

103^D CONGRESS
2^D SESSION

H. R. 4161

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to make comprehensive improvements in provisions relating to liability, State implementation, remedy selection, and funding.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1994

Mr. ZELIFF introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Public Works and Transportation, and Ways and Means

JUNE 21, 1994

Additional sponsors: Mr. HUTCHINSON, Mr. SHUSTER, Mr. EWING, Mr. CLINGER, Mr. INHOFE, Mr. BARRETT of Nebraska, Mrs. JOHNSON of Connecticut, Mr. PETRI, Mr. MICA, and Mr. EMERSON

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to make comprehensive improvements in provisions relating to liability, State implementation, remedy selection, and funding.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive
5 Superfund Improvement Act”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—LIABILITY

- Sec. 101. Release of evidence.
- Sec. 102. Elimination of retroactive liability.
- Sec. 103. Limitation on liability of certain owners and operators.
- Sec. 104. Contribution protection.
- Sec. 105. Contiguous properties.
- Sec. 106. Lender and fiduciary liability.
- Sec. 107. Definitions.
- Sec. 108. Assignment of shares of liability for costs of response actions at national priority list sites.
- Sec. 109. Enforcement of response actions through joint and several liability.
- Sec. 110. Establishment of binding allocation of responsibility process.
- Sec. 111. Site redevelopment.
- Sec. 112. Liability of response action contractors.

TITLE II—STATE IMPLEMENTATION

- Sec. 201. State authority.
- Sec. 202. Transfer of authorities.
- Sec. 203. EPA oversight costs.

TITLE III—REMEDY SELECTION

- Sec. 301. Immediate risk reduction measures.
- Sec. 302. Site scoring.
- Sec. 303. Long-term response plan.
- Sec. 304. Long-term response selection.
- Sec. 305. Periodic review.
- Sec. 306. Delisting of facilities and sites.

TITLE IV—FUNDING

- Sec. 401. 5-year extension of Hazardous Substance Superfund.
- Sec. 402. Increase in environmental income tax.
- Sec. 403. Environmental fees and assessments on insurance companies.
- Sec. 404. Retroactive Liability Fund.

3 **TITLE I—LIABILITY**

4 **SEC. 101. RELEASE OF EVIDENCE.**

5 (a) TIMELY ACCESS TO INFORMATION FURNISHED
6 UNDER SECTION 104(e).—Section 104(e)(7)(A) of the
7 Comprehensive Environmental Response, Compensation,
8 and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is

1 amended by inserting after “shall be available to the pub-
2 lic” the following: “not later than 14 days after the
3 records, reports, or information is obtained”.

4 (b) REQUIREMENT TO PROVIDE PRPS EVIDENCE OF
5 LIABILITY.—(1) Subsection (a) of section 106 of the Com-
6 prehensive Environmental Response, Compensation, and
7 Liability Act of 1980 (42 U.S.C. 9607(a)) is amended by
8 adding at the end the following: “In any case in which
9 the President issues an order to a person under this sub-
10 section, the President shall provide information concerning
11 the evidence that indicates that each element of liability
12 contained in subparagraph (A), (B), (C), or (D) of section
13 107(a)(1) is present.”.

14 (2) Section 122(e)(1) of such Act is amended by in-
15 serting after subparagraph (C) the following:

16 “(D) For each potentially responsible
17 party, the evidence that indicates that each ele-
18 ment of liability contained in subparagraph (A),
19 (B), (C), or (D) of section 107(a)(1) is
20 present.”.

21 **SEC. 102. ELIMINATION OF RETROACTIVE LIABILITY.**

22 Section 107 of the Comprehensive Environmental Re-
23 sponse, Compensation, and Liability Act of 1980 (42
24 U.S.C. 9607(a)) is amended by adding at the end the fol-
25 lowing new subsection:

1 “(n) RETROACTIVE LIABILITY CUT-OFF DATE; COST
2 REIMBURSEMENT PROVISIONS.—

3 “(1) IN GENERAL.—Subject to the provisions in
4 this subsection, a person is liable under this section
5 only for actions occurring after December 11, 1980.
6 The provisions of this subsection shall not apply to
7 actions occurring before December 11, 1980 which
8 were contrary to law at the time of the actions. Re-
9 imbursement or payment from the Retroactive Li-
10 ability Fund (established by section 9512 of the In-
11 ternal Revenue Code of 1986) shall be made pursu-
12 ant to section 508.

13 “(2) PRE-1981 SITES.—With respect to sites or
14 facilities with respect to which all actions for which
15 liability arising under this Act occurred before De-
16 cember 11, 1980, the following rules apply:

17 “(A) CONSTRUCTION COMPLETED.—For
18 such sites or facilities where the construction of
19 the response action has been completed by Jan-
20 uary 1, 1994, no reimbursement may be made
21 from the Retroactivity Liability Fund to the po-
22 tentially responsible parties concerned for costs
23 incurred for such construction. If a potentially
24 responsible party is conducting operation and
25 maintenance related to the response action at

1 the site or facility as of January 1, 1994, the
2 President shall assume the future costs of such
3 operation and maintenance and shall reimburse
4 the party for such costs incurred.

5 “(B) CONSTRUCTION ONGOING.—For such
6 sites or facilities where the construction of the
7 response action has not been completed by Jan-
8 uary 1, 1994, reimbursement may be made to
9 the potentially responsible parties concerned for
10 costs incurred for such construction, but only
11 after the construction is completed. After con-
12 struction is complete, the President shall as-
13 sume future costs for any operation and main-
14 tenance related to the response action.

15 “(C) DISCOVERY AFTER JANUARY 1,
16 1994.—For such sites or facilities that are dis-
17 covered after January 1, 1994, the President
18 shall use amounts from the Retroactive Liabil-
19 ity Fund to pay for all costs of the response ac-
20 tion. Such costs shall not include attorney’s fees
21 or other costs associated with litigation related
22 to the response action.

23 “(3) STRADDLE SITES.—With respect to sites
24 or facilities with respect to which actions for which
25 liability arising under this Act occurred both before

1 and after December 11, 1980, the following rules
2 apply:

3 “(A) CONSTRUCTION COMPLETED.—For
4 such sites or facilities where the construction of
5 the response action has been completed by Jan-
6 uary 1, 1994, no reimbursement may be made
7 from the Retroactive Liability Fund to the po-
8 tentially responsible parties concerned for costs
9 incurred for such construction. If a potentially
10 responsible party is conducting operation and
11 maintenance related to the response action at
12 the site or facility as of January 1, 1994, the
13 potentially responsible party may, within 90
14 days after the date of enactment of the Com-
15 prehensive Superfund Improvement Act, peti-
16 tion the President for an allocation (in accord-
17 ance with title V) of the operation and mainte-
18 nance costs. The allocation shall determine
19 which portion of the operation and maintenance
20 costs are attributable to actions occurring be-
21 fore December 11, 1980, and which are attrib-
22 utable to actions occurring after such date, and
23 shall provide for the reimbursement of the po-
24 tentially responsible party, from the Retroactive

1 Liability Fund, of those costs attributable to
2 actions occurring before December 11, 1980.

3 “(B) CONSTRUCTION ONGOING.—For such
4 sites or facilities where the construction of the
5 response action has not been completed by Jan-
6 uary 1, 1994, the potentially responsible parties
7 concerned shall complete construction and con-
8 duct any required operation and maintenance.
9 A potentially responsible party may, with 90
10 days after construction of the response action is
11 complete, petition the President for an alloca-
12 tion (in accordance with title V) of both the
13 construction and operation and maintenance
14 costs. The allocation shall determine which por-
15 tion of the construction and operation and
16 maintenance costs are attributable to actions
17 occurring before December 11, 1980, and which
18 are attributable to actions occurring after such
19 date, and shall provide for the reimbursement
20 of the potentially responsible party, from the
21 Retroactive Liability Fund, of those costs at-
22 tributable to actions occurring before December
23 11, 1980.

24 “(C) DISCOVERY AFTER JANUARY 1,
25 1994.—For such sites or facilities that are dis-

1 covered after January 1, 1994, the President
2 shall use amounts from the Retroactive Liabil-
3 ity Fund to pay for costs of the response action,
4 including construction and operation and main-
5 tenance, attributable to actions occurring before
6 December 11, 1980.

7 “(4) DEFINITIONS.—In this subsection:

8 “(A) The term ‘actions’ includes ownership or
9 operation of a facility at which hazardous substances
10 were disposed of, disposal of hazardous substances,
11 arrangement with a transporter for transport for
12 disposal or treatment of a hazardous substance, and
13 any other activities described in subsection (a).

14 “(B) The term ‘person’ has the meaning pro-
15 vided in section 101(21) but does not include the
16 United States Government.”.

17 **SEC. 103. LIMITATION ON LIABILITY OF CERTAIN OWNERS**
18 **AND OPERATORS.**

19 (a) EXEMPTION FOR GRANTEES OF CERTAIN EASE-
20 MENTS.—Subsection (a) of section 107 of the Comprehen-
21 sive Environmental Response, Compensation, and Liabil-
22 ity Act of 1980 (42 U.S.C. 9607(a)) is amended—

23 (1) in paragraph (4), by striking out “shall be
24 liable for—” and inserting in lieu thereof “shall be

1 liable, except as provided in paragraph (4), for the
2 costs and damages set forth in paragraph (2).”;

3 (2) by inserting before subparagraph (A) the
4 following:

5 “(2) The costs and damages for which persons de-
6 scribed in paragraph (1) shall be liable are—”;

7 (3) by aligning the margins of subparagraphs
8 (A), (B), (C), and (D) so as to be cut in two ems;

9 (4) by inserting “(1)” before “Notwithstanding
10 any other provision or rule of law,”;

11 (5) by redesignating paragraphs (1), (2), (3),
12 and (4) as subparagraphs (A), (B), (C), and (D), re-
13 spectively;

14 (6) by inserting “(3)” before the text beginning
15 with “The amounts recoverable in an action under
16 this section” (and aligning such text as a paragraph
17 below paragraphs (1) and (2) (as redesignated)) and
18 in that text—

19 (A) by inserting “of paragraph (2)” after
20 “subparagraphs (A) through (D)”;

21 (B) by striking out “(i)” and inserting in
22 lieu thereof “(A)”;

23 (C) by striking out “(ii)” and inserting in
24 lieu thereof “(B)”;

1 (7) by adding at the end the following new
2 paragraph:

3 “(4) In the case of a person who is a qualified organi-
4 zation under section 170(h)(3) of the Internal Revenue
5 Code of 1986 and who is the grantee of a conservation
6 easement with respect to real property on which a facility
7 is located, the person shall not be considered an owner
8 or operator of the facility under subparagraph (A) or (B)
9 of paragraph (1) unless the person, by any act or omis-
10 sion, causes or contributes to the release or threatened re-
11 lease of a hazardous substance that causes the incurrence
12 of response costs. For purposes of this paragraph, the
13 term “conservation easement” means a restriction on the
14 use of land for purposes of protecting in perpetuity a con-
15 servation purpose listed in section 170(h)(4) of the Inter-
16 nal Revenue Code of 1986.”.

17 (b) SAFE HARBOR FOR INNOCENT LANDOWNER DE-
18 FENSE.—(1) Section 101(35) of the Comprehensive Envi-
19 ronmental Response, Compensation and Liability Act of
20 1980 (42 U.S.C. 9601 et seq.) is amended by redesignat-
21 ing subparagraphs (C) and (D) as subparagraphs (D) and
22 (E), respectively and inserting after subparagraph (B),
23 the following:

24 “(C)(i) A defendant who has acquired real
25 property shall have established a rebuttable pre-

1 sumption that he has made all appropriate inquiry
2 within the meaning of subparagraph (B) if he estab-
3 lishes that, immediately prior to or at the time of ac-
4 quisition, he obtained an environmental assessment
5 of the real property which meets the requirements of
6 this subparagraph.

7 “(ii) For purposes of this subparagraph, the
8 term ‘environmental professional’ means an individ-
9 ual, or an entity managed or controlled by such indi-
10 vidual who, through academic training, occupational
11 experience and reputation (such as engineers, envi-
12 ronmental consultants and attorneys), can objec-
13 tively conduct one or more aspects of an environ-
14 mental assessment. For purposes of this subpara-
15 graph, the term ‘environmental assessment’ means
16 an investigation of the real property, conducted by
17 environmental professionals, to determine or discover
18 the likelihood of the presence or substantial reason
19 to suspect the presence of a release or threatened re-
20 lease of hazardous substances on the real property
21 and which consists of a review of each of the follow-
22 ing sources of information concerning the previous
23 ownership and uses of the real property:

24 “(I) Recorded chain of title documents re-
25 garding the real property, including all deeds,

1 easements, leases, restrictions, and covenants
2 for a period of 50 years.

3 “(II) Aerial photographs which may reflect
4 prior uses of the real property and which are
5 reasonably accessible through State or local
6 government agencies.

7 “(III) Determination of the existence of re-
8 corded environmental cleanup liens against the
9 real property which have arisen pursuant to
10 Federal, State, and local statutes.

11 “(IV) Reasonably obtainable Federal,
12 State, and local government records of sites or
13 facilities where there has been a release of haz-
14 ardous substances and which are likely to cause
15 or contribute to a release or threatened release
16 of hazardous substances on the real property,
17 including investigation reports for such sites or
18 facilities; reasonably obtainable Federal, State,
19 and local government environmental records of
20 activities likely to cause or contribute to a re-
21 lease or a threatened release of hazardous sub-
22 stances on the real property, including landfill
23 and other disposal location records, under-
24 ground storage tank records, hazardous waste
25 handler and generator records and spill report-

1 ing records; and such other reasonably obtain-
2 able Federal, State, and local government envi-
3 ronmental records which report incidents or ac-
4 tivities which are likely to cause or contribute
5 to a release or threatened release of hazardous
6 substances on the real property. A record is
7 considered to be reasonably obtainable for pur-
8 poses of this subclause if a copy or reasonable
9 facsimile of the record is obtainable from the
10 government agency by request.

11 “(V) A visual site inspection of the real
12 property and all facilities and improvements on
13 the real property, and a visual inspection of im-
14 mediately adjacent properties from the real
15 property, including an investigation of any
16 chemical use, storage, treatment and disposal
17 practices on the property.

18 “(iii) No presumption shall arise under clause
19 (i) unless the defendant has maintained a compila-
20 tion of the information reviewed in the course of the
21 environmental assessment.

22 “(iv) Notwithstanding any other provision of
23 this paragraph, if the environmental assessment dis-
24 closes the presence or likely presence of a release or
25 threatened release of hazardous substances on the

1 real property to be acquired, no presumption shall
2 arise under clause (i) with respect to such release or
3 threatened release unless the defendant has taken
4 reasonable steps, in accordance with current tech-
5 nology available, existing regulations, and generally
6 acceptable engineering practices, as may be nec-
7 essary to confirm the absence of such release or
8 threatened release.”.

9 (2) Subparagraph (C) of section 101(35) of the Com-
10 prehensive Environmental Response, Compensation, and
11 Liability Act of 1980, as added by paragraph (1), shall
12 take effect on the date of the enactment of this Act.

