

104TH CONGRESS
1ST SESSION

H. R. 2256

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1995

Mr. ZELIFF introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to make comprehensive improvements in provisions relating to liability 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 “Superfund Liability
5 Equity and Acceleration Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 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—FUNDING

- Sec. 201. Hazardous Substance Revolving Fund.

1 **TITLE I—LIABILITY**

2 **SEC. 101. RELEASE OF EVIDENCE.**

3 (a) **TIMELY ACCESS TO INFORMATION FURNISHED**
 4 **UNDER SECTION 104(e).**—Section 104(e)(7)(A) of the
 5 Comprehensive Environmental Response, Compensation,
 6 and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is
 7 amended by inserting after “shall be available to the pub-
 8 lic” the following: “not later than 14 days after the
 9 records, reports, or information is obtained”.

10 (b) **REQUIREMENT TO PROVIDE PRPs EVIDENCE OF**
 11 **LIABILITY.**—(1) Subsection (a) of section 106 of the Com-
 12 prehensive Environmental Response, Compensation, and
 13 Liability Act of 1980 (42 U.S.C. 9607(a)) is amended by
 14 adding at the end the following: “In any case in which
 15 the President issues an order to a person under this sub-

1 section, the President shall provide information concerning
2 the evidence that indicates that each element of liability
3 contained in subparagraph (A), (B), (C), or (D) of section
4 107(a)(1) is present.”.

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

7 “(D) For each potentially responsible
8 party, the evidence that indicates that each ele-
9 ment of liability contained in subparagraph (A),
10 (B), (C), or (D) of section 107(a)(1) is
11 present.”.

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

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

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

19 “(1) RETROACTIVE LIABILITY CUT-OFF
20 DATE.—Subject to the provisions in this subsection,
21 a person is liable under this section only for actions
22 occurring after December 31, 1986.

23 “(2) EXCEPTION FOR ILLEGAL ACTIONS.—
24 Paragraph (1) does not apply to actions occurring
25 on or before December 31, 1986, which were con-

1 trary to law at the time of the actions. For purposes
2 of this paragraph, actions shall be considered to be
3 contrary to law at the time of the actions if the ac-
4 tions are determined by a court before, on, or after
5 the date of the enactment of this subsection to have
6 been illegal at the time the actions occurred.

7 “(3) REIMBURSEMENT.—Reimbursement or
8 payment for costs incurred under this Act for ac-
9 tions for which a person is not liable under this sec-
10 tion by reason of paragraph (1) shall be made from
11 the Hazardous Substance Revolving Fund in accord-
12 ance with paragraphs (4) and (5).

13 “(4) PRE-1987 SITES.—For a site or facility
14 with respect to which all actions occurred before
15 January 1, 1987, the following reimbursement rules
16 apply:

17 “(A) NO REIMBURSEMENT FOR COSTS IN-
18 CURRED BEFORE DATE OF ENACTMENT OF
19 SUBSECTION FOR CERTAIN SITES.—In the case
20 of such a site or facility that was discovered be-
21 fore June 1, 1995, no reimbursement may be
22 made from the Hazardous Substance Revolving
23 Fund to the potentially responsible parties con-
24 cerned for costs incurred before the date of the
25 enactment of this subsection for construction or

1 operation and maintenance of a response action
2 at such a site or facility.

3 “(B) REIMBURSEMENT FOR CERTAIN
4 COSTS.—The President shall use amounts from
5 the Hazardous Substance Revolving Fund to
6 pay—

7 “(i) in the case of such a site or facil-
8 ity where construction was completed by
9 June 1, 1995, any costs of operation and
10 maintenance incurred on or after the date
11 of the enactment of this subsection;

12 “(ii) in the case of such a site or facil-
13 ity where construction was not completed
14 by June 1, 1995, any costs of construction
15 or operation and maintenance incurred on
16 or after such date of enactment; and

17 “(iii) in the case of such a site or fa-
18 cility that is discovered after June 1, 1995,
19 all costs of the response action (including
20 construction and operation and mainte-
21 nance) incurred on or after the date of the
22 enactment of this subsection, except that
23 such costs shall not include attorneys’ fees
24 or other costs associated with litigation re-
25 lated to the response action.

