any brownfields site.

Third, the prohibition extends to private contribution actions, revealing the misleading nature of the title "Prohibition on Enforcement." A private party may have voluntarily commenced a cleanup with the expectation that the cleanup would be financed, in part or in the entirety, by a successful contribution action to be brought against parties responsible for the contamination. Once H.R. 2580 is in effect, the contribution action will be extinguished. This provision may actually discourage parties from commencing cleanup due to financial inability—a result that is inconsistent with our goal to encourage the remediation and redevelopment of brownfields. As well, a number of parties who have commenced cleanup with the expectation of contribution prior to the enactment of this legislation may abandon their effort prior to completion of the cleanup. But because a cleanup was commenced, H.R. 2580 forecloses EPA from ensuring that it is completed.

Narrow Exceptions to the Broad Prohibition Put Communities at Risk.—While we agree that the states should have primary responsibility for overseeing cleanup at brownfields sites, not all states are the same, nor is one state program necessarily funded at the same level from one administration to the next. Many states have successful, responsible voluntary cleanup programs or other waste treatment programs. But some states have yet to enact or fund such programs. The GAO has reported that state voluntary programs have varying characteristics. About half the programs they surveyed in 1997 made no provision for either monitoring nonpermanent cleanups or for overseeing their accomplishment. Yet, all the programs gave some assurance of relief from future state liability. (See "State Voluntary Programs Provide Incentives to Encourage Cleanups," GAO/RCED–97–66, April 1997.)

We find that the variety in state programs is similar to the variety in brownfield sites themselves. Nevertheless, we do not seek to impose a uniform brownfields program upon the states. Likewise, we do not seek to impose federal cleanup requirements on the states. But for the same reason, a uniform and severe prohibition on federal action is ill-advised. This Committee has received testimony from citizens who have numerous examples of states not responding to their requests for assistance at these sites, most recently from Teresa B. Mills from the Buckeye Environmental Network in Ohio. She states, "I believe that Ohio's sorry experience with the [Voluntary Action Program] proves that minimum federal standards for public participation, openness of information, protective clean up standards, reliability of remedy and adequacy of state and federal oversight must be guaranteed to all Americans" (Testimony of Teresa B. Mills Before the House Finance and Hazardous

Materials Subcommittee, August 4, 1999). A federal safety net is essential to maintain the assurance to our communities that there is some recourse should the state lack the resources or the political desire to answer their concerns. These citizens should not be told that their only opportunity to obtain assistance for a danger to their community will come with the next election cycle.

The few exceptions to the prohibition contained in H.R. 2580 are not tailored to the breadth of the prohibition, particularly as the prohibition forecloses not just the EPA's ability to act, but also a private party's ability to act. The result is likely to be, at a minimum, protracted litigation as the courts are forced to sort whether a citizen seeking action under section 7002 of RCRA or a private party seeking contribution under CERCLA, is allowed to bring the action. Likewise, a citizen seeking EPA's assistance at a site can only obtain that assistance if the requirements of one of these exceptions is met.

For instance, a party seeking action will first have to ascertain whether the site fits into any of the exceptions contained in Sections 102(c)(1), (3), or (4) which pertain to the nature of the site. As the universe of these excepted sites is narrow, it is likely that his site will not fit into any of those exceptions. There are only two possibilities left: that the Governor of a state (presumably the state in which the facility is located, but this is not clear) seeks assistance from the Environmental Protection Agency to perform a response action at the facility (see Section 102(c)((2)), or that the release or threatened release at the site requires response actions immediately to prevent or mitigate a public health or environmental emergency and the state is not responding in a timely manner (see Section 102(c)(5)). Both of these remaining exceptions require the state to take action before the citizen may exercise his rights. As well, a party who has performed a cleanup with the expectation of contribution will then find, after-the-fact, that he is penalized for his good deed. If he has performed a responsible cleanup, his site will not present an emergency, nor will it merit the EPA assistance that the Governor must request. Thus, his right to contribution will be extinguished.

The exception contained in section 102(c)(5) re-writes the current standard that governs EPA's ability to act at sites not listed on the National Priorities List. Currently, in sections 104 and 106 of CERCLA, and section 7003 of RCRA, EPA may act if a release or threatened release may present an imminent and substantial endangerment to the public health or welfare or the environment. This is a well-recognized standard contained in numerous other federal environmental laws such as the Clean Air Act, the Safe Drinking Water Act, the Clean Water Act, as well as state environmental laws. The states of Arizona, California, Louisiana, Arkansas, New Mexico, Texas, and Michigan, for instance, utilize this standard in their environmental laws. H.R. 2580 prohibits action under CERCLA sections 104 and 106, and also section 7003 of RCRA. The narrow exception to the prohibition contained in section 102(c)(5) does not recognize this well-settled principle of current law, but instead re-writes the standard to include new and untested terms such as "prevent or mitigate" and "environmental emergency." The authority also is conditioned upon another, new test:

whether the state is responding in a timely manner. H.R. 2580 leaves to interpretation by the courts the criteria for state response, as well as what may be considered "timely."