13 **SEC. 104. CONTRIBUTION PROTECTION.**

14 Section 113(f)(2) of the Comprehensive Environ-
15 mental Response, Compensation, and Liability Act of
16 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sen-
17 tence by inserting “or cost recovery” after “contribution”.

18 **SEC. 105. CONTIGUOUS PROPERTIES.**

19 Section 107(a) of the Comprehensive Environmental
20 Response, Compensation, and Liability Act of 1980 (42
21 U.S.C. 9607(a)), as amended by section 103(a), is further
22 amended by adding at the end the following new para-
23 graph:

24 “(5) A person who owns or operates real prop-
25 erty that is contiguous to or otherwise situated with

1 respect to real property on which there has been a
2 release of a hazardous substance and that is or may
3 be contaminated by such release shall not be consid-
4 ered an owner or operator of a facility under para-
5 graph (1)(A) solely by reason of such contamination.
6 The President may issue assurances of no enforce-
7 ment action under this Act to any such person and
8 may grant any such person protection against cost
9 recovery and contribution actions pursuant to sec-
10 tion 113(f)(2).”.

11 **SEC. 106. LENDER AND FIDUCIARY LIABILITY.**

12 (a) RULEMAKING AUTHORITY FOR SECURITY INTER-
13 EST EXEMPTION.—Section 115 of the Comprehensive En-
14 vironmental Response, Compensation, and Liability Act of
15 1980 (15 U.S.C. 9615) is amended—

16 (1) by redesignating the text of the section as
17 subsection (a); and

18 (2) by adding at the end the following:

19 “(b)(1) Pursuant to the authority conferred by this
20 section, the President shall issue, within 30 days after the
21 date of enactment of the Comprehensive Superfund Im-
22 provement Act, regulations to define the terms of this Act
23 as they apply to lenders and other financial services pro-
24 viders. These regulations shall clarify the definition of the

1 term ‘owner or operator’ contained in section 101(20)(A)
2 by—

3 “(A) defining the terms ‘indicia of ownership’,
4 ‘security interest’, ‘primarily to protect a security in-
5 terest’, and ‘participation in management’; and

6 “(B) specifying the types of activities that may
7 be undertaken without voiding the exemption to li-
8 ability provided by section 101(20)(A).

9 “(2) The following clarifications shall be included
10 among the provisions in the regulations issued under para-
11 graph (1):

12 “(A) The term ‘participation in management’
13 does not include—

14 “(i) the mere capacity to influence, or abil-
15 ity to influence, or the unexercised right to con-
16 trol facility operations; or

17 “(ii) any act of the security interest holder
18 to require another person or itself, to comply
19 with applicable laws or to respond lawfully to
20 disposal of any hazardous substance.

21 “(B) A security interest holder will not be
22 deemed to be participating in management of a facil-
23 ity unless the security interest holder—

1 “(i) has undertaken responsibility for the
2 facility’s hazardous substance handling or dis-
3 posal practices; or

4 “(ii) has undertaken overall management
5 of the facility encompassing day-to-day deci-
6 sionmaking over either environmental compli-
7 ance or over the operational, as opposed to fi-
8 nancial and administrative, aspects of the facil-
9 ity.

10 “(C) Legal or equitable title acquired by a secu-
11 rity interest holder through foreclosure or its equiva-
12 lents will be deemed to be held primarily to protect
13 a security interest provided that the holder under-
14 takes to sell, re-lease, or otherwise divest the prop-
15 erty in a reasonably expeditious manner on commer-
16 cially reasonable terms.”.

17 (b) PROTECTION FOR FIDUCIARIES FROM INDIVID-
18 UAL LIABILITY.—(1) Section 101(20) of the Comprehen-
19 sive Environmental Response, Compensation, and Liabil-
20 ity Act of 1980 (42 U.S.C. 9601(20)) is amended by add-
21 ing at the end the following new subparagraph:

22 “(E)(i) The term ‘owner or operator’ does not
23 include a fiduciary who holds legal title to, is the
24 mortgagee or secured party with respect to, controls,
25 or manages, directly or indirectly, any facility or ves-

1 sel for purposes of administering an estate or trust
2 of which such facility or vessel is a part.

3 “(ii) For purposes of clause (i), the term ‘fidu-
4 ciary’ means a person who is acting in any of the
5 following representative capacities, but only to the
6 extent such person is acting in such representative
7 capacity:

8 “(I) An executor or administrator of an es-
9 tate, including a voluntary executor or a vol-
10 untary administrator.

11 “(II) A guardian.

12 “(III) A conservator.

13 “(IV) A trustee under a will under which
14 the trustee takes title to, or otherwise controls
15 or manages, property for the purpose of pro-
16 tecting or conserving such property under the
17 ordinary rules applied in State courts.

18 “(V) A court-appointed receiver.

19 “(VI) A trustee appointed in proceedings
20 under Federal bankruptcy laws.

21 “(VII) An assignee or a trustee acting
22 under an assignment made for the benefit of
23 creditors.

24 “(VIII) A trustee, or any successor there-
25 to, pursuant to an indenture agreement, trust

1 agreement, lease, or similar financing agree-
2 ment, for debt securities, certificates of interest
3 of participation in any such debt securities, or
4 other forms of indebtedness as to which it is
5 not, in its capacity as trustee, the lender.”.

6 (2) Section 107 of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980 (42
8 U.S.C. 9607), as amended by sections 102 and 103, is
9 further amended by adding at the end the following new
10 subsection:

11 “(m) FIDUCIARY LIABILITY.—(1) Except as provided
12 in paragraph (3), a fiduciary (as defined in section
13 101(20)) shall not be liable in its individual capacity under
14 this section.

15 “(2) Nothing in this paragraph may be construed as
16 preventing claims under this Act against—

17 “(A) the assets of the estate or trust adminis-
18 tered by a fiduciary; or

19 “(B) non-employee agents or independent con-
20 tractors retained by a fiduciary.

21 “(3) Nothing in this paragraph may be construed as
22 preventing claims under this Act against a fiduciary in its
23 individual capacity whose negligent acts or intentional
24 misconduct caused a release or threatened release of haz-
25 ardous substances at a facility or vessel. A fiduciary shall

1 not be attributed with the negligence or intentional mis-
2 conduct of non-employee agents or independent contrac-
3 tors if the fiduciary has conducted itself without neg-
4 ligence or intentional misconduct with regard to its rela-
5 tionship with such agents or contractors.”.

6 **SEC. 107. DEFINITIONS.**

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

11 “(39) The term ‘potentially responsible party’
12 means any person identified as potentially liable
13 under section 107, potentially responsible to perform
14 any response action under sections 104 or 106, or
15 potentially liable for contribution under section 113.

16 “(40) The term ‘de micromis party’ means a
17 potentially responsible party who is a generator or
18 transporter who contributed less than one hundred
19 pounds or one hundred liters of material containing
20 hazardous substances at a facility, or such greater
21 or lesser amount as the Administrator may deter-
22 mine by regulation.

23 “(41) The term ‘de minimis party’ means a lia-
24 ble party whose assigned share of liability is deter-

1 mined to be 1.0 percent or less in a final binding al-
2 location of responsibility decision under title V.

3 “(42) The term ‘liable party’ means any poten-
4 tially responsible party determined by an allocation
5 panel or a court to be liable under section 107, re-
6 sponsible to perform any action under sections 104
7 or 106, or liable for contribution under section 113.

8 “(43) The term ‘assigned share’ means the per-
9 centage of liability assigned, in accordance with the
10 factors set forth in section 503(g)(2), to a liable
11 party by an allocation panel in a binding allocation
12 of responsibility or by a court of law.

13 “(44) The term ‘orphan party’ means a liable
14 party at a site who is defunct, unknown, insolvent,
15 or whose assigned share has been subject to dis-
16 charge or limitation in bankruptcy, or who is other-
17 wise financially unable to pay all or part of its as-
18 signed share.

19 “(45) The term ‘creditor party’ means the Ad-
20 ministrator, a State, or any person who is deter-
21 mined to be a liable party with respect to a National
22 Priority List site and who incurs or has incurred
23 costs with respect to the site that are not inconsis-
24 tent with the National Contingency Plan.

1 “(46) The term ‘debtor party’ means the Haz-
2 ardous Substance Superfund and any person who is
3 determined to be a liable party with respect to a Na-
4 tional Priority List site.

5 “(47) The term ‘binding allocation of respon-
6 sibility’ means a final binding determination by an
7 allocation panel pursuant to title V.

8 “(48) The term ‘orphan share’ means the total
9 of the assigned shares of all orphan parties at a site,
10 including all shares eligible for reimbursement or
11 payment pursuant to section 107(n).

12 “(49) The term ‘guardian of the fund’ or
13 ‘guardian’ means the person appointed by the Ad-
14 ministrator to represent the Environmental Protec-
15 tion Agency in a binding allocation of responsibility
16 proceeding.

17 “(50) The term ‘National Priority List site’
18 means any site or facility that the Administrator has
19 listed on, or proposed for listing on, the list estab-
20 lished pursuant to section 105(a)(8)(B).”.

21 **SEC. 108. ASSIGNMENT OF SHARES OF LIABILITY FOR**
22 **COSTS OF RESPONSE ACTIONS AT NATIONAL**
23 **PRIORITY LIST SITES.**

24 Section 107(a) of the Comprehensive Environmental
25 Response, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9607(a)), is amended by inserting before the
2 phrase “The amounts recoverable” the following: “With
3 respect to any National Priority List site, each liable party
4 who accepts the results of the allocation of responsibility
5 process under title V or who successfully appeals the re-
6 sults of such process shall be liable only for its assigned
7 share of the costs incurred pursuant to subparagraphs
8 (A), (B), and (D) of this section. The orphan share of
9 a National Priority List site shall be paid out of the Haz-
10 ardous Substance Superfund or the Retroactive Liability
11 Fund or any combination thereof, as determined by final
12 binding allocation of liability.”.

13 **SEC. 109. ENFORCEMENT OF RESPONSE ACTIONS**
14 **THROUGH JOINT AND SEVERAL LIABILITY.**

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

19 “(n) JOINT AND SEVERAL LIABILITY OF PARTIES
20 WHO FAIL TO PERFORM RESPONSE ACTIONS.—In any
21 case in which no liable party or potentially responsible
22 party agrees to perform a response action at a National
23 Priority List site, or a liable party or potentially respon-
24 sible party agrees to perform a response action but the
25 party fails to perform such response action, as determined

1 by the Administrator or the State in which the site is
2 located, the following provisions apply:

3 “(1) The party is considered to have not re-
4 solved its liability to the United States, notwith-
5 standing the party’s acceptance of the results of the
6 binding allocation of responsibility process under
7 title V or the party’s successful appeal of the results
8 of such process.

9 “(2) The party is subject to civil action under
10 section 106, subparagraphs (A), (B), and (D) of
11 subsection (a) of this section, and section 113 for
12 the response action and all costs of the response ac-
13 tion with respect to the National Priority List site.

14 “(o) PAYMENT OF CERTAIN RESPONSE COSTS BY
15 FUND.—A potentially responsible party who performs and
16 pays for a response action at a National Priority List site
17 shall be reimbursed by the Hazardous Substance
18 Superfund.

19 “(p) AUTHORITY TO COLLECT RESPONSE COSTS
20 FROM OTHERS.—A liable party who performs and pays
21 for a response action at a National Priority List site is
22 a creditor party under section 508 with respect to the site
23 and may recover its response costs in accordance with that
24 section.”.

1 **SEC. 110. ESTABLISHMENT OF BINDING ALLOCATION OF**
 2 **RESPONSIBILITY PROCESS.**

3 The Comprehensive Environmental Response, Com-
 4 pensation, and Liability Act of 1980 (42 U.S.C. 9601 et
 5 seq.) is amended by adding at the end the following new
 6 title:

7 **“TITLE V—BINDING ALLOCA-**
 8 **TION OF RESPONSIBILITY**

“Sec. 501. General rules governing binding allocations of responsibility.

“Sec. 502. Qualifications and powers of administrative law judges and alloca-
 tion panels.

“Sec. 503. Specific rules and procedures.

“Sec. 504. Duty to answer information requests and requests for production of
 documents.

“Sec. 505. Civil and criminal penalties.

“Sec. 506. Document repository; confidentiality; no waiver.

“Sec. 507. Final agency action and judicial review.

“Sec. 508. Collection, enforcement, and implementation.

“Sec. 509. Transition provisions.

“Sec. 510. Voluntary settlements.

“Sec. 511. New binding allocations of responsibility.

9 **“SEC. 501. GENERAL RULES GOVERNING BINDING ALLOCA-**
 10 **TIONS OF RESPONSIBILITY.**

11 “(a) ALLOCATION PANELS.—The Administrator shall
 12 appoint panels of administrative law judges to perform ex-
 13 pedited administrative proceedings, to be known as ‘bind-
 14 ing allocations of responsibility’, for purposes of determin-
 15 ing the liability of potentially responsible parties at Na-
 16 tional Priority List sites. Each such panel shall be com-
 17 posed of three administrative law judges appointed by the
 18 Administrator under section 3105 of title 5, United States
 19 Code, and shall be known as an ‘allocation panel’.

1 “(1) issue information requests and requests for
2 production of documents to any person;

3 “(2) require the Administrator and the State
4 concerned to provide all information relevant to a
5 binding allocation of responsibility, including the
6 production of copies of all documents and informa-
7 tion obtained pursuant to section 104(e) or pursuant
8 to similar State law;

9 “(3) rule upon motions, requests, and offers of
10 proof, dispose of procedural requests, and issue all
11 necessary orders;

12 “(4) administer oaths and affirmations and
13 take affidavits;

14 “(5) examine witnesses and receive documen-
15 tary or other evidence;

16 “(6) grant and manage such discovery by the
17 parties as the allocation panel deems appropriate
18 and consistent with the expedited nature of the bind-
19 ing allocation of responsibility process;

20 “(7) admit or exclude evidence;

21 “(8) hear and decide questions of fact and law;

22 “(9) require the parties, including the State
23 and the guardian of the Fund, to attend conferences
24 for the settlement or simplification of the issues or
25 the expedition of the proceedings;

1 “(10) require, at any time, that potentially re-
2 sponsible parties wishing to present similar legal or
3 factual arguments use a common spokesman or con-
4 solidated briefing for the presentation of such facts
5 and legal positions;

6 “(11) obtain or employ such support services as
7 are necessary to conduct the binding allocation of re-
8 sponsibility, including secretarial and clerical serv-
9 ices, investigative services, and computer information
10 and database management services;

11 “(12) establish a document repository where all
12 documents associated with the binding allocation of
13 responsibility shall be maintained and made avail-
14 able to all parties to the binding allocation of re-
15 sponsibility in accordance with section 506; and

16 “(13) do all other acts and take all measures
17 necessary for the maintenance of order and for the
18 efficient, fair, and impartial adjudication of issues
19 arising in the binding allocation of responsibility.