1 “(5) STRADDLE SITES.—For a site or facility
2 with respect to which actions occurred both before
3 and after January 1, 1987 (hereinafter in this sub-
4 section referred to as a ‘straddle site or facility’), the
5 following reimbursement rules apply:

6 “(A) NO REIMBURSEMENT FOR COSTS IN-
7 CURRED BEFORE DATE OF ENACTMENT OF
8 SUBSECTION FOR CERTAIN SITES.—In the case
9 of a straddle site or facility that was discovered
10 before June 1, 1995, no reimbursement may be
11 made from the Hazardous Substance Revolving
12 Fund to the potentially responsible parties con-
13 cerned for costs incurred before the date of the
14 enactment of this subsection for construction or
15 operation and maintenance of a response action
16 at the site or facility.

17 “(B) REIMBURSEMENT FOR CERTAIN
18 COSTS.—The President shall use amounts from
19 the Hazardous Substance Revolving Fund to
20 pay—

21 “(i) in the case of a straddle site or
22 facility where construction was completed
23 by June 1, 1995, any costs of operation
24 and maintenance incurred on or after the
25 date of the enactment of this subsection

1 that are attributable to pre-1987 actions
2 (as determined pursuant to an allocation
3 for which a petition is granted under para-
4 graph (6) of this subsection);

5 “(ii) in the case of a straddle site or
6 facility where construction was not com-
7 pleted by June 1, 1995, any costs of con-
8 struction or operation and maintenance in-
9 curred on or after such date of enactment
10 that are attributable to pre-1987 actions
11 (as determined pursuant to an allocation
12 for which a petition is granted under para-
13 graph (6) of this subsection); and

14 “(iii) in the case of a straddle site or
15 facility that is discovered on or after June
16 1, 1995, all costs of the response action
17 (including construction and operation and
18 maintenance) incurred on or after the date
19 of the enactment of this subsection that
20 are attributable to pre-1987 actions (as de-
21 termined pursuant to an allocation in ac-
22 cordance with title V), except that such
23 costs shall not include attorneys’ fees or
24 other costs associated with litigation relat-
25 ed to the response action.

1 “(6) PETITION FOR ALLOCATION.—A poten-
2 tially responsible party of a straddle site or facility
3 that was discovered before June 1, 1995, may peti-
4 tion the President for an allocation in accordance
5 with title V of the construction and operation and
6 maintenance costs attributable to pre-1987 actions.
7 In the case of a straddle site or facility where con-
8 struction was completed by June 1, 1995, any such
9 petition must be made not later than 90 days after
10 the date of the enactment of this subsection. In the
11 case of a straddle site or facility where construction
12 was not completed by June 1, 1995, any such peti-
13 tion must be made not later than 90 days after the
14 date on which the construction is completed. The
15 President shall grant any petition for an allocation
16 of pre-1987 costs incurred at a straddle site or facil-
17 ity upon determining that the site or facility is in
18 fact a straddle site or facility.

19 “(7) EFFECT ON CONCLUDED ACTIONS.—This
20 subsection shall not affect any judicial or adminis-
21 trative action from which all direct appeals have
22 been made and finally acted upon, or with respect to
23 which the time for filing such appeals has passed
24 and no appeals have been filed, as of the date of the
25 enactment of this subsection.

1 “(8) DEFINITIONS.—In this subsection:

2 “(A) The term ‘action’ means any action
3 for which a person is liable under paragraph
4 (1), (2), (3), or (4) of subsection (a).

5 “(B) The term ‘person’ has the meaning
6 provided in section 101(21) but does not in-
7 clude the United States Government.”.

8 **SEC. 103. LIMITATION ON LIABILITY OF CERTAIN OWNERS**
9 **AND OPERATORS.**

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

14 (1) in paragraph (4), by striking out “shall be
15 liable for—” and inserting in lieu thereof “shall be
16 liable, except as provided in paragraph (5), for—”;
17 and

18 (2) by adding at the end the following new
19 paragraph:

20 “(5) In the case of a person who is a qualified organi-
21 zation under section 170(h)(3) of the Internal Revenue
22 Code of 1986 and who is the grantee of a conservation
23 easement with respect to real property on which a facility
24 is located, the person shall not be considered an owner
25 or operator of the facility under paragraph (1) or (2) un-

1 less the person, by any act or omission, causes or contrib-
2 utes to the release or threatened release of a hazardous
3 substance that causes the incurrence of response costs.
4 For purposes of this paragraph, the term “conservation
5 easement” means a restriction on the use of land for pur-
6 poses of protecting in perpetuity a conservation purpose
7 listed in section 170(h)(4) of the Internal Revenue Code
8 of 1986.”.