There are no examples of EPA abusing these settled principles of current law at brownfields sites. Not once has EPA over-filed on a voluntary cleanup. Therefore, to the extent that the drafters of H.R. 2580 are concerned that sections 104, 106 or 7003 have been interpreted by the courts in an expansive manner, there is no example of such a case pertaining to a brownfield site. In fact, the imminent and substantial endangerment threshold is viewed by some who have testified before the Committee as far too high a threshold for EPA action at a brownfield site because a brownfield site may not meet that threshold even without cleanup.

The few types of sites exempted from the prohibition exacerbates the concern that this one-size-fits-all prohibition is far too expansive for such a broad array of sites. The prohibition will not apply to sites actually listed on the National Priorities List. However, there are numerous sites proposed for listing that may be as dangerous or even more dangerous than those that have completed the scoring and listing process. H.R. 2580 would prohibit EPA's listing of those sites, even though the sites may be only a few weeks short of final action for listing. A responsible party at the site may then initiate a voluntary cleanup in order to trigger the prohibition, but then abandon the cleanup once the prohibition is triggered. Officials of about half of the states surveyed by GAO in 1998 told GAO that their state's financial capacity to clean up sites potentially eligible for the National Priorities List, if necessary, is poor or very poor. In addition, about 20% of these officials said that their state's enforcement capacity (including resources and legal authority) to compel responsible parties to clean up these potentially eligible sites is fair to very poor. (See "Unaddressed Risks At Many Potential Superfund Sites," GAO/RCED–99–8, November 1998.) With this information, we see no justification for foreclosing federal action at sites that are likely to be very hazardous, and likely to be inadequately addressed by state governments.

The exemption contained in section 102(c)(4) that pertains to "a release or threatened release to the extent that a response action has been required pursuant to an administrative order or judicial order or decree entered into by the United States" is also too narrowly crafted, especially with regard to facilities such as RCRA facilities with permits that require corrective action, or RCRA generator sites. Persons obligated under the longstanding requirements of current law (as well as their own permits) have incentives, under this provision, to initiate a limited action under a voluntary cleanup program and foreclose federal enforcement for their failure to adhere to RCRA requirements. The result is unfairness to facilities that have complied with law, as well as fewer actual cleanups.

H.R. 2580 Lacks Adequate Criteria To Ensure That State Programs are Functional and Consistently Funded.—Section 102(b) of H.R. 2580 is entitled "State Requirements," but no actual requirements are imposed upon the state programs. The section provides that the state must self-certify that its program meets four general criteria, with no apparent review mechanism for EPA or any other Agency to determine whether the certification is valid. Moreover, if

circumstances change with regard to any of the criteria, there is no requirement that the state re-certify or correct any failure to meet the criteria. Yet, so long as this one-time certification is in place, the broad prohibitions of section 102(c) apply.

The National Association of Local Government Environmental Professionals (NALGEP), in its testimony before the Committee, stated that liability authority over brownfields sites should be granted only to state cleanup programs that can ensure protection of public health and the environment. The organization suggested criteria that should be demonstrated by states desiring to play the lead role in brownfields liability clarification. Further, the organization advocated EPA review and approval of qualified states for lead brownfields authority. These criteria include: mechanisms to ensure adequate site assessments early in the process; technical expertise, staff and enforcement authority; risk-based cleanup standards that can be tied to reasonably anticipated land use, established through an adequate public approval process; institutional controls that are enforceable over time; community information and involvement processes; commitment to build the capacity of local government health and environmental agencies; and adequate mechanisms to address unanticipated cleanups or orphaned sites. (See Testimony of the National Association of Local Government Environmental Professionals Before the Subcommittee on Finance and Hazardous Waste, August 4, 1999.)

The Governors Concurrence Provision Is Inflexible and Overbroad.—Section 103 of H.R. 2580 requires a Governor's concurrence for adding any facility to the National Priorities List. It is the policy of the EPA to routinely seek concurrence from a Governor before a site is listed on the National Priorities List. Since this policy was formalized in November 1995, Governors have opposed the listing of 31 sites and supported the listing of 123 as of February 1999. In the past four years since the EPA has instituted its administrative policy to obtain the concurrence of a Governor prior to listing a site, no site has been listed over the objection of a Governor.