20 “(c) SUBPOENA POWER.—Allocation panels shall
21 have the power of subpoena to collect information nec-
22 essary or appropriate for conducting the binding allocation
23 of responsibility or for otherwise implementing this sec-
24 tion. This authority shall include the power to compel the
25 attendance and testimony of witnesses and the production

1 of reports, papers, documents, answers to questions, and
2 other information that the allocation panel deems nec-
3 essary. Witnesses shall be paid the same fees and mileage
4 that are paid witnesses in the courts of the United States.
5 In the event of contumacy or failure or refusal of any per-
6 son to obey any such subpoena, any district court of the
7 United States in which venue is proper shall have jurisdic-
8 tion to order any such person to comply with such
9 subpoena.

10 “(d) INFORMAL RULES OF EVIDENCE.—In conduct-
11 ing the binding allocation of responsibility, an allocation
12 panel shall not be bound by the Federal Rules of Evidence,
13 but shall instead use such informal rules of evidence and
14 evidentiary procedures, such as those set forth at sections
15 22.22 and 22.23 of title 40 of the Code of Federal Regula-
16 tions, as will promote the expeditious completion of the
17 proceeding.

18 “(e) NATIONWIDE SERVICE OF PROCESS.—Any docu-
19 ment required to be served on a party under this title may
20 be served in any district where the person is found, re-
21 sides, transacts business, or has appointed an agent for
22 service of process. Any such document is deemed to be
23 served on a party if it is mailed to the counsel of record
24 for the party or to the address designated by the party
25 if the party is not represented by counsel.

1 **“SEC. 503. SPECIFIC RULES AND PROCEDURES.**

2 “(a) INITIATION OF ALLOCATION PROCESS.—

3 “(1) IN GENERAL.—A binding allocation of re-
4 sponsibility with respect to a National Priority List
5 site shall be initiated by filing a petition with the Of-
6 fice of the Administrative Law Judges of the Envi-
7 ronmental Protection Agency. Such a petition may
8 be filed by the Administrator or the State where the
9 National Priority List site is located.

10 “(2) WHEN INITIATED.—The Administrator or
11 a State shall file a petition to initiate a binding allo-
12 cation of responsibility at a National Priority List
13 site not later than 30 days after initiating the reme-
14 dial investigation study (or its equivalent) for the
15 site. In any case where the petition is filed more
16 than 30 days after initiation of the remedial inves-
17 tigation study (or its equivalent), all governmental
18 response costs incurred or contracted for prior to the
19 filing of the petition shall be allocated entirely to the
20 orphan share.

21 “(3) CONTENTS OF PETITION.—The petition to
22 initiate the binding allocation of responsibility pro-
23 ceeding shall identify the petitioner and shall include
24 all relevant information reasonably available con-
25 cerning—

1 “(A) the identity, location, history, current
2 status, and environmental condition of the Na-
3 tional Priority List site;

4 “(B) the identity and address of each per-
5 son believed by the petitioner to be a liable
6 party and the basis for such belief;

7 “(C) any proposed questions and document
8 requests that the petitioner believes should be
9 included in the allocation panel’s first informa-
10 tion request and document request; and

11 “(D) a list of any legal or technical issues
12 that the petitioner believes may be raised in the
13 binding allocation of responsibility.

14 “(4) SERVICE.—A copy of the petition shall be
15 served by mail, publication, or otherwise on the Ad-
16 ministrator, the State where the site is located, and
17 each potentially responsible party identified in the
18 petition. Within 20 days after the filing of the peti-
19 tion, the Hearing Clerk of the Office of Administra-
20 tive Law Judges shall cause a notice of the filing of
21 the petition, together with a brief description of the
22 site and a list of all potentially responsible parties
23 identified in the petition, to be published in the Fed-
24 eral Register. The petitioner shall cause a similar
25 notice, description, and list to be published in a

1 newspaper of general circulation within the State
2 where the site is located.

3 “(5) PRIOR INVESTIGATION AND SEARCH.—The
4 Administrator or the State, as the case may be,
5 shall, prior to filing a petition, conduct a thorough
6 investigation and search, under section 104(e) or
7 any other relevant Federal or State statutory or reg-
8 ulatory authority, for all potentially responsible par-
9 ties. All information, answers, and documents dis-
10 covered in such investigation or search and relevant
11 to any aspect of the binding allocation of responsibil-
12 ity shall, simultaneously with the filing of the peti-
13 tion, be filed in the document repository for the
14 binding allocation of responsibility. If the allocation
15 panel determines that the Administrator or the
16 State failed to conduct a diligent search for poten-
17 tially responsible parties in accordance with this
18 paragraph, and if another party performs additional
19 investigations and successfully identifies additional
20 potentially responsible parties, then the allocation
21 panel shall credit all of the reasonable costs of such
22 additional search against the assigned share, if any,
23 of the party that performed such additional inves-
24 tigation or search.

1 “(6) APPOINTMENT OF GUARDIAN FOR THE
2 HAZARDOUS SUBSTANCE SUPERFUND AND THE RET-
3 ROACTIVE LIABILITY FUND.—Any petition filed by
4 the Administrator shall include the name and ad-
5 dress of the person appointed to serve as the guard-
6 ian for the Hazardous Substance Superfund and the
7 Retroactive Liability Fund for that binding alloca-
8 tion of responsibility. In any case where a petition
9 is initiated by a State, the Administrator shall notify
10 the Hearing Clerk of the Office of the Administra-
11 tive Law Judges within 10 days after the petition is
12 filed of the name and address of the person des-
13 ignated by the Administrator as the guardian for the
14 Hazardous Substance Superfund and the Retro-
15 active Liability Fund. If the Environmental Protec-
16 tion Agency is also a potentially responsible party or
17 a liable party with respect to the National Priority
18 List site concerned, then the agency may participate
19 in the binding allocation of responsibility with regard
20 to such liability, but the person designated as the
21 guardian shall not represent the agency with regard
22 to the agency’s status as a potentially responsible
23 party or liable party.

24 “(b) IDENTIFICATION OF POTENTIALLY RESPON-
25 SIBLE PARTIES.—

1 “(1) INITIAL STATEMENT.—(A) Not later than
2 30 days after receipt of a copy of a petition or after
3 publication in the Federal Register of a notice of the
4 filing of an initial petition (whichever is earlier)
5 under subsection (a)(4), the guardian, the State and
6 any potentially responsible party may file an initial
7 statement setting forth—

8 “(i) any defenses to liability;

9 “(ii) any equitable considerations pertain-
10 ing to any party’s potential liability;

11 “(iii) any additional facts and issues rel-
12 evant to the binding allocation of responsibility;

13 “(iv) any proposed questions or document
14 requests that the person filing the statement
15 believes should be included in the first informa-
16 tion request issued by the allocation panel; and

17 “(v) the name and address of any addi-
18 tional person or persons that the person filing
19 the statement believes may be a liable party at
20 the National Priority List site and all reason-
21 ably available information as to the relationship
22 between each proposed additional party and the
23 site.

1 “(B) Any initial statement shall be filed with
2 the Hearing Clerk and served on all parties named
3 in the petition and named in such initial statement.

4 “(2) INFORMATION REQUESTS AND REQUESTS
5 FOR PRODUCTION OF DOCUMENTS.—(A) Not later
6 than 30 days after the filing of the petition, the allo-
7 cation panel shall mail initial information requests
8 and requests for production of documents to the
9 guardian, the State, all potentially responsible par-
10 ties identified in the petition, and all additional par-
11 ties identified in the initial statements. Responses to
12 such requests shall be made in accordance with this
13 paragraph and section 504.

14 “(B) Within 45 days after a person receives
15 any information request or request for production of
16 documents, such person shall file a response with the
17 Hearing Clerk. For good cause shown, the allocation
18 panel may grant a single 45-day extension for the
19 filing of any such response. Each party shall have a
20 continuing obligation to supplement its response
21 upon the receipt of additional relevant information.

22 “(3) ADDITIONAL NOMINATIONS OF POTEN-
23 TIALY RESPONSIBLE PARTIES.—The parties may
24 identify and nominate additional potentially respon-
25 sible parties until the expiration of the 120-day pe-

1 riod beginning on the date of filing of the petition.
2 Any nominations received by the Hearing Clerk after
3 that period may be disregarded by the allocation
4 panel. Each nomination shall include all reasonably
5 available information supporting the assertion that
6 the nominee is a liable party and shall be made at
7 the earliest possible time. Any party making an ad-
8 ditional nomination shall serve notice of such nomi-
9 nation on the nominated party and file a copy of
10 such notice with the Hearing Clerk. The nominated
11 party may file its initial response not later than 30
12 days after receipt of the notice. The allocation panel
13 may issue information requests and requests for the
14 production of documents to any nominated party at
15 any time.

16 “(4) INITIAL LIST OF ALL POTENTIALLY RE-
17 SPONSIBLE PARTIES.—Within six months after the
18 filing of the petition, the allocation panel shall cause
19 to be published in the Federal Register and a news-
20 paper of general circulation in the State where the
21 site is located a list identifying all parties that the
22 allocation panel preliminarily deems to be potentially
23 responsible parties with respect to the site. The allo-
24 cation panel also shall attempt to mail a copy of the
25 list to all parties to the binding allocation of respon-

1 sibility. The allocation panel shall reject the nomina-
2 tion of any person as a liable party or potentially re-
3 sponsible party if it finds that the nomination al-
4 leges no connection between the nominated person
5 and the site. The allocation panel may also identify,
6 on its own motion or the motion of a potentially re-
7 sponsible party, additional potentially responsible
8 parties at any time before issuance of the final bind-
9 ing allocation of responsibility.

10 “(c) DE MICROMIS PARTIES.—(1) Not later than six
11 months after the filing of the petition, the allocation panel
12 shall issue a list identifying all potentially responsible par-
13 ties that the allocation panel determines contributed only
14 one hundred pounds or one hundred liters of material con-
15 taining hazardous substances at the facility (or such
16 greater or lesser amount as the Administrator may deter-
17 mine by regulation), to be known as ‘de micromis parties’.
18 The allocation panel shall base the determination on an
19 evaluation of all evidence received at the time of the issu-
20 ance of the list with respect to the amount of hazardous
21 substances contributed by potentially responsible parties.

22 “(2) The allocation panel shall notify each de
23 micromis party of its inclusion on the list issued under
24 paragraph (1) not later than 20 days after issuing the list.

1 “(3) Any person included on the list of de micromis
2 parties is exempt from liability to the United States and
3 shall have no other liability (including liability for con-
4 tribution), under Federal or State law, to any person for
5 response actions or for any past, present, or future costs
6 incurred at the site, provided that the person takes no
7 other actions after being included on the list that would
8 give rise to a separate basis for liability under this Act.

9 “(d) IDENTIFICATION OF LIABLE PARTIES AND DE-
10 TERMINATION OF ASSIGNED SHARES.—

11 “(1) FIRST ALLOCATION ADVOCACY PAPER.—

12 Unless the allocation panel determines that it would
13 unduly delay the process, the guardian, the State,
14 and any potentially responsible party may file an al-
15 location advocacy paper with the Hearing Clerk not
16 later than 30 days after the publication of the initial
17 list of potentially responsible parties in the Federal
18 Register. Any such allocation advocacy paper, which
19 shall be served on the guardian, the State, and each
20 potentially responsible party, shall be a concise
21 statement, together with citations to relevant sup-
22 porting evidence and law, of the party’s position
23 with regard to—

24 “(A) the legal and factual criteria that
25 should be used in determining whether a poten-

1 tially responsible party at the site is a liable
2 party; and

3 “(B) how the allocation factors set forth in
4 subsection (g)(2) should be applied to deter-
5 mine the assigned share of each liable party.

6 “(2) FIRST ALLOCATION REPORT.—Within 90
7 days after the publication of the initial list of poten-
8 tially responsible parties in the Federal Register, the
9 allocation panel shall issue its first allocation report
10 tentatively specifying the criteria to be used in iden-
11 tifying the liable parties, tentatively specifying how
12 the allocation factors will be applied to the case to
13 determine assigned shares, and setting forth the
14 process and schedule that will be used to allow par-
15 ties the opportunity to present written evidence and
16 argument regarding how such criteria and factors
17 apply to the case. The first allocation report shall be
18 served on the guardian, on the State, and on each
19 potentially responsible party.

20 “(3) SECOND ALLOCATION ADVOCACY PAPER.—
21 The guardian, the State, and each potentially re-
22 sponsible party may file an allocation advocacy
23 paper with the Hearing Clerk not later than 60 days
24 after receipt of the first allocation report. The allo-
25 cation advocacy paper, which shall be served on the

1 guardian, the State, and each potentially responsible
2 party, shall be the primary opportunity for the
3 guardian, the State, and each potentially responsible
4 party to present evidence and argument regarding
5 how the liability criteria and the allocation factors
6 should be applied to such party and, if desired by
7 the person filing the paper, how those criteria and
8 factors should be applied to other potentially respon-
9 sible parties at the site.

10 “(4) HEARING.—Any potentially responsible
11 party may request a hearing on the determination
12 that such party is a liable party and on the deter-
13 mination of its assigned share. The allocation panel
14 may hold such a hearing if the allocation panel de-
15 termines that it would expedite or materially assist
16 in the resolution of disputed factual or legal issues.
17 The allocation panel shall have broad discretion in
18 managing the conduct of any such hearing, including
19 limiting the time available to each party and requir-
20 ing that parties with generally similar interests be
21 represented by a single spokesperson or common
22 counsel. The allocation panel may allow or prohibit
23 the cross-examination of witnesses.

24 “(5) RULE OF DECISION.—Any party may
25 present written evidence or argument on whether it,

1 or any other potentially responsible party, is a liable
2 party and on the appropriate assigned share for it-
3 self or any other potentially responsible party. A po-
4 tentially responsible party shall be deemed a liable
5 party if the allocation panel determines that the pre-
6 ponderance of the evidence supports the conclusion
7 that such party is liable.

8 “(6) SECOND ALLOCATION REPORT.—Following
9 the submission of advocacy papers and at the con-
10 clusion of any hearings, the allocation panel shall
11 issue a second allocation report identifying all liable
12 parties at the site and specifying the assigned share
13 of each liable party. If the second allocation report
14 changes or expands the list of potentially responsible
15 parties or the criteria or factors set forth in the first
16 allocation report, then the second report shall so
17 specify and provide a brief explanation of any such
18 change. The second allocation report shall be served
19 on the guardian, the State, all potentially responsible
20 parties, and all liable parties.

21 “(e) DETERMINATION OF ORPHAN SHARE.—

22 “(1) ORPHAN SHARE ADVOCACY PAPER.—Un-
23 less the allocation panel determines that it would un-
24 duly delay the process, the guardian, the State, and
25 each liable party may file an orphan share advocacy

1 paper with the Hearing Clerk not later than the 30-
2 day period beginning on the date of issuance of the
3 second allocation report. The orphan share advocacy
4 paper shall be the primary opportunity for the
5 guardian, the State, and each liable party to present
6 written evidence and argument as to which liable
7 parties are orphan parties whose assigned share
8 should, in whole or in part, be assigned to the
9 orphan share.

10 “(2) ORPHAN SHARE REPORT.—Following the
11 expiration of the 30-day period referred to in para-
12 graph (1), the allocation panel shall issue an orphan
13 share allocation report identifying the orphan share.
14 The orphan share report shall be served on the
15 guardian, the State, all potentially responsible par-
16 ties, and all liable parties.