9 (b) SAFE HARBOR FOR INNOCENT LANDOWNER DE-
10 FENSE.—(1) Section 101(35) of the Comprehensive Envi-
11 ronmental Response, Compensation and Liability Act of
12 1980 (42 U.S.C. 9601 et seq.) is amended by redesignat-
13 ing subparagraphs (C) and (D) as subparagraphs (D) and
14 (E), respectively and inserting after subparagraph (B),
15 the following:

16 “(C)(i) A defendant who has acquired real
17 property shall have established a rebuttable pre-
18 sumption that he has made all appropriate inquiry
19 within the meaning of subparagraph (B) if he estab-
20 lishes that, immediately prior to or at the time of ac-
21 quisition, he obtained an environmental assessment
22 of the real property which meets the requirements of
23 this subparagraph.

24 “(ii) For purposes of this subparagraph, the
25 term ‘environmental professional’ means an individ-

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

16 “(I) Recorded chain of title documents re-
17 garding the real property, including all deeds,
18 easements, leases, restrictions, and covenants
19 for a period of 50 years.

20 “(II) Aerial photographs which may reflect
21 prior uses of the real property and which are
22 reasonably accessible through State or local
23 government agencies.

24 “(III) Determination of the existence of re-
25 corded environmental cleanup liens against the

1 real property which have arisen pursuant to
2 Federal, State, and local statutes.

3 “(IV) Reasonably obtainable Federal,
4 State, and local government records of sites or
5 facilities where there has been a release of haz-
6 ardous substances and which are likely to cause
7 or contribute to a release or threatened release
8 of hazardous substances on the real property,
9 including investigation reports for such sites or
10 facilities; reasonably obtainable Federal, State,
11 and local government environmental records of
12 activities likely to cause or contribute to a re-
13 lease or a threatened release of hazardous sub-
14 stances on the real property, including landfill
15 and other disposal location records, under-
16 ground storage tank records, hazardous waste
17 handler and generator records and spill report-
18 ing records; and such other reasonably obtain-
19 able Federal, State, and local government envi-
20 ronmental records which report incidents or ac-
21 tivities which are likely to cause or contribute
22 to a release or threatened release of hazardous
23 substances on the real property. A record is
24 considered to be reasonably obtainable for pur-
25 poses of this subclause if a copy or reasonable

1 facsimile of the record is obtainable from the
2 government agency by request.

3 “(V) A visual site inspection of the real
4 property and all facilities and improvements on
5 the real property, and a visual inspection of im-
6 mediately adjacent properties from the real
7 property, including an investigation of any
8 chemical use, storage, treatment and disposal
9 practices on the property.

10 “(iii) No presumption shall arise under clause
11 (i) unless the defendant has maintained a compila-
12 tion of the information reviewed in the course of the
13 environmental assessment.

14 “(iv) Notwithstanding any other provision of
15 this paragraph, if the environmental assessment dis-
16 closes the presence or likely presence of a release or
17 threatened release of hazardous substances on the
18 real property to be acquired, no presumption shall
19 arise under clause (i) with respect to such release or
20 threatened release unless the defendant has taken
21 reasonable steps, in accordance with current tech-
22 nology available, existing regulations, and generally
23 acceptable engineering practices, as may be nec-
24 essary to confirm the absence of such release or
25 threatened release.”.

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

5 **SEC. 104. CONTRIBUTION PROTECTION.**

6 Section 113(f)(2) of the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sen-
9 tence by inserting “or cost recovery” after “contribution”.

10 **SEC. 105. CONTIGUOUS PROPERTIES.**

11 Section 107(a) of the Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980 (42
13 U.S.C. 9607(a)), as amended by section 103(a), is further
14 amended by adding at the end the following new para-
15 graph:

16 “(6) A person who owns or operates real prop-
17 erty that is contiguous to or otherwise situated with
18 respect to real property on which there has been a
19 release of a hazardous substance and that is or may
20 be contaminated by such release shall not be consid-
21 ered an owner or operator of a facility under para-
22 graph (1) solely by reason of such contamination.
23 The President may issue assurances of no enforce-
24 ment action under this Act to any such person and
25 may grant any such person protection against cost

1 recovery and contribution actions pursuant to sec-
2 tion 113(f)(2).”.