The current policy retains the flexibility for the EPA to consider listing over a Governor's objection at sites where the state could be a major responsible party, where the Agency for Toxic Substances and Disease Registry public health advisory listing criteria (40 CFR 300.425(c)(3)) are met or where sites with community-identified conditions warrant listing.

During the Committee consideration of H.R. 2580, Representative Barrett of Wisconsin offered an amendment to allow the President to list a site over a Governor's objection where a request for such listing is made by local government authorities in a jurisdiction where the public health or environment is affected by a release of hazardous substances. If there was a dispute between the local government and the Governor over the need to list a site on the NPL, the amendment would allow the President to resolve the dispute. The amendment, however, would not affect the current CERCLA requirement that a site still must qualify, or score under the hazard ranking system, for listing on the National Priorities List. The amendment was rejected on a party-line vote.

THE DEMOCRATIC ALTERNATIVE TO H.R. 2580 WOULD PROMOTE BROWNFIELDS REDEVELOPMENT AND ENSURE A FEDERAL SAFETY NET FOR OUR COMMUNITIES

In the Democratic alternative to H.R. 2580, we struck a balance between providing greater assurance that the EPA would not be able to second-guess a state-approved cleanup at will, and maintaining a federal safety net to ensure that the incentives to responsible cleanup remain. We set forth seven general criteria for state programs that can be met by states through law, regulation or administrative action, including "providing for voluntary response actions that ensure adequate site assessment and protect human health and environment." This criteria does not impose any specific cleanup standards upon the states, but rather allows the states to maintain their state standards. As suggested by NALGEP, we required the EPA to review the programs and to approve their adherence to these criteria on an expedited schedule. In order to assure the maintenance of responsible programs, we require the state to report annually whether its program continues to be consistent with the criteria.

Under the Democratic alternative, a cleanup that takes place under an approved program receives the benefit of assurance that the EPA will not list a site on the National Priorities List while substantial and continuous response activities are being conducted under a qualified state program, or after those activities are certified complete by the state. In addition, the EPA will not cost recover against any party associated with the site so long as substantial and continuous voluntary response activities are taking place under a qualified state program, or after those activities are certified complete by the state. Unlike H.R. 2580, by requiring substantial and continuous response activities, or completion, the Democratic alternative will not undermine incentives for the completion of cleanup.

As suggested by community witnesses such as Ms. Mills, the Clinton Administration, NALGEP and others, we maintain a federal safety net through narrow exceptions to the prohibition against EPA cost recovery. In one of the re-openers, we preserve a well-settled legal standard by allowing the Administrator to act if she determines that a release or threatened release may present an imminent and substantial endangerment to the public health or welfare or the environment. We recognize other conditions at a site that may not reach this threshold but may nevertheless require action on the part of the Administrator, such as conditions that were unknown at the site that render the cleanup unprotective, or a change in the use of the site which renders the cleanup unprotective.

Unlike H.R. 2580, the scope of sites affected by the enforcement prohibition does not include a facility proposed for listing on the National Priorities List, nor any facility that is subject to corrective action, or to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures. Thus, the Democratic alternative does not foreclose federal action at the most hazardous sites in the nation, some of which have been proposed for listing on the National Priorities List

but have not yet been through the final paperwork for listing, or which are subject to longstanding requirements of RCRA for performance of corrective action. Although federal action is not foreclosed at these sites, the Democratic alternative does not prohibit state cleanup at these sites, nor cooperative efforts between the states and the EPA.

The Democratic alternative also grandfathers existing agreements between the states and the United States, as well as those between the EPA and private parties, and encourages those state-by-state or site-by-site agreements in the future. As brownfields, and brownfields programs vary so widely, the EPA and states already have recognized the value of entering into discussions on a specific site, or to examine the state's entire program. The outcome of these discussions is an agreement between the state and EPA in which the state agrees to maintain its program and EPA agrees to limit its involvement in state cleanups. A number of states including Texas, Michigan, Wisconsin, Missouri, Minnesota, Illinois, Colorado, Rhode Island, Indiana, Oklahoma, Maryland, and Delaware have entered into Memoranda of Agreement with EPA. These agreements contain varying assurances depending on the state program or the experience the state may have had with its program. The Democratic alternative recognizes that the cooperative effort between the states and EPA is an effective means by which the developers and sellers of brownfield properties can obtain the "certainty" they may need to pursue a more extensive cleanup or otherwise risky endeavor.

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