17 “(f) DETERMINATION OF NONLIABLE PARTIES.—(1)
18 At any time during the period beginning six months after
19 the filing of the petition and ending 18 months after the
20 filing of the petition, the allocation panel shall issue a list
21 identifying all potentially responsible parties that the allo-
22 cation panel determines did not contribute any amount of
23 hazardous substances to the National Priority List site.
24 The allocation panel shall base the determination on an
25 evaluation of all evidence received at the time of the issu-

1 ance of the list with respect to the amount of hazardous
2 substances contributed by potentially responsible parties.

3 “(2) The allocation panel shall notify each nonliable
4 party of its inclusion on the list issued under paragraph
5 (1) not later than 20 days after issuing the list.

6 “(3) Nonliable parties shall have no other liability,
7 under Federal or State law, to any person for response
8 actions or for any past, present, or future costs incurred
9 at the site, provided that they take no other actions after
10 making such settlement payment that would give risk to
11 a separate basis for their liability under this Act.

12 “(g) FINAL BINDING ALLOCATION OF RESPONSIBIL-
13 ITY DECISION.—

14 “(1) DECISION.—(A) Not later than the dead-
15 line set forth in subparagraph (B), the allocation
16 panel shall issue a final binding allocation of respon-
17 sibility decision (in this subsection referred to as the
18 ‘final BAR decision’) based on the allocation factors
19 listed in paragraph (2). The panel shall include the
20 Government’s costs of carrying out the allocation as
21 part of the response costs to be included in the final
22 BAR decision. The decision shall include a list of all
23 potentially responsible parties, a list of all liable par-
24 ties and the assigned share for each (including all de
25 minimis parties as determined under paragraph (3)),

1 a list of all orphan parties and the portion of the as-
2 signed share of each orphan party that is assigned
3 to the orphan share, and the total orphan share as-
4 signed to the Fund and to the Retroactive Liability
5 Fund. Where an orphan party is able to pay only a
6 portion of its assigned share, the allocation panel
7 shall allocate to the orphan share the portion of the
8 assigned share that the party is unable to pay and
9 require the party to pay the remainder. The final
10 BAR decision shall provide a concise explanation of
11 the basis for the decision. The decision may consist,
12 in whole or in part, of a compilation of the first allo-
13 cation report, the second allocation report, and the
14 orphan share report.

15 “(B) The final BAR decision shall be issued not
16 later than 18 months after the date of publication
17 under section 503(a)(4) of notice that a petition for
18 a binding allocation of responsibility has been filed,
19 except that, in a case of exceptional complexity, the
20 final decision shall be issued not later than 24
21 months after such date.

22 “(2) ALLOCATION FACTORS.—An allocation
23 panel shall determine the assigned share of each lia-
24 ble party based on the following factors:

1 “(A) The degree to which the liable party’s
2 contribution to a discharge, release, or disposal
3 of a hazardous substance can be distinguished.

4 “(B) The amount of hazardous substances
5 contributed by the liable party at the site con-
6 cerned, compared to the total amount of haz-
7 ardous substances at that site.

8 “(C) The degree of toxicity of the hazard-
9 ous substance contributed by the liable party.

10 “(D) The degree of involvement by the lia-
11 ble party in the generation, transportation,
12 treatment, storage, or disposal of the hazardous
13 substance.

14 “(E) The degree of care exercised by the
15 liable party with respect to the hazardous sub-
16 stance concerned, taking into account the char-
17 acteristics of such hazardous substance.

18 “(F) The degree of cooperation by the lia-
19 ble party with Federal, State, or local officials
20 to prevent any harm to the public health or the
21 environment.

22 “(G) The weight of the evidence as to the
23 liability and the appropriate share of the liable
24 party.

25 “(H) The ability to pay of the liable party.

1 “(I) Any other equitable factors deemed
2 appropriate.

3 “(3) DE MINIMIS SETTLEMENTS.—(A) As part
4 of the final BAR decision, or at any time before the
5 issuance of the final BAR decision, the allocation
6 panel shall issue a list identifying all potentially re-
7 sponsible parties that the allocation panel deter-
8 mines contributed only 1.0 percent or less of the
9 total quantity of hazardous substances present at
10 the National Priority List site, to be known as ‘de
11 minimis parties’.

12 “(B) Not later than 60 days after issuance of
13 the final BAR decision or the issuance of the list of
14 de minimis parties under subparagraph (A), which-
15 ever is earlier, the Administrator shall make a firm
16 written offer of settlement to all de minimis parties.
17 The amount of the settlement offer for a de minimis
18 party shall be based on the Environmental Protec-
19 tion Agency’s estimate of the total cleanup cost at
20 the site multiplied by the de minimis party’s allo-
21 cated share as determined by the allocation panel
22 and increased by a reasonable premium (expressed
23 as a percentage) to reflect the benefit of an early
24 and complete resolution of liability, including consid-
25 eration of whether the remedy at the site will entail

1 multiple phases or operable units. All settlement of-
2 fers by the Administrator to de minimis parties at
3 the same site shall be based on the same estimate
4 of cleanup costs and the same premium percentage.
5 The settlement offer under this subparagraph is not
6 subject to judicial review.

7 “(C) A de minimis party may accept or decline
8 a settlement offer, but any acceptance of the offer
9 must be made within 60 days after receipt of the
10 offer. A de minimis party that accepts the offer may
11 resolve its liability to the United States by paying
12 the amount of the offer to the Hazardous Substance
13 Superfund. Such settlement may not be reopened
14 after payment is made, except on grounds of fraud.

15 “(D) De minimis parties that accept the settle-
16 ment offer and pay the amount of the offer shall
17 have no other liability, under Federal or State law,
18 to any person for response actions or for any past,
19 present, or future costs incurred at the site, provided
20 that they take no other actions after making such
21 settlement payment that would give risk to a sepa-
22 rate basis for their liability under this Act.

23 “(E) All proceeds from de minimis settlements
24 under this paragraph that represent the allocated
25 shares of de minimis parties at a site shall be paid

1 by the Administrator directly to the person perform-
2 ing the response action at the site. All proceeds from
3 de minimis settlements under this paragraph that
4 represent premiums paid by de minimis parties at
5 the site shall be earmarked in the Hazardous Sub-
6 stance Superfund to be used specifically for costs of
7 response action at the site. Any amounts of such set-
8 tlements remaining in the Fund after completion of
9 the response action shall be available in the
10 Superfund for general use.

11 “(4) SERVICE AND PUBLICATION.—The binding
12 allocation of responsibility decision shall be served
13 on the guardian, the State, and all liable parties.
14 The Hearing Clerk shall cause a notice of the bind-
15 ing allocation of responsibility decision to be pub-
16 lished in the Federal Register and in a newspaper of
17 general publication in the State where the site is
18 located.

19 “(5) BINDING EFFECT.—The binding allocation
20 of responsibility decision shall be binding as to all
21 past, present, or future liability (i) for response
22 costs incurred under section 107(a)(1)(A), (B), or
23 (D), and (ii) for contribution under section 113. The
24 binding allocation of responsibility decision shall be
25 binding on all persons, including, without limitation,

1 the United States, any affected State or local gov-
2 ernmental agency or Indian Tribe, any alleged or
3 nominated potentially responsible party (regardless
4 of whether such party participates in the binding al-
5 location of responsibility), and the public.

6 “(6) EFFECT ON OTHER PROCEEDINGS.—A de-
7 termination that a person is a liable party under a
8 binding allocation of responsibility proceeding is ap-
9 plicable only with respect to liability being assigned
10 in the proceeding and not with respect to liability
11 being determined in any other criminal, civil, or ad-
12 ministrative proceeding.

13 **“SEC. 504. DUTY TO ANSWER INFORMATION REQUESTS AND**
14 **REQUESTS FOR PRODUCTION OF DOCU-**
15 **MENTS.**

16 “(a) DUTY TO ANSWER.—Each person who receives
17 any information request or request for production of docu-
18 ments from the allocation panel during a binding alloca-
19 tion of responsibility must provide full and timely re-
20 sponses to the request.

21 “(b) CERTIFICATION OF DOCUMENTS.—Answers to
22 information requests and requests for production of docu-
23 ments shall include a certification by a responsible rep-
24 resentative who meets the criteria established in section

1 270.11(a) of title 40 of the Code of Federal Regulations
2 that the answers—

3 “(1) are true and correct to the best of their
4 knowledge;

5 “(2) are based on a diligent good faith search
6 of records in the possession or control of the person
7 to whom the request was directed;

8 “(3) are based on a reasonable inquiry of the
9 current and former officers, directors, employees,
10 and agents of the person to whom the request was
11 directed;

12 “(4) accurately reflect information obtained in
13 the course of conducting such search and such
14 inquiry;

15 “(5) that the person executing the certification
16 understands that there is a duty to supplement any
17 such answers if, during the binding allocation of re-
18 sponsibility, any significant additional, new, or dif-
19 ferent information becomes known or available to
20 the answerer; and

21 “(6) that the person executing the certification
22 understands that there are significant penalties for
23 submitting false information, including the possibil-
24 ity of fine and imprisonment for knowing violations.

1 “(c) SANCTION.—In addition to any other penalty or
2 sanction, any person who fails to answer an information
3 request or request for production of documents, and who
4 is determined to be a liable party, shall be assigned an
5 assigned share of up to 500 percent of whatever its as-
6 signed share would otherwise have been, or up to 50 per-
7 cent of the total liability at the site, whichever is greater.
8 If this results in a binding allocation of responsibility that
9 allocates more than 100 percent of the total liability, then
10 the excess shall be deposited into the Hazardous Sub-
11 stance Superfund.

12 **“SEC. 505. CIVIL AND CRIMINAL PENALTIES.**

13 “(a) CIVIL PENALTIES.—Any person who fails to
14 submit a complete and timely answer to an allocation pan-
15 el’s information request or request for production of docu-
16 ments or other discovery request, or who submits a re-
17 sponse that lacks the certification required under section
18 504(b), or who makes any false or misleading material
19 statement or representation in any submission to the allo-
20 cation panel during the binding allocation of responsibility
21 process, including statements or representations in con-
22 nection with the nomination of another potentially respon-
23 sible party, shall be subject to civil penalties of up to
24 \$10,000 per day of violation. The violation shall be
25 deemed a continuing one until such time as the request

1 is answered or the necessary certification is submitted or
2 the false or misleading statement or representation is cor-
3 rected. Such penalties may be assessed by the President
4 in accordance with section 109 or by any other party in
5 a citizen suit brought under section 310. A prevailing
6 plaintiff in such a citizen suit shall be awarded its attor-
7 neys fees and up to 50 percent of the penalty imposed
8 by the court.

9 “(b) CRIMINAL PENALTIES.—Any person who know-
10 ingly makes any false material statement or representation
11 in the response to an allocation panel’s information re-
12 quest or request for the production of documents or other
13 discovery request, or in any other submission to the alloca-
14 tion panel during the binding allocation of responsibility,
15 including statements or representations in connection with
16 the nomination of another potentially responsible party,
17 may be fined under title 18, United States Code, impris-
18 oned for not more than 2 years, or both.

19 **“SEC. 506. DOCUMENT REPOSITORY; CONFIDENTIALITY; NO**
20 **WAIVER.**

21 “(a) DOCUMENT REPOSITORY.—The allocation panel
22 shall establish and maintain a document repository where
23 copies of all petitions, initial statements, advocacy papers,
24 reports, answers to information requests and requests for
25 production of documents by the allocation panel, answers

1 to Federal or State information requests or requests for
2 the production of documents issued prior to the filing of
3 the petition, produced documents, and all other similar
4 material shall be maintained and organized. The docu-
5 ments and information in the document repository shall
6 be available only to the parties to the binding allocation
7 of responsibility for review and copying at their own ex-
8 pense, subject only to the confidentiality provisions of sub-
9 section (b). All responses to any information request or
10 request for production of documents by the allocation
11 panel shall be filed with the clerk for the document reposi-
12 tory and need not be served on other potentially respon-
13 sible parties, the State, or the guardian.

14 “(b) CONFIDENTIALITY.—(1) All pleadings, docu-
15 ments, and materials submitted to the allocation panel or
16 placed in the document repository, together with the
17 record of any depositions or testimony adduced during the
18 binding allocation of responsibility, shall be confidential
19 and shall not be subject to release under section 552 of
20 title 5, United States Code (the Freedom of Information
21 Act). The Hearing Clerk and each party to the binding
22 allocation of responsibility proceeding shall maintain such
23 pleadings, documents, and materials, together with the
24 record of any depositions or testimony adduced during the
25 binding allocation of responsibility, as confidential. Such

1 material shall not be discoverable or admissible in any
2 other Federal, State or local judicial, administrative, or
3 legislative proceeding of any kind whatsoever, except—

4 “(A) to the extent necessary to collect or other-
5 wise enforce in court the assigned share of a liable
6 party as determined by the binding allocation of
7 responsibility;

8 “(B) in a proceeding for judicial review of the
9 binding allocation of responsibility;

10 “(C) in any new binding allocation of respon-
11 sibility proceeding concerning the same site; and

12 “(D) in any binding allocation of responsibility
13 involving a different site where the allocation panel
14 determines that the sites are related and that speci-
15 fied documents from the first binding allocation of
16 responsibility could materially assist the second
17 binding allocation of responsibility.

18 “(2) Notwithstanding paragraph (1)(D), if the origi-
19 nal of any document or material submitted to the alloca-
20 tion panel or placed in the document repository during the
21 binding allocation of responsibility was, while in the pos-
22 session of the party which provided it, otherwise discover-
23 able or admissible, then such original document, if subse-
24 quently sought from such party, shall remain discoverable
25 or admissible. If a fact covered in any deposition or testi-

1 mony adduced during the binding allocation of responsibil-
2 ity was, in the knowledge of the witness or deponent, oth-
3 erwise discoverable or admissible, then such testimony, if
4 subsequently sought from such other party, shall remain
5 discoverable or admissible.

6 “(c) NO WAIVER OF PRIVILEGE.—The submission of
7 documents or information pursuant to the binding alloca-
8 tion of responsibility proceeding shall not be deemed to
9 be a waiver of any privilege, applicable to the original doc-
10 ument or fact, under any Federal or State law, regulation,
11 or rule of discovery or evidence.

12 “(d) DISCOVERY.—In any case where a party to a
13 binding allocation of responsibility receives any request for
14 any pleading, document, or material, or for the record of
15 any depositions or testimony adduced in a binding alloca-
16 tion of responsibility, such party shall promptly notify the
17 person who originally submitted such item and shall pro-
18 vide such submitting person the opportunity to assert and
19 defend the confidentiality of such item. No party to the
20 binding allocation of responsibility shall release or provide
21 a copy of any pleading, document, or material, or the
22 record of any depositions or testimony adduced therein,
23 to any person not a party to such binding allocation of
24 responsibility, except in compliance with an order from a
25 court.

1 “(e) CIVIL PENALTY FOR VIOLATION OF CONFIDEN-
2 TIALITY REQUIREMENTS.—Any person who fails to main-
3 tain the confidentiality of any pleadings, documents, or
4 materials, or the record of any deposition or testimony ad-
5 duced during the binding allocation of responsibility, or
6 who releases any such information in violation of this sec-
7 tion, shall be subject to a civil penalty of up to \$25,000
8 per violation. Such a penalty may be assessed by the Presi-
9 dent in accordance with section 109 or by any other party
10 in a citizen suit brought under section 310. A prevailing
11 plaintiff in such a citizen suit shall be awarded its attor-
12 neys fees and up to 50 percent of the penalty imposed
13 by the court.