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

4 (a) RULEMAKING AUTHORITY FOR SECURITY INTER-
5 EST EXEMPTION.—Section 115 of the Comprehensive En-
6 vironmental Response, Compensation, and Liability Act of
7 1980 (15 U.S.C. 9615) is amended—

8 (1) by redesignating the text of the section as
9 subsection (a); and

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

11 “(b)(1) Pursuant to the authority conferred by this
12 section, the President shall issue, within 30 days after the
13 date of enactment of the Superfund Liability Equity and
14 Acceleration Act, regulations to define the terms of this
15 Act as they apply to lenders and other financial services
16 providers. These regulations shall clarify the definition of
17 the term ‘owner or operator’ contained in section
18 101(20)(A) by—

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

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

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

4 “(A) The term ‘participation in management’
5 does not include—

6 “(i) the mere capacity to influence, or abil-
7 ity to influence, or the unexercised right to con-
8 trol facility operations; or

9 “(ii) any act of the security interest holder
10 to require another person or itself, to comply
11 with applicable laws or to respond lawfully to
12 disposal of any hazardous substance.

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

16 “(i) has undertaken responsibility for the
17 facility’s hazardous substance handling or dis-
18 posal practices; or

19 “(ii) has undertaken overall management
20 of the facility encompassing day-to-day deci-
21 sionmaking over either environmental compli-
22 ance or over the operational, as opposed to fi-
23 nancial and administrative, aspects of the facil-
24 ity.

1 “(C) Legal or equitable title acquired by a secu-
2 rity interest holder through foreclosure or its equiva-
3 lents will be deemed to be held primarily to protect
4 a security interest provided that the holder under-
5 takes to sell, re-lease, or otherwise divest the prop-
6 erty in a reasonably expeditious manner on commer-
7 cially reasonable terms.”.

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

13 “(E)(i) The term ‘owner or operator’ does not
14 include a fiduciary who holds legal title to, is the
15 mortgagee or secured party with respect to, controls,
16 or manages, directly or indirectly, any facility or ves-
17 sel for purposes of administering an estate or trust
18 of which such facility or vessel is a part.

19 “(ii) For purposes of clause (i), the term ‘fidu-
20 ciary’ means a person who is acting in any of the
21 following representative capacities, but only to the
22 extent such person is acting in such representative
23 capacity:

1 “(I) An executor or administrator of an es-
2 tate, including a voluntary executor or a vol-
3 untary administrator.

4 “(II) A guardian.

5 “(III) A conservator.

6 “(IV) A trustee under a will under which
7 the trustee takes title to, or otherwise controls
8 or manages, property for the purpose of pro-
9 tecting or conserving such property under the
10 ordinary rules applied in State courts.

11 “(V) A court-appointed receiver.

12 “(VI) A trustee appointed in proceedings
13 under Federal bankruptcy laws.

14 “(VII) An assignee or a trustee acting
15 under an assignment made for the benefit of
16 creditors.

17 “(VIII) A trustee, or any successor there-
18 to, pursuant to an indenture agreement, trust
19 agreement, lease, or similar financing agree-
20 ment, for debt securities, certificates of interest
21 of participation in any such debt securities, or
22 other forms of indebtedness as to which it is
23 not, in its capacity as trustee, the lender.”.

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

1 U.S.C. 9607), as amended by section 102, is further
2 amended by adding at the end the following new sub-
3 section:

4 “(o) FIDUCIARY LIABILITY.—(1) Except as provided
5 in paragraph (3), a fiduciary (as defined in section
6 101(20)) shall not be liable in its individual capacity under
7 this section.

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

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

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

14 “(3) Nothing in this paragraph may be construed as
15 preventing claims under this Act against a fiduciary in its
16 individual capacity whose negligent acts or intentional
17 misconduct caused a release or threatened release of haz-
18 ardous substances at a facility or vessel. A fiduciary shall
19 not be attributed with the negligence or intentional mis-
20 conduct of non-employee agents or independent contrac-
21 tors if the fiduciary has conducted itself without neg-
22 ligence or intentional misconduct with regard to its rela-
23 tionship with such agents or contractors.”.

1 **SEC. 107. DEFINITIONS.**

2 Section 101 of the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9601), is amended by adding at the end the
5 following:

6 “(39) The term ‘potentially responsible party’
7 means any person identified as potentially liable
8 under section 107, potentially responsible to perform
9 any response action under sections 104 or 106, or
10 potentially liable for contribution under section 113.