14 **“SEC. 507. FINAL AGENCY ACTION AND JUDICIAL REVIEW.**

15 “(a) FINAL AGENCY ACTION.—The binding alloca-
16 tion of responsibility decision of the allocation panel shall
17 constitute final agency action pursuant to section 706 of
18 title 5, United States Code, subject only to review by the
19 Administrator in situations of fraud or gross misconduct.

20 “(b) JUDICIAL REVIEW.—

21 “(1) IN GENERAL.—No Federal or State court
22 shall have jurisdiction to review, modify, or enjoin
23 any aspect of any binding allocation of responsibility
24 proceeding except as expressly set forth in this sub-
25 section. No aspect of any action, decision, ruling, or

1 determination by an allocation panel in any binding
2 allocation of responsibility proceeding shall be sub-
3 ject to administrative or judicial review in any Fed-
4 eral or State court until after the final binding allo-
5 cation of responsibility decision (in this subsection
6 referred to as the ‘final BAR decision’) is issued by
7 the allocation panel. Thereafter the Administrator,
8 the guardian, the State, or any person determined
9 by the allocation panel to be a liable party may ob-
10 tain judicial review of a final BAR decision by filing
11 a petition for review with the United States Court
12 of Appeals for the Circuit in which the facility is lo-
13 cated or for the District of Columbia.

14 “(2) PETITION.—Any such petition for review
15 must be filed within 60 days after the date of the
16 final BAR decision by the allocation panel. The peti-
17 tion shall set forth either the specific assigned share
18 of liability that the petitioner believes should have
19 been assigned to it (or, in the case of a petition filed
20 by the guardian, the assigned share that the guard-
21 ian believes should have been assigned to the orphan
22 share) in the binding allocation of responsibility, or
23 stating specifically that the petitioner believes it
24 should not have been found to have any liability at
25 all.

1 “(3) REVIEW.—Judicial review of the final
2 BAR decision shall be conducted on the administra-
3 tive record, which shall include all materials relating
4 to the issues raised on appeal by the petitioner that
5 are contained in the document repository described
6 in section 506(a). The court shall set aside the bind-
7 ing allocation of responsibility only if it is found to
8 be arbitrary, capricious, an abuse of discretion, or
9 contrary to constitutional right, power, privilege, or
10 immunity.

11 “(4) PAYMENT DURING PENDENCY OF RE-
12 VIEW.—During the pendency of a petition for review
13 under this section, the petitioner shall pay any de-
14 mand notices rendered for its assigned share in ac-
15 cordance with the binding allocation of responsibility
16 decision, subject to later refund if the petitioner pre-
17 vails in the litigation.

18 “(5) CONDUCT OF RESPONSE ACTION DURING
19 PENDENCY OF REVIEW.—During the pendency of a
20 petition for review under this section, response ac-
21 tion with respect to the site may occur, but only as
22 provided in section 121(b)(7).

23 “(6) LIABILITY OF SUCCESSFUL PETITIONER.—
24 If the petitioner is a liable party and the court
25 adopts the assigned share proposed by the peti-

1 tioner, then the difference between that share and
2 the share originally assigned to the petitioner shall
3 be added to the orphan share. If the petitioner is the
4 guardian and the court adopts the orphan share pro-
5 posed by the petitioner, then the matter shall be re-
6 manded to the allocation panel for the issuance, as
7 soon as possible, of a revised binding allocation of
8 responsibility decision in accordance with the deci-
9 sion of the court.

10 “(7) LIABILITY OF UNSUCCESSFUL PETI-
11 TIONER.—(A) In the case of a petitioner who is a
12 liable party petitioning for a change in the petition-
13 er’s assigned share, and the court does not adopt the
14 assigned share proposed by the petitioner, the fol-
15 lowing provisions apply:

16 “(i) The petitioner shall reimburse all
17 other parties that participated in the appeal for
18 the actual attorneys’ fees and costs that they
19 incurred in defending the binding allocation of
20 responsibility decision.

21 “(ii) The petitioner may participate in the
22 settlement based on its assigned share if the pe-
23 titioner notifies the court of such intention
24 within 10 days after the court’s decision on the
25 petition.

1 “(iii) If the petitioner does not give notice
2 as described in clause (ii), the petitioner is con-
3 sidered to have not resolved its liability to the
4 United States and is subject to civil action
5 under section 106, 107(a), and 113 for the fol-
6 lowing response costs with respect to the Na-
7 tional Priority List site concerned:

8 “(I) The assigned share of the peti-
9 tioner, as determined in the final BAR de-
10 cision, plus

11 “(II) the orphan share for that site.

12 “(iv) A petitioner covered by clause (ii) is
13 subject to claims for contribution from, and
14 may make claims for contribution against, other
15 unsuccessful petitioners with respect to the Na-
16 tional Priority List site concerned.

17 “(B) In the case of a petitioner who is a liable
18 party petitioning for a determination that the peti-
19 tioner is not liable with respect to the site concerned
20 (for reasons such as the fact that the petitioner is
21 a successor to, or a parent or subsidiary of, a com-
22 pany which the petitioner believes should be assigned
23 liability instead), and the court denies the petition,
24 the petitioner is liable for its assigned share as de-
25 termined in the final BAR decision.

1 **“SEC. 508. COLLECTION, ENFORCEMENT, AND IMPLEMEN-**
2 **TATION.**

3 “(a) COLLECTION.—

4 “(1) AMOUNT RECOVERABLE.—After a final
5 binding allocation of responsibility decision is made
6 with respect to a National Priority List site, any
7 creditor party may, in accordance with paragraph
8 (2), recover from any debtor party the following:

9 “(A) With respect to a debtor party who is
10 a liable party, that party’s assigned share, as
11 determined under the binding allocation of re-
12 sponsibility.

13 “(B) With respect to a debtor party which
14 is the Hazardous Substance Superfund, or the
15 Retroactive Liability Fund the orphan share, as
16 determined under the binding allocation of re-
17 sponsibility.

18 “(C) With respect to a debtor party who is
19 either a liable party or the Hazardous Sub-
20 stance Superfund, or the Retroactive Liability
21 Fund, any attorneys’ fees incurred by the credi-
22 tor party in a judicial action seeking to recover
23 costs from the debtor party.

24 “(2) PROCEDURES FOR RECOVERY.—Recovery
25 by a creditor party from a debtor party shall be car-
26 ried out in accordance with the following provisions:

1 “(A) The creditor party shall file a cer-
2 tified copy of the final decision of the binding
3 allocation of responsibility in the United States
4 District Court for the district in which the site
5 is located.

6 “(B) The creditor party shall file a verified
7 statement with the same court specifying the
8 actions taken and the costs incurred by the
9 creditor party, and stating that such actions
10 and costs are not inconsistent with the National
11 Contingency Plan.

12 “(C) The creditor party shall serve a de-
13 mand notice to each debtor party against whom
14 enforcement is sought and shall deliver a copy
15 of each such notice to the Administrator and
16 the State in which the site is located. The de-
17 mand notice shall specify the total amount of
18 costs covered by the notice, state a demand
19 amount (consisting of the debtor party’s as-
20 signed share or, with regard to the Fund, the
21 orphan share), and demand that the debtor
22 party pay such demand amount within 30 days
23 after receipt of the notice. Any demand notice
24 served by a creditor party shall provide that a
25 debtor party may pay the demand amount over

1 a period of time in installment payments. A
2 copy of the demand notice shall be filed with
3 the United States District Court for the district
4 in which the site is located.

5 “(D) With respect to any response actions
6 or expenditures of a continuing nature, verified
7 statements and demand notices shall be filed
8 with the court and delivered to the debtor par-
9 ties and the guardian quarterly.

10 “(E) Where several liable parties, or a lia-
11 ble party and the Administrator or the State,
12 each take actions or incur costs not inconsistent
13 with the National Contingency Plan, different
14 demand notices may be issued concurrently.

15 “(b) PENALTIES AND DAMAGES.—Except in the case
16 of a challenge to collection duly filed in accordance with
17 subsection (c), if a liable party, including any Federal,
18 State, or local governmental agency, fails to pay the sum
19 specified in a demand notice within 30 days after receipt
20 of the notice (or, in the case of a debtor party paying by
21 installments, within 30 days after an installment payment
22 is due), such party shall be liable for the interest thereon,
23 civil penalties of up to \$10,000 per day, and damages of
24 up to an amount equal to 3 times the sum specified in
25 the demand notice. In the case of the orphan share, if the

1 Hazardous Substance Superfund or the Retroactive Li-
2 ability Fund fails to pay the sum specified in a demand
3 notice within 30 days after receipt of the notice, the Fund
4 or the Retroactive Liability Fund shall be liable for inter-
5 est thereon and damages of up to the amount equal to
6 2 times the sum specified in the demand notice.

7 “(c) CHALLENGES TO ENFORCEMENT.—There shall
8 be no administrative or judicial review of any aspect of
9 a demand notice filed and delivered pursuant to subsection
10 (a) except in accordance with this subsection. Within 30
11 days after receipt of a demand notice, a liable party or,
12 in the case of the orphan share, the guardian may file
13 a petition with the allocation panel that issued the binding
14 allocation of responsibility decision contending that the
15 costs reflected in the demand notice were incurred for ac-
16 tions inconsistent with the National Contingency Plan. If
17 such a petition is filed, the allocation panel shall conduct
18 an expedited review of the matter. The review shall be lim-
19 ited solely to the issue of the alleged inconsistency of the
20 response actions and costs with the National Contingency
21 Plan. The person challenging the demand notice shall have
22 the burden of proof that such actions and the claimed
23 costs are inconsistent with the National Contingency Plan.
24 The allocation panel’s decision shall not be subject to judi-

1 cial review. Payment need not be made, and no interest
2 shall accrue, pending the allocation panel's decision.

3 “(d) SUBSEQUENT ADDITIONS TO ORPHAN
4 SHARE.—If good faith collection and enforcement efforts,
5 whether by the Federal or State government or by any
6 other creditor party, against a liable party results in a ju-
7 dicial or administrative determination that such liable
8 party is an orphan party, then such liable party's share
9 will be added to the orphan share amount and will be re-
10 coverable from the Hazardous Substance Superfund.

11 “(e) CONTRIBUTION PROTECTION.—Liable parties
12 that pay their assigned share and comply with the binding
13 allocation of responsibility decision shall have no other li-
14 ability, under Federal or State law, to any person for costs
15 incurred at the site, and shall be granted covenants not
16 to sue by the Federal Government and the State govern-
17 ment concerned, except that the binding allocation of re-
18 sponsibility decision shall not affect any contract for insur-
19 ance or indemnification.

20 **“SEC. 509. TRANSITION PROVISIONS.**

21 “(a) IN GENERAL.—Except as provided in subsection
22 (b), no person may initiate any administrative or judicial
23 action under section 106, subparagraph (A), (B), or (D)
24 of section 107(a)(1), or section 113, or under any other
25 Federal or State law or regulation, for the recovery of re-

1 sponse costs, contribution, or performance of response ac-
2 tions regarding any National Priority List site until 90
3 days after a final binding allocation of responsibility is
4 issued.

5 “(b) EXCEPTIONS.—Subsection (a) is subject to only
6 the following exceptions:

7 “(1) ADMINISTRATIVE ORDERS FOR EMER-
8 GENCY REMOVAL ACTIONS.—The President may
9 issue an order under section 106, prior to the issu-
10 ance of a final binding allocation of responsibility, if
11 the order is limited to those actions required to im-
12 plement immediate risk reduction measures pending
13 the issuance of the final binding allocation of re-
14 sponsibility decision.

15 “(2) CONTINUATION OF PENDING RESPONSE
16 ACTIONS.—In any case where, as of the date of en-
17 actment of this title, the Administrator or a State
18 has already issued a binding contract for the per-
19 formance of a remedial investigation/feasibility study
20 or has issued an administrative order or executed a
21 consent decree for the performance of any response
22 action, the binding allocation of responsibility proc-
23 ess shall not affect the timing or manner of imple-
24 mentation of such response actions.

25 “(c) STAY OF EXISTING ACTIONS.—

1 “(1) STAY OF PENDING ENFORCEMENT AC-
2 TIONS.—In any case where, as of the date of enact-
3 ment of this title, the Administrator or the State has
4 already initiated any administrative or judicial en-
5 forcement action regarding the liability of any party
6 under section 106, subparagraph (A), (B), or (D) of
7 section 107(a)(1), or section 113, or under any other
8 Federal or State law or regulation for the response
9 costs, contribution, or performance of response ac-
10 tions, such action shall be automatically stayed until
11 90 days after a binding allocation of responsibility is
12 issued, any judicial review of such allocation is com-
13 pleted, and a final administrative or judicial alloca-
14 tion decision is rendered.

15 “(2) STAY OF PENDING PRIVATE PARTY LITIGA-
16 TION.—In any case where, as of the date of enact-
17 ment of this title, any private person has initiated
18 any administrative or judicial action regarding the
19 liability of any party at a National Priority List site
20 under section 106, subparagraph (A), (B), or (D) of
21 section 107(a)(1), or section 113, or under any other
22 Federal or State law or regulation for the response
23 costs, contribution, or performance of response ac-
24 tions, such action shall be automatically stayed until
25 90 days after a binding allocation of responsibility is

1 issued, any judicial review of such allocation is com-
2 pleted, and a final administrative or judicial alloca-
3 tion decision is rendered.

4 “(d) CREDIT FOR ACTIONS AND COSTS IN PENDING
5 MATTERS.—In the case of any response action performed
6 or cost incurred in any activity carried out pursuant to
7 subsection (b), the liability for such response action shall
8 be governed by, and the costs of implementing any such
9 response action or other activity carried out pursuant to
10 subsection (b), shall be included in, the subsequently is-
11 sued binding allocation of responsibility for such National
12 Priority List site. In conducting the binding allocation of
13 responsibility, the allocation panel shall, to the extent rea-
14 sonably possible, give credit for any prior costs incurred
15 or response actions performed at the National Priority
16 List site.

17 “(e) LIMITATIONS ON EXISTING ACTIONS.—(1) The
18 time period described in paragraph (2) shall not be count-
19 ed in determining the statute of limitations applicable to
20 any administrative or judicial action under section 106,
21 subparagraph (A), (B), or (D) of section 107(a)(1), or sec-
22 tion 113, or under any other Federal or State law or regu-
23 lation, for the recovery of costs, for contribution, or for
24 the investigation, cleanup, or remediation of any National
25 Priority List site.

1 “(2) The time period referred to in paragraph (1) is
2 the period beginning on the date that any person first files
3 a petition for the initiation of a binding allocation of re-
4 sponsibility for that site and ending on the date that a
5 binding allocation of responsibility is issued.