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

18 “(41) The term ‘de minimis party’ means a lia-
19 ble party whose assigned share of liability is deter-
20 mined to be 1.0 percent or less in a final binding al-
21 location of responsibility decision under title V.

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

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

6 “(44) The term ‘orphan party’ means a liable
7 party at a site who is defunct, unknown, insolvent,
8 or whose assigned share has been subject to dis-
9 charge or limitation in bankruptcy, or who is other-
10 wise financially unable to pay all or part of its as-
11 signed share.

12 “(45) The term ‘creditor party’ means the Ad-
13 ministrator, a State, or any person who is deter-
14 mined to be a liable party with respect to a National
15 Priority List site and who incurs or has incurred
16 costs with respect to the site that are not inconsis-
17 tent with the National Contingency Plan.

18 “(46) The term ‘debtor party’ means the Haz-
19 ardous Substance Revolving Fund and any person
20 who is determined to be a liable party with respect
21 to a National Priority List site.

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

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

5 “(49) The term ‘guardian of the fund’ or
6 ‘guardian’ means the person appointed by the Ad-
7 ministrator to represent the Environmental Protec-
8 tion Agency in a binding allocation of responsibility
9 proceeding.

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

14 **SEC. 108. ASSIGNMENT OF SHARES OF LIABILITY FOR**
15 **COSTS OF RESPONSE ACTIONS AT NATIONAL**
16 **PRIORITY LIST SITES.**

17 Section 107(a) of the Comprehensive Environmental
18 Response, Compensation, and Liability Act of 1980 (42
19 U.S.C. 9607(a)), is amended by inserting before the
20 phrase “The amounts recoverable” the following: “With
21 respect to any National Priority List site, each liable party
22 who accepts the results of the allocation of responsibility
23 process under title V or who successfully appeals the re-
24 sults of such process shall be liable only for its assigned
25 share of the costs incurred pursuant to subparagraphs

1 (A), (B), and (D) of this subsection. The orphan share
2 of a National Priority List site shall be paid out of the
3 Hazardous Substance Revolving Fund, as determined by
4 final binding allocation of liability.’’.

5 **SEC. 109. ENFORCEMENT OF RESPONSE ACTIONS**
6 **THROUGH JOINT AND SEVERAL LIABILITY.**

7 Section 107 of the Comprehensive Environmental Re-
8 sponse, Compensation, and Liability Act of 1980 (42
9 U.S.C. 9607), as amended by section 106, is further
10 amended by adding at the end the following:

11 “(p) JOINT AND SEVERAL LIABILITY OF PARTIES
12 WHO FAIL TO PERFORM RESPONSE ACTIONS.—In any
13 case in which no liable party or potentially responsible
14 party agrees to perform a response action at a National
15 Priority List site, or a liable party or potentially respon-
16 sible party agrees to perform a response action but the
17 party fails to perform such response action, as determined
18 by the Administrator or the State in which the site is
19 located, the following provisions apply:

20 “(1) The party is considered to have not re-
21 solved its liability to the United States, notwith-
22 standing the party’s acceptance of the results of the
23 binding allocation of responsibility process under
24 title V or the party’s successful appeal of the results
25 of such process.

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

6 “(q) PAYMENT OF CERTAIN RESPONSE COSTS BY
7 FUND.—A potentially responsible party who performs and
8 pays for a response action at a National Priority List site
9 shall be reimbursed by the Hazardous Substance Revolv-
10 ing Fund.

11 “(r) AUTHORITY TO COLLECT RESPONSE COSTS
12 FROM OTHERS.—A liable party who performs and pays
13 for a response action at a National Priority List site is
14 a creditor party under section 508 with respect to the site
15 and may recover its response costs in accordance with that
16 section.”.

17 **SEC. 110. ESTABLISHMENT OF BINDING ALLOCATION OF**
18 **RESPONSIBILITY PROCESS.**

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

23 **“TITLE V—BINDING ALLOCA-**
24 **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.

1 **“SEC. 501. GENERAL RULES GOVERNING BINDING ALLOCA-**
 2 **TIONS OF RESPONSIBILITY.**

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

12 “(b) RULES OF DECISION.—The decisions of alloca-
 13 tion panels under this title shall be rendered based on the
 14 provisions of this Act and the court decisions interpreting
 15 such provisions.