6 **“SEC. 510. VOLUNTARY SETTLEMENTS.**

7 “Prior to the issuance of a binding allocation of re-
8 sponsibility decision, any group of potentially responsible
9 parties may submit a private allocation for the National
10 Priority List site (to be known as a ‘voluntary binding
11 allocation of responsibility’) to the allocation panel. If such
12 voluntary binding allocation of responsibility meets the fol-
13 lowing criteria, the allocation panel shall promptly adopt
14 it as the binding allocation of responsibility:

15 “(1) The voluntary binding allocation of respon-
16 sibility shall be a binding allocation of 100 percent
17 of past, present, and future recoverable response
18 costs at the site.

19 “(2) The voluntary binding allocation of respon-
20 sibility shall not allocate any costs or require-
21 ments—

22 “(A) to the orphan share, unless the
23 guardian agrees, in writing, to such allocation;
24 or

1 sion. Thereafter a new binding allocation of responsibility
2 process shall be available only if the party requesting it
3 demonstrates that, due to new information not reasonably
4 available during first binding allocation of responsibility,
5 a 35 percent or greater increase in total waste-in volume
6 has been discovered. If such a request for a new binding
7 allocation of responsibility is granted, the same rules and
8 procedures described for initial binding allocations of re-
9 sponsibility apply to the new or revised binding allocation
10 of responsibility. New binding allocations of responsibility
11 shall only apply to funds actually expended after the effec-
12 tive date of the new binding allocation of responsibility de-
13 cision, with no credits for funds already expended. Subse-
14 quent new binding allocations of responsibility requests
15 are prohibited until 5 years after the date of issuance of
16 the prior new binding allocation of responsibility.”.

17 **SEC. 111. SITE REDEVELOPMENT.**

18 Section 107 of the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9607) is amended by adding the following at the
21 end thereof:

22 “(n) SITE REDEVELOPMENT.—

23 “(1) EXEMPTION.—No person who is a quali-
24 fied redeveloper shall be liable under this title for
25 costs or damages with respect to the release of any

1 hazardous substance or the threat of any such re-
2 lease from any facility solely by reason of an agree-
3 ment by such person to redevelop such facility after
4 a response action has been completed (as determined
5 by the President) at such facility.

6 “(2) QUALIFIED REDEVELOPER.—For purposes
7 of this subsection, the term ‘qualified redeveloper’
8 means a person who is not otherwise liable under
9 section 107 and did not cause or contribute to the
10 release or threat of release which necessitated the
11 response action referred to in paragraph (1).”.

12 **SEC. 112. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

13 (a) EXTENSION OF NEGLIGENCE STANDARD.—Sub-
14 section (a) of section 119 of the Comprehensive Environ-
15 mental Response, Compensation, and Liability Act of
16 1980 is amended—

17 (1) in paragraph (1) by striking out “title or
18 under any other Federal law” and inserting in lieu
19 thereof “title, under any other Federal law, or under
20 the law of any State or political subdivision of a
21 State”; and

22 (2) by adding at the end of paragraph (2) the
23 following: “Such conduct shall be evaluated based on
24 the generally accepted standards and practices in ef-

1 fect at the time and place that the conduct
2 occurred.”.

3 (b) EXTENSION OF INDEMNIFICATION AUTHOR-
4 ITY.—Section 119(c) of such Act is amended by adding
5 at the end of paragraph (1) the following: “Any such
6 agreement may apply to claims for negligence arising
7 under Federal, State, or common law.”.

8 (c) EXTENSION OF COVERAGE.—Section 119(e) of
9 such Act is amended in the text appearing after subpara-
10 graph (D)—

11 (1) by striking out “List, or any removal under
12 this Act,” and inserting in lieu thereof “List, any re-
13 moval under this Act, or any response action under
14 this Act at a facility using an alternative or innova-
15 tive technology,”; and

16 (2) by inserting before the period the following:
17 “, or to undertake appropriate natural resource res-
18 toration actions necessary to protect and restore any
19 natural resources damaged by such release or threat-
20 ened release of a hazardous substance or pollutant
21 or contaminant”.

22 (d) INDEMNIFICATION FOR THREATENED RE-
23 LEASES.—Section 119(c)(5) of such Act is amended in
24 subparagraph (A) by inserting “or threatened release”
25 after “release” both places it appears.

1 (e) CLARIFICATION OF LIABILITY.—Section 101 of
2 such Act, as amended by section 106, is further amended
3 by adding at the end of paragraph (20) the following:

4 “(F) The term ‘owner or operator’ does not in-
5 clude any person carrying out a written contract or
6 agreement with any Federal agency, any State (or
7 any political subdivision of a State), or any respon-
8 sible party to provide any response action or any
9 form of services or equipment ancillary to such re-
10 sponse action. Any such person shall not be consid-
11 ered to have caused or contributed to any release or
12 threatened release of, or to have arranged for dis-
13 posal or treatment of, or arranged with a trans-
14 porter for transport for disposal or treatment of, or
15 transported, hazardous substances or pollutants or
16 contaminants. This subparagraph shall not apply to
17 any person potentially responsible under section 106
18 or 107 other than those persons associated solely
19 with the provision of response action or any form of
20 ancillary services or equipment.”.

21 (f) FEDERAL STATUTE OF REPOSE.—Section 119 of
22 such Act is further amended by adding at the end the fol-
23 lowing new subsection:

24 “(g) LIMITATION ON ACTIONS AGAINST RESPONSE
25 ACTION CONTRACTORS.—No action to recover for any in-

1 jury to property, real or personal, or for bodily injury or
2 wrongful death, or any other expenses or costs arising out
3 of the performance of services under a response action
4 contract, nor any action for contribution or indemnity for
5 damages sustained as a result of such injury, shall be
6 brought against any response action contractor more than
7 6 years after the completion of work at any site under
8 such contract. The limitation prescribed in this subsection
9 shall not affect any right of indemnification that such re-
10 sponse action contractor may have under this section or
11 may acquire by written agreement with any party.”.

12 **TITLE II—STATE** 13 **IMPLEMENTATION**

14 **SEC. 201. STATE AUTHORITY.**

15 (a) STATE AUTHORIZATION.—Title I of the Com-
16 prehensive Environmental Response, Compensation, and
17 Liability Act of 1980 (42 U.S.C. 9600 et seq.) is amended
18 by adding after section 126 the following new section:

19 **“§ 127. State authority**

20 “(a) STATE PROGRAM AUTHORIZATION.—

21 “(1) IN GENERAL.—At any time after the pro-
22 mulgation of regulations required by paragraph (2),
23 a State may apply to the Administrator to carry out,
24 under its own legal authorities, response actions and
25 enforcement activities at all facilities listed or pro-

1 posed for listing on the National Priorities List, or
2 certain categories of facilities listed or proposed for
3 listing on the National Priorities List, within the
4 State. If the Administrator determines that the
5 State meets the criteria for eligibility, the Adminis-
6 trator, pursuant to a contract or agreement entered
7 into between the Administrator and the State, shall
8 authorize the State to assume the responsibilities es-
9 tablished under this Act at all such facilities or cat-
10 egories of facilities. Except as otherwise provided in
11 this Act, such responsibilities include, but are not
12 limited to, responding to a release or threatened re-
13 lease of a hazardous substance or pollutant or con-
14 taminant; selecting response actions; expending the
15 Fund and the Retroactive Liability Fund in amounts
16 authorized by the Administrator to finance response
17 activities; and taking enforcement actions, including
18 cost recovery actions to recover Fund expenditures
19 made by the State. In an application for authoriza-
20 tion, a State shall acknowledge its responsibility to
21 address all response actions at the facilities for
22 which it seeks authorization.

23 “(2) PROMULGATION OF REGULATIONS.—Not
24 later than 1 year after the date of the enactment of
25 the Comprehensive Superfund Improvement Act, the

1 Administrator shall issue regulations to determine a
2 State's eligibility for authorization and to establish
3 a process and criteria for withdrawal of such an au-
4 thorization. A State shall be considered eligible for
5 authorization if the Administrator determines that
6 the State possesses the legal authority, technical ca-
7 pability, and resources necessary to conduct re-
8 sponse actions and enforcement activities in a man-
9 ner that is substantially consistent with this Act and
10 the National Contingency Plan at the facilities listed
11 or proposed for listing on the National Priorities
12 List for which it seeks authorization.

13 “(b) AUTHORIZED USE OF FUNDS.—At facilities list-
14 ed on the National Priorities List for which a State is au-
15 thorized under subsection (a), and at facilities listed on
16 the National Priorities List which are referred to a State
17 under subsection (b), the State shall be eligible for re-
18 sponse action financing from the Fund and the Retro-
19 active Liability Fund. The Administrator shall ensure that
20 all allocations of the Fund and the Retroactive Liability
21 Fund to the States for the purpose of undertaking site-
22 specific response actions are based primarily on the rel-
23 ative risks to human health and the environment posed
24 by the facilities eligible for funding. The amount of Fund
25 and Retroactive Liability Fund financing for a State-se-

1 lected response action at a facility listed on the National
2 Priorities List shall—

3 “(1) take into account the number and financial
4 viability of parties identified as potentially liable for
5 response costs at such facility, and

6 “(2) be limited to the amount necessary to
7 achieve a level of response that is not more stringent
8 than that required under this Act.

9 A State also may obtain Fund financing to develop and
10 enhance its capacity to undertake response actions and en-
11 forcement activities. The Administrator, in consultation
12 with the States, shall establish, within 1 year after the
13 date of enactment of the Comprehensive Superfund Im-
14 provement Act, specific criteria for allocating expenditures
15 from the Fund and the Retroactive Liability Fund among
16 States for the purposes of undertaking response actions
17 and enforcement activities at referred and State-author-
18 ized facilities, and building State capacities to undertake
19 such response actions and enforcement activities.

20 “(c) STATE COST SHARE.—Notwithstanding section
21 104(c)(3)(C) of this Act, a State shall pay or assure pay-
22 ment of 10 percent of the costs of all response actions
23 (including response actions at facilities operated by the
24 State or a political subdivision of the State) for which the
25 State receives funds from the Fund under this section. A

1 State that receives funds from the Retroactive Liability
2 Fund under this section shall not be subject to any cost
3 share requirements for the receipt of those funds.

4 “(d) TERMS AND CONDITIONS; COST RECOVERY.—
5 A contract or agreement for a State authorization or refer-
6 ral under this section is subject to such terms and condi-
7 tions as the Administrator prescribes. The terms and con-
8 ditions shall include requirements for periodic auditing
9 and reporting of State expenditures from the Fund and
10 the Retroactive Liability Fund. The contract or agreement
11 may cover a specific facility, a category of facilities, or
12 all facilities listed or proposed to be listed on the National
13 Priorities List in the State. The contract or agreement
14 shall require the State to seek cost recovery, as con-
15 templated by this Act, of all expenditures from the Fund.
16 Ten percent of the moneys recovered by the State may
17 be retained by the State for use in its hazardous substance
18 response program, and the remainder shall be returned
19 to the Fund. Before making further allocations from the
20 Fund to any State, the Administrator shall take into con-
21 sideration the effectiveness of the State’s enforcement pro-
22 gram and cost recovery efforts.

23 “(e) ENFORCEMENT OF AGREEMENTS.—If the Ad-
24 ministrator enters into a contract or agreement with a
25 State pursuant to this section, and the State fails to com-

1 ply with any terms and conditions of the contract or agree-
2 ment, the Administrator, after providing 60 days notice,
3 may withdraw the State authorization or referral, or seek
4 in the appropriate Federal district court to enforce the
5 contract or agreement to recover any funds advanced or
6 any costs incurred because of the breach of the contract
7 or agreement by the State.

8 “(f) MORE STRINGENT STATE STANDARDS.—Under
9 either an authorization or referral, a State may select a
10 response action that achieves a level of cleanup that is
11 more stringent than required under section 121 of this
12 Act if the State agrees to pay for the incremental increase
13 in response cost attributable to achieving the more strin-
14 gent cleanup level. Neither the Fund, the Retroactive Li-
15 ability Fund, nor any party liable for response costs shall
16 incur costs in excess of those necessary to achieve a level
17 of cleanup required under section 121 of this Act.

18 “(g) OPPORTUNITY FOR PUBLIC COMMENT.—The
19 Administrator shall make available, for public review and
20 comment, applications for authorization under subsection
21 (a) and applications for referral under subsection (b). The
22 Administrator shall not approve or withdraw authorization
23 or referral from a State unless the Administrator notifies
24 the State, and makes public, in writing, the reasons for
25 such approval or withdrawal.

1 “(h) PERIODIC REVIEW OF AUTHORIZED STATE
2 PROGRAMS AND REFERRALS.—The Administrator shall
3 conduct a periodic review of authorized State programs
4 and referrals to determine, among other things, whether—

5 “(1) the response actions were selected and con-
6 ducted in a manner that was substantially consistent
7 with this Act, the National Contingency Plan, and
8 the contract or agreement between the Adminis-
9 trator and the State;

10 “(2) the State response costs financed by Fund
11 and Retroactive Liability Fund expenditures were in-
12 curred in the manner agreed to by the State, in ac-
13 cordance with the contract or agreement between the
14 Administrator and the State; and

15 “(3) the State’s cost recovery efforts and other
16 enforcement efforts were conducted in accordance
17 with the contract or agreement between the Admin-
18 istrator and the State.

19 Within 1 year after the date of enactment of the Com-
20 prehensive Superfund Improvement Act, the Adminis-
21 trator, in consultation with the States, shall develop spe-
22 cific criteria for periodic reviews of authorized State pro-
23 grams and referrals. The Administrator shall establish a
24 mechanism to make the periodic State reviews available
25 to the public.”.

1 (b) TRANSITION AND CONFORMING AMENDMENTS.—

2 (1) Sections 104(c)(5), 104(c)(7), 104(d)(1),
3 and 104(d)(2) of the Comprehensive Environmental
4 Response, Compensation, and Liability Act of 1980
5 are each amended by inserting after the heading in
6 each paragraph the following—“This paragraph ap-
7 plies only to response actions for which a Record of
8 Decision or other decision document is signed before
9 the date of enactment of the Comprehensive
10 Superfund Improvement Act.”.

11 (2) Section 114(a) of such Act is amended by
12 striking “Nothing” and inserting—“Except as other-
13 wise provided in this Act, nothing”.

14 (3) Paragraph (1) of section 121(f) of such Act
15 is amended to read as follows: “(1) The President
16 may repeal, no earlier than one year after the pro-
17 mulgation of final regulations under sections
18 127(a)(3) and 127(b)(3), the regulations issued
19 under this paragraph prior to the date of enactment
20 of the Comprehensive Superfund Improvement
21 Act.”.

22 (4) Paragraphs (2) and (3) of section 121(f) of
23 such Act are each amended in the second sentence
24 of subparagraph (A) by striking “does not attain a
25 legally applicable or relevant and appropriate stand-

1 ard, requirement, criteria, or limitation, under the
2 authority of subsection(d)(4)” and inserting in lieu
3 thereof “is not relevant and appropriate under
4 subsection(d),”.

5 (5) Section 302(d) of such Act is amended by
6 striking “Nothing” and inserting—“Except as other-
7 wise provided in this Act, nothing”.

8 **SEC. 202. TRANSFER OF AUTHORITIES.**

9 Section 120(g) of the Comprehensive Environmental
10 Response, Compensation, and Liability Act of 1980 (42
11 U.S.C. 9620(g)) is amended by inserting after “the Envi-
12 ronmental Protection Agency,” the following: “and except
13 as provided in section 127,”.

14 **SEC. 203. EPA OVERSIGHT COSTS.**

15 (a) OVERSIGHT COST ACCOUNTING AND APPEAL
16 PROCEDURE.—Section 104(a) of the Comprehensive Envi-
17 ronmental Response, Compensation, and Liability Act of
18 1980 (42 U.S.C. 9604(a)) is amended by adding at the
19 end the following new paragraph:

20 “(5) OVERSIGHT COST ACCOUNTING AND APPEAL
21 PROCEDURE.—(A) The President shall maintain detailed
22 and timely records of the costs incurred under, or in con-
23 nection with, any oversight contract or arrangement re-
24 ferred to in paragraph (1). The President shall submit
25 such records to the responsible party that has agreed to

1 reimburse the Fund for such costs with each demand or
2 bill for such costs.

3 “(B) The President shall establish an administrative
4 procedure under which a party that conducts any response
5 action may contest the amount of costs incurred by the
6 President in overseeing the conduct of that response ac-
7 tion. The procedure shall be carried out separately from
8 the conduct of the response action at the facility con-
9 cerned.”.

10 (b) LIMITATION ON OVERSIGHT COSTS.—Any costs
11 of oversight incurred by the President that exceed 50 per-
12 cent of the response costs incurred by the responsible
13 party or parties at the facility concerned shall be paid by
14 the Fund, unless the responsible party or parties have pre-
15 viously agreed to pay a larger sum under a court decree
16 or the response action is being conducted under an order
17 issued under section 106 of the Comprehensive Environ-
18 mental Response, Compensation, and Liability Act of
19 1980.

20 **TITLE III—REMEDY SELECTION**

21 **SEC. 301. IMMEDIATE RISK REDUCTION MEASURES.**

22 (a) IMMEDIATE RISK REDUCTION MEASURES.—Sec-
23 tion 104(a) of the Comprehensive Environmental Re-
24 sponse, Compensation, and Liability Act of 1980 is
25 amended—

1 (1) by redesignating paragraphs (1), (2), (3),
2 and (4) as paragraphs (2), (3), (4), and (5), respec-
3 tively;

4 (2) in paragraph (5) (as redesignated), by strik-
5 ing out “paragraph (3)” and inserting in lieu thereof
6 “paragraph (4)”; and

7 (3) by inserting after “(a)” the following new
8 paragraph (1): “(1) IMMEDIATE RISK REDUCTION
9 MEASURES.—

10 “(A) AUTHORITY TO ACT.—Whenever any haz-
11 ardous substance, pollutant, or contaminant is re-
12 leased or there is a substantial threat of such a re-
13 lease into the environment, and such release may
14 present an imminent and substantial danger to the
15 public health, the President, or the State in the case
16 of a facility for which a State has responsibility
17 under section 127, is authorized to act to minimize
18 and prevent to the extent possible the endangerment
19 to the public health.

20 “(B) TYPES OF MEASURES ALLOWED.—The ac-
21 tions that the President or a State may take under
22 this paragraph (hereinafter in this section referred
23 to as ‘immediate risk reduction measures’) may in-
24 clude but are not limited to the following:

1 “(i) The removal of waste from barrels,
2 tanks, or lagoons.

3 “(ii) The provision of alternative water
4 supplies or point-of-use treatment.

5 “(iii) The prevention of discharges to sur-
6 face waters or ground waters.

7 “(iv) The installation of fencing.

8 “(v) The institution of other institutional
9 controls.

10 “(C) MEASURES PROHIBITED.—The authority
11 provided by this paragraph does not include author-
12 ity for the President or a State to institute long-
13 term remediation measures.

14 “(D) TIMING.—The President or a State shall
15 commence immediate risk reduction measures under
16 this paragraph—

17 “(i) in the case of a facility that is not list-
18 ed on the National Priorities List, as soon as
19 practicable after the President or the State be-
20 comes aware of an endangerment to the public
21 health; and

22 “(ii) in the case of a facility that is listed
23 on the National Priorities List, not later than
24 60 days after the facility is so listed.

1 “(E) COST EFFECTIVENESS.—Any immediate
2 risk reduction measure carried out under this para-
3 graph shall be conducted in the most cost-effective
4 manner practicable.

5 “(F) FUNDING.—The Fund may be used to pay
6 for immediate risk reduction measures taken under
7 this paragraph. The President may (in accordance
8 with Title V) recover the costs of such measures
9 from any person determined to be liable for such
10 costs but, in the case of measures costing less than
11 \$1,000,000, the President may choose not to recover
12 such costs.

13 “(G) JUDICIAL REVIEW.—The decision of the
14 President or a State to act under this subsection is
15 subject to review as provided in chapter 7 of title 5,
16 United States Code, except that a reviewing court
17 may set aside an action only if it is found to be arbi-
18 trary, capricious, an abuse of discretion, or other-
19 wise not in accordance with law. Review may be had
20 only in the United States district court for the dis-
21 trict in which the facility or site is located.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall take effect on the date of the enact-
24 ment of this Act.

1 **SEC. 302. SITE SCORING.**

2 Section 105(c)(1) of the Comprehensive Environ-
3 mental Response, Compensation, and Liability Act of
4 1980 (42 U.S.C. 9605(c)(1)) is amended—

5 (1) by inserting “(A)” after “REVISION.—”;

6 and

7 (2) by adding at the end: the following new sub-
8 paragraph:

9 “(B)(i) After the date of enactment of the Com-
10 prehensive Superfund Improvement Act, the hazard
11 ranking system shall be applied to a site or facility
12 only after the site or facility has undergone imme-
13 diate risk reduction measures pursuant to section
14 104(a)(1). In applying such ranking system, condi-
15 tions existing at the site or facility before the imme-
16 diate risk reduction measures were taken shall not
17 be taken into account.

18 “(ii) Clause (i) shall apply to all sites and facili-
19 ties to be newly listed on the National Priorities List
20 after such date of enactment and to any sites al-
21 ready so listed as of such date of enactment but for
22 which a remedial investigation and feasibility study
23 has not been conducted as of such date.

24 “(iii) As soon as practicable after such date of
25 enactment, the President shall revise the hazard

1 ranking system regulations to reflect the require-
2 ments this subparagraph. ”.

3 **SEC. 303. LONG-TERM RESPONSE PLAN.**

4 (a) IN GENERAL.—Section 104(a) of the Comprehen-
5 sive Environmental Response, Compensation, and Liabil-
6 ity Act of 1980, as amended by section 301, is further
7 amended by adding at the end the following new para-
8 graph:

9 “(6) LONG-TERM RESPONSE PLAN.—

10 “(A) IN GENERAL.—Before carrying out or al-
11 lowing another person to carry out a response action
12 at a facility under this subsection, the President, or
13 the State in the case of a facility for which a State
14 has responsibility under section 127, shall prepare a
15 long-term response plan (hereinafter in this section
16 referred to as an ‘LTRP’ or ‘plan’) for such facility.
17 The President or State may allow a potentially re-
18 sponsible party to prepare such a plan and to carry
19 out the elements of the plan listed in clauses (i), (ii),
20 and (iv) of subparagraph (B).

21 “(B) ELEMENTS OF LTRP.—The LTRP shall
22 address the following elements:

23 “(i) SITE CHARACTERIZATION.—The site
24 characterization element of the plan shall deter-
25 mine the type, nature, and extent of contamina-

1 tion at the facility, including the location of the
2 sources of the release or threatened release.
3 The site characterization component shall be
4 completed within 12 months after a facility is
5 listed on the National Priorities List.

6 “(ii) RISK ASSESSMENT.—The risk assess-
7 ment element of the plan shall be carried out in
8 accordance with paragraph (7). The risk assess-
9 ment component shall be performed simulta-
10 neously with the site characterization compo-
11 nent and shall be completed within 12 months
12 after a facility is listed on the National Prior-
13 ities List.

14 “(iii) COMMUNITY ADVISORY COUNCILS.—
15 The plan shall take into account any rec-
16 ommendations made by the community advisory
17 council for the facility created under section
18 117(f). The council shall provide its rec-
19 ommendations with respect to the facility within
20 12 months after a facility is listed on the Na-
21 tional Priorities List.

22 “(iv) RESPONSE OPTION IDENTIFICA-
23 TION.—The response option identification ele-
24 ment of the plan shall be carried out in accord-
25 ance with paragraph (8) during the 3-month

1 period beginning on the date on which the ele-
2 ments listed in clauses (i) through (iii) are com-
3 pleted.

4 “(C) APPLICABILITY.—(i) A long-term response
5 plan shall be required for the following:

6 “(I) A facility to be newly listed on the
7 National Priorities List after the date of enact-
8 ment of the Comprehensive Superfund Improve-
9 ment Act.

10 “(II) A facility or site listed on the Na-
11 tional Priorities List as of such date of enact-
12 ment but for which a remedial investigation and
13 feasibility study has not been conducted as of
14 such date.

15 “(III) A facility or site listed on the Na-
16 tional Priorities List as of such date of enact-
17 ment, for which a remedial investigation and
18 feasibility study has been conducted as of such
19 date, but for which a contract has not been exe-
20 cuted for remedial design and remedial action
21 as of such date, if the potentially responsible
22 parties and the State in which the facility or
23 site is located agree, within 30 days after such
24 date, to subject themselves to the requirements
25 of an LTRP.

1 “(ii) A long-term response plan shall not be re-
2 quired for any facility or site with respect to which
3 a contract has been executed for remedial design
4 and remedial action as of such date of enactment. ”.

5 (b) RISK ASSESSMENTS.—(1) Section 104(a) of the
6 Comprehensive Environmental Response, Compensation,
7 and Liability Act of 1980 (42 U.S.C. 9604(a)), as amend-
8 ed by section 301 and this section, is further amended
9 by adding at the end the following new paragraph:

10 “(7) RISK ASSESSMENTS.—

11 “(A) IN GENERAL.—In carrying out a remedial
12 investigation with respect to a facility, the President
13 or other person carrying out the investigation shall
14 assess the risk to human health and the environment
15 presented by the release or threat of release of a
16 hazardous substance, pollutant, or contaminant. The
17 risk assessment component of the remedial investiga-
18 tion shall be carried out in compliance with regula-
19 tions promulgated by the President. The President
20 shall ensure that the regulations do not conflict with
21 regional or State guidance on risk assessments. At
22 a minimum, the regulations shall—

23 “(i) require risk assessments to use expo-
24 sure factors that accurately describe site or fa-
25 cility conditions; and

1 “(ii) require that values used to describe
2 quantities of a substance consumed by people
3 accurately reflect average conditions.

4 “(B) CURRENT RISK VERSUS FUTURE RISK.—
5 In carrying out the risk assessment component of
6 the remedial investigation, the President or other
7 person carrying out the assessment shall separately
8 evaluate (i) the current risks, and (ii) the likely fu-
9 ture risks, to human health and the environment,
10 based on current and likely future land use of the
11 site. If the President determines that one or more
12 such risks exist and warrant remedial action, the
13 President shall specify in the record of decision
14 which risks support the decision for remedial action,
15 which risks are current risks, and which risks are
16 likely future risks.

17 “(C) BEST ESTIMATES VERSUS WORST CASE.—
18 In carrying out the risk assessment component of
19 the remedial investigation, the President or other
20 person carrying out the assessment shall rely to the
21 maximum extent practicable on actual data rather
22 than on assumptions. The President or other person
23 shall provide the most plausible estimate of any risk
24 to human health and the environment. The Presi-
25 dent or other person also shall describe any assump-

1 tions or uncertainties that pertain to such estimate,
2 including the likelihood of human exposure actually
3 occurring. Whenever the President or other person
4 considers it feasible, the President shall provide a
5 quantitative estimate of the uncertainty associated
6 with the most plausible estimate of the risk.”.

7 (2) PERFORMANCE OF RISK ASSESSMENTS BY
8 PRPS.—Section 104(a)(1) of such Act is amended in the
9 second sentence—

10 (A) by striking out “may” and inserting in lieu
11 thereof “shall”; and

12 (b) by inserting after “remedial investigation”
13 the following: “(including the risk assessment com-
14 ponent of the remedial investigation)”.

15 (c) COMMUNITY ADVISORY COUNCILS.—Section 117
16 of the Comprehensive Environmental Response, Com-
17 pensation, and Liability Act of 1980 (42 U.S.C. 9607) is
18 amended by adding at the end the following:

19 “(f) COMMUNITY ADVISORY COUNCILS.—

20 “(1) CREATION.—The Administrator shall cre-
21 ate a Community Advisory Council for each facility
22 listed on the National Priorities List. Such Council
23 shall be comprised of not more than 20 persons ap-
24 pointed by the Governor of the State in which the
25 facility is located from among persons in the com-

1 munity in which the facility is located. Each such
2 council shall represent a wide variety of local -inter-
3 ests.

4 “(2) PURPOSE.—The Community Advisory
5 Councils shall provide information to potentially re-
6 sponsible parties, the Administrator, and the State
7 with regard to the future use of the facility and af-
8 fected off-site areas and resources. The councils
9 shall provide a public forum for citizens to voice con-
10 cerns regarding the response action to be taken and
11 the future use of the site.

12 “(3) RECOMMENDATIONS.—The President and
13 the State shall take into consideration any rec-
14 ommendations made by a Community Advisory
15 Council in making decisions regarding any response
16 action under this title at the facility for which such
17 council was established.

18 “(4) TECHNICAL AND ADMINISTRATIVE SUP-
19 PORT FOR COMMUNITY ADVISORY COUNCILS.—The
20 Administrator’s regional offices shall provide admin-
21 istrative and technical services for Community Advi-
22 sory Councils, including technical assistance in un-
23 derstanding this title and the regulations under this
24 title.”.

1 (d) RESPONSE OPTION IDENTIFICATION.—(1) Sec-
2 tion 104(a) of the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9604(a)), as amended by section 301 and this sec-
5 tion, is further amended by adding at the end the following
6 new paragraph:

7 “(8) RESPONSE OPTION IDENTIFICATION.—(A) The
8 response option identification element of a long-term re-
9 mediation plan shall consist of the development of the
10 range of possible response actions for a facility and the
11 conduct of a cost-benefit analysis on each of the following
12 categories of possible response actions:

13 “(i) Containment (both permanent and tem-
14 porary).

15 “(ii) Remediation.

16 “(iii) Monitoring.

17 “(iv) Delineation.

18 “(v) Institutional controls.

19 “(B) The President, the State, or the other person
20 carrying out the identification shall take into account ad-
21 vice from the Community Advisory Council created for the
22 facility concerned.

23 “(C) During the 30-day period occurring after com-
24 pletion of the response option identification, the Commu-
25 nity Advisory Council, potentially responsible parties, and

1 any other interested parties may submit comments to the
2 President or the State on preferred options.”.

3 (2) COST-BENEFIT REGULATIONS.—Section 105 of
4 the Comprehensive Environmental Response, Compensa-
5 tion, and Liability Act of 1980 (42 U.S.C. 9605) is
6 amended by adding at the end the following new sub-
7 section:

8 “(h) COST-BENEFIT REGULATIONS.—(1) The Presi-
9 dent shall promulgate and include in the national contin-
10 gency plan guidelines for conducting cost/benefit analyses
11 of response actions conducted pursuant to this Act. The
12 guidelines shall include a standard methodology for evalu-
13 ating benefits and costs over the lifetime of a remedial
14 action.

15 “(2) In developing the standard methodology under
16 paragraph (1), the President shall seek and take into ac-
17 count suggestions from States and political subdivisions
18 of States for which costs and benefits to include in a cost-
19 benefit analysis, and which methods to use in evaluating
20 the costs and benefits. The costs may include costs related
21 to public welfare.

22 “(3) In developing the methodology for measuring the
23 costs of a remedial action, the President, at a minimum,
24 shall take into account the following costs:

1 “(A) Costs associated with the remedial action,
2 including the following:

3 “(i) Direct capital costs.

4 “(ii) Operation and maintenance costs.

5 “(iii) Preconstruction costs, including per-
6 mitting, siting, and regulatory compliance costs.

7 “(iv) Capital acquisition, amortization, and
8 debt service costs.

9 “(v) Consulting costs.

10 “(vi) Costs and potential liabilities of fu-
11 ture environmental remediation if the remedial
12 action does not provide for a permanent rem-
13 edy.

14 “(vii) Land acquisition costs.

15 “(viii) Costs of insurance.

16 “(B) Avoided or additional costs of cleaning up
17 the contamination using an alternative treatment
18 technology.

19 “(4) In developing the methodology for measuring the
20 benefits of a remedial action, the President shall, at a min-
21 imum, take into account the costs of benefits associated
22 with the remedial action, including the following:

23 “(A) Increased property values.

24 “(B) Reduced public health risks.

25 “(C) Reduced ecological risks.

1 “(D) Improved environmental quality in the
2 community.”.

3 **SEC. 304. LONG-TERM RESPONSE SELECTION.**

4 (a) LONG-TERM RESPONSE SELECTION.—Section
5 121(a) of the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980 (42 U.S.C.
7 9621(a)) is amended to read as follows:

8 “(a) RESPONSE SELECTION.—

9 “(1) SECTION 104.—After completion of the
10 long-term response plan for a facility under section
11 104, the President, or the State in the case of a fa-
12 cility for which a State has responsibility under sec-
13 tion 127, shall select that response or combination
14 of responses (from among the options identified in
15 the plan) that best achieves an acceptable level of re-
16 sidual risk reduction at the facility or site (referred
17 to as the ‘cleanup goal’), in accordance with the gen-
18 eral rules stated in subsection (b).

19 “(2) SECTION 106.—With respect to actions de-
20 termined to be necessary by the President to be se-
21 cured under section 106, the President shall select
22 appropriate remedial actions that are in accordance
23 with this section and, to the extent practicable, the
24 national contingency plan, and which provide for
25 cost-effective response.

1 (b) GENERAL RULES FOR RESPONSE SELECTION.—
2 Section 121(b) of such Act is amended to read as follows:

3 “(b) GENERAL RULES.—

4 “(1) SELECTION PROCESS.—In selecting a re-
5 sponse action under this section, the President (or
6 State, as the case may be) shall review the long-term
7 response plan for the facility or site and consider
8 any recommendations submitted to it from the Com-
9 munity Advisory Council, the potentially responsible
10 parties, and the general public.

11 “(2) FACTORS TO BE CONSIDERED.—In select-
12 ing a response action, the President shall take into
13 account the following:

14 “(A) Site-specific factors, including the
15 current and likely future uses of the land and
16 the ground water (including any designated
17 uses or institutional controls), the potential for
18 human exposure to contamination, the actual
19 risk to human health, and the degree and type
20 of contamination.

21 “(B) The economic impact of the action on
22 the potentially responsible parties. In the case
23 of a potentially responsible party which is a mu-
24 nicipality or other subdivision of a State (in-
25 cluding municipalities that are owners or opera-

1 tors of landfills), the President shall take into
2 account the funding priorities of the commu-
3 nity.

4 “(C) The costs and benefits of the re-
5 sponse options, as determined by cost-benefit
6 analysis under section 104(a)(8).

7 “(3) TYPES OF RESPONSES THAT MAY BE SE-
8 LECTED.—The types of response actions that the
9 President (or State, as the case may be) may select
10 include the following:

11 “(A) Monitoring.

12 “(B) Containment or stabilization, if the
13 President or State finds that any of the follow-
14 ing conditions exist with respect to the facility
15 concerned:

16 “(i) The risks to human health or the
17 environment are low.

18 “(ii) The costs of other types of reme-
19 diation, including treatment, are extremely
20 high.

21 “(iii) No proven technology exists for
22 achieving a permanent and significant de-
23 crease in the toxicity, mobility, or volume
24 of the hazardous substance, pollutant, or
25 contaminant concerned that is propor-

1 tionate to the risk to human health or the
2 environment.

3 “(C) Institutional controls as part of a
4 permanent remedy. The President shall give
5 preference to using such controls at facilities
6 with low future risk (as determined in the risk
7 assessment component of a Long Term Re-
8 sponse Plan). Such controls include zoning ordi-
9 nances and other ordinances that restrict access
10 to or use of property (including groundwater
11 management zones), physical barriers that re-
12 strict access to property (such as fences), and
13 such other controls as the President (or State)
14 considers appropriate.

15 “(4) PREFERENCE FOR CERTAIN TYPE OF AC-
16 TION.—In selecting a response action, the President
17 (or State) shall, with reference to the factors set
18 forth in section 121(b)(2) prefer response actions
19 that significantly reduce the volume, toxicity, or mo-
20 bility of the hazardous substances, pollutants, and
21 contaminants, or that significantly reduce actual or
22 threatened exposure to such hazardous substances,
23 pollutants, or contaminants.

24 “(5) LIMITATION ON STANDARDIZED REM-
25 EDIES.—The President (or State) shall not select a

1 response action that is a standardized remedy in any
2 case in which the use of an alternative technology
3 would be less expensive but as protective of health
4 and the environment as the standardized remedy.
5 For purposes of this paragraph, the term ‘standard-
6 ized remedy’ means a remedy that is determined by
7 the President to be protective of human health and
8 the environment for a category of facilities.

9 “(6) COMPLIANCE BOUNDARIES.— The Presi-
10 dent (or State), in determining the boundaries with-
11 in which a response action is to be achieved, shall
12 extend site or facility boundaries to include areas
13 subject to easements or other institutional controls,
14 such as zones of groundwater management.

15 “(7) JUDICIAL REVIEW.—The selection of a re-
16 sponse action by the President or a State under this
17 subsection is subject to review as provided in chapter
18 7 of title 5, United States Code, except that a re-
19 viewing court may set aside an action only if it is
20 found to be arbitrary, capricious, an abuse of discre-
21 tion, or otherwise not in accordance with law. Re-
22 view may be had only in the United States district
23 court for the district in which the facility or site is
24 located. In any such review, the facts of the case are
25 subject to a trial de novo by the reviewing court.

1 Any appeal of the selection of a response action shall
2 be filed within 60 days after the selection is made.

3 “(8) DEADLINE FOR IMPLEMENTATION TO
4 BEGIN.—The implementation of a response action
5 selected pursuant to this section shall begin no later
6 than 60 days after the selection has been made
7 and—

8 “(i) an appeal of such selection has been
9 filed and a court has finally acted upon such
10 appeal; or

11 “(ii) the time for filing an appeal of such
12 selection has expired and no appeal has been
13 filed.”.

14 (c) REPEAL OF ARARs CLEANUP STANDARDS.—
15 Section 121(d) of the Comprehensive Environmental Re-
16 sponse, Compensation, and Liability Act of 1980 (42
17 U.S.C. 9621(d)) is amended—

18 (1) by striking out paragraphs (2), (3), and (4);

19 and

20 (2) by striking out “(1)”.

21 (d) APPLICABILITY.—The amendments made by this
22 section shall apply with respect to any facility or site with
23 respect to which—

1 (1) no contract for remedial design and reme-
2 dial action has been executed as of the date of the
3 enactment of this Act; and

4 (2) the pertinent parties have not opted to sub-
5 ject themselves to the long-term response plan and
6 related requirements within 30 days after such date
7 of enactment (as described in section 104(a)(6)(C)).

8 (e) CROSS REFERENCE AMENDMENT.—Section
9 104(c)(4) of such Act is amended to read as follows:

10 “(4) SELECTION OF RESPONSE.—The President
11 shall select response actions to carry out this section in
12 accordance with section 121 of this Act.”.

13 **SEC. 305. PERIODIC REVIEW.**

14 Section 121(c) of the Comprehensive Environmental
15 Response, Compensation, and Liability Act of 1980 (42
16 U.S.C. 9621(c)) is amended by striking out the first two
17 sentences and inserting in lieu thereof the following: “The
18 President, or the State in the case of a facility for which
19 a State has responsibility under section 127, shall review
20 each response action selected under this section not less
21 often than once every 5 years after the initiation of the
22 action to assure that human health and the environment
23 are being protected by the action being implemented. If
24 upon such review it is the judgment of the President or
25 State that additional actions are appropriate at such site

1 in accordance with section 104, the President or State
2 shall take or require such action, including a supplemental
3 long-term response plan under section 104. In the case
4 of a review carried out by the President, if it is the judg-
5 ment of the President that additional actions are appro-
6 priate at such site in accordance with section 106, the
7 President or State shall take or require such action.”.

8 **SEC. 306. DELISTING OF FACILITIES AND SITES.**

9 Section 105 of the Comprehensive Environmental Re-
10 sponse, Compensation, and Liability Act of 1980 (42
11 U.S.C. 9605) is amended by adding at the end the follow-
12 ing new subsection:

13 “(h) DELISTING OF FACILITIES AND SITES.—After
14 a response action selected for a site or facility achieves
15 the cleanup goal set for such facility under section 121(a),
16 the President shall delist the site or facility from the Na-
17 tional Priorities List. Such delisting may occur even if
18 monitoring or operation and maintenance are being con-
19 ducted at the facility.”.

20 **TITLE IV—FUNDING**

21 **SEC. 401. 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE**
22 **SUPERFUND.**

23 (a) EXTENSION OF TAXES.—

24 (1) The following provisions of the Internal
25 Revenue Code of 1986 are each amended by striking

1 “January 1, 1996” each place it appears and insert-
2 ing “January 1, 2001”:

3 (A) Section 59A(e)(1) (relating to applica-
4 tion of environmental tax).

5 (B) Paragraphs (1) and (3) of section
6 4611(e) (relating to application of Hazardous
7 Substance Superfund financing rate).

8 (2) Paragraph (2) of section 4611(e) of such
9 Code is amended—

10 (A) by striking “1993” and inserting
11 “1998”,

12 (B) by striking “1994” each place it ap-
13 pears and inserting “1999”, and

14 (C) by striking “1995” each place it ap-
15 pears and inserting “2000”.

16 (b) INCREASE IN AGGREGATE TAX WHICH MAY BE
17 COLLECTED.—Paragraph (3) of section 4611(e) of such
18 Code is amended by striking “\$11,970,000,000” each
19 place it appears and inserting “\$26, 970,000,000” and by
20 striking “December 31, 1995” and inserting “December
21 31, 2000”.

22 (c) EXTENSION OF REPAYMENT DEADLINE FOR
23 SUPERFUND BORROWING.—Subparagraph (B) of section
24 9507(d)(3) is amended by striking “December 31, 1995”
25 and inserting “December 31, 2000”.

1 (d) EXTENSION OF AUTHORIZATION OF APPROPRIA-
2 TIONS TO TRUST FUND.—Subsection (b) of section 517
3 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507
4 note) is amended by striking “and” at the end of para-
5 graph (8), by striking the period at the end of paragraph
6 (9) and inserting “, and”, and by adding at the end there-
7 of the following new paragraphs:

8 “(10) 1996, \$250,000,000,
9 “(11) 1997, \$250,000,000,
10 “(12) 1998, \$250,000,000,
11 “(12) 1999, \$250,000,000, and
12 “(13) 2000, \$250,000,000.”

13 **SEC. 402. INCREASE IN ENVIRONMENTAL INCOME TAX.**

14 (a) IN GENERAL.—Subsection (a) of section 59A of
15 the Internal Revenue Code of 1986 (relating to environ-
16 mental tax) is amended by inserting “(0.24 percent in the
17 case of taxable years beginning after December 31, 1994,
18 and before January 1, 2000)”.

19 (b) INCREASED REVENUES NOT DEPOSITED IN
20 SUPERFUND.—Subsection (b) of section 9507 of such
21 Code (relating to Hazardous Substance Superfund) is
22 amended by adding at the end the following new sentence:
23 “Only 50 percent of the taxes received in the Treasury
24 under section 59A with respect to taxable years beginning

1 after December 31, 1994, and before January 1, 2000,
2 shall be taken into account under paragraph (1).”

3 (c) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to taxable years beginning after
5 December 31, 1994.

6 **SEC. 403. ENVIRONMENTAL FEES AND ASSESSMENTS ON IN-**
7 **SURANCE COMPANIES.**

8 (a) IN GENERAL.—The Internal Revenue Code of
9 1986 is amended by inserting after section ____ the fol-
10 lowing new section:

11 “§ . **Environmental fees and assessments on insur-**
12 **ance companies”.**

13 [RESERVED]

14 (b) CLERICAL AMENDMENTS.—The table of sections
15 for chapter ____ of the Internal Revenue Code of 1986
16 is amended by inserting after the item relating to section
17 ____ the following:

18 “§ . **Environmental fees and assessments on insur-**
19 **ance companies”.**

20 **SEC. 404. RETROACTIVE LIABILITY FUND.**

21 (a) IN GENERAL.—Subchapter A of chapter 98 of the
22 Internal Revenue Code of 1986 (relating to trust fund
23 code) is amended by adding at the end thereof the follow-
24 ing new section:

1 **“SEC. 9512. RETROACTIVE LIABILITY FUND.**

2 “(a) CREATION OF TRUST FUND.—There is estab-
3 lished in the Treasury of the United States a trust fund
4 to be known as the ‘Retroactive Liability Fund’, consisting
5 of such amounts as may be appropriated or credited to
6 such Fund as provided in this section or section 9602(b).

7 “(b) TRANSFERS TO FUND.—There are hereby ap-
8 propriated to the Retroactive Liability Fund—

9 “(1) amounts equivalent to 50 percent of the
10 revenues received in the Treasury from the tax im-
11 posed by section 59A (relating to environmental tax)
12 for taxable years beginning after December 31,
13 1994, and before January 1, 2000; and

14 “(2) amounts received from fees and assess-
15 ments imposed by the amendments made by section
16 403 of this Act.

17 “(c) EXPENDITURES FROM FUND.—Amounts in the
18 Retroactive Liability Fund shall be available, as provided
19 in appropriation Acts, only for purposes of making ex-
20 penditures to carry out section 107(n) of the Comprehen-
21 sive Environmental Response, Compensation, and Liabil-
22 ity Act of 1980.”

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for such subchapter A is amended by adding at the end
25 thereof the following new item:

“Sec. 9512. Retroactive Liability Fund.”



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