16 **“SEC. 502. QUALIFICATIONS AND POWERS OF ALLOCATION**
 17 **PANELS.**

18 “(a) QUALIFICATIONS.—An administrative law judge
 19 may not be appointed to an allocation panel under section
 20 501 unless the judge completes at least 40 hours of edu-

1 cation and training, as specified by the Administrator, in
2 the following subject areas:

3 “(1) The operation of this Act and the regula-
4 tions promulgating this Act.

5 “(2) The science of soil and groundwater con-
6 tamination and the technology for treating such con-
7 tamination.

8 “(b) GENERAL POWERS.—An allocation panel shall
9 have the power and authority to perform all functions nec-
10 essary to administer and perform the binding allocations
11 of responsibility, including the power to—

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

14 “(2) require the Administrator and the State
15 concerned to provide all information relevant to a
16 binding allocation of responsibility, including the
17 production of copies of all documents and informa-
18 tion obtained pursuant to section 104(e) or pursuant
19 to similar State law;

20 “(3) rule upon motions, requests, and offers of
21 proof, dispose of procedural requests, and issue all
22 necessary orders;

23 “(4) administer oaths and affirmations and
24 take affidavits;

1 “(5) examine witnesses and receive documen-
2 tary or other evidence;

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

7 “(7) admit or exclude evidence;

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

9 “(9) require the parties, including the State
10 and the guardian of the Fund, to attend conferences
11 for the settlement or simplification of the issues or
12 the expedition of the proceedings;

13 “(10) require, at any time, that potentially re-
14 sponsible parties wishing to present similar legal or
15 factual arguments use a common spokesman or con-
16 solidated briefing for the presentation of such facts
17 and legal positions;

18 “(11) obtain or employ such support services as
19 are necessary to conduct the binding allocation of re-
20 sponsibility, including secretarial and clerical serv-
21 ices, investigative services, and computer information
22 and database management services;

23 “(12) establish a document repository where all
24 documents associated with the binding allocation of
25 responsibility shall be maintained and made avail-

1 able to all parties to the binding allocation of re-
2 sponsibility in accordance with section 506; and

3 “(13) do all other acts and take all measures
4 necessary for the maintenance of order and for the
5 efficient, fair, and impartial adjudication of issues
6 arising in the binding allocation of responsibility.

7 “(c) SUBPOENA POWER.—Allocation panels shall
8 have the power of subpoena to collect information nec-
9 essary or appropriate for conducting the binding allocation
10 of responsibility or for otherwise implementing this sec-
11 tion. This authority shall include the power to compel the
12 attendance and testimony of witnesses and the production
13 of reports, papers, documents, answers to questions, and
14 other information that the allocation panel deems nec-
15 essary. Witnesses shall be paid the same fees and mileage
16 that are paid witnesses in the courts of the United States.
17 In the event of contumacy or failure or refusal of any per-
18 son to obey any such subpoena, any district court of the
19 United States in which venue is proper shall have jurisdic-
20 tion to order any such person to comply with such
21 subpoena.

22 “(d) INFORMAL RULES OF EVIDENCE.—In conduct-
23 ing the binding allocation of responsibility, an allocation
24 panel shall not be bound by the Federal Rules of Evidence,
25 but shall instead use such informal rules of evidence and

1 evidentiary procedures, such as those set forth at sections
2 22.22 and 22.23 of title 40 of the Code of Federal Regula-
3 tions, as will promote the expeditious completion of the
4 proceeding.

5 “(e) NATIONWIDE SERVICE OF PROCESS.—Any docu-
6 ment required to be served on a party under this title may
7 be served in any district where the person is found, re-
8 sides, transacts business, or has appointed an agent for
9 service of process. Any such document is deemed to be
10 served on a party if it is mailed to the counsel of record
11 for the party or to the address designated by the party
12 if the party is not represented by counsel.

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

14 “(a) INITIATION OF ALLOCATION PROCESS.—

15 “(1) IN GENERAL.—A binding allocation of re-
16 sponsibility with respect to a National Priority List
17 site shall be initiated by filing a petition with the Of-
18 fice of the Administrative Law Judges of the Envi-
19 ronmental Protection Agency. Such a petition may
20 be filed by the Administrator or the State where the
21 National Priority List site is located.

22 “(2) WHEN INITIATED.—The Administrator or
23 a State shall file a petition to initiate a binding allo-
24 cation of responsibility at a National Priority List
25 site not later than 30 days after initiating the reme-

1 dial investigation study (or its equivalent) for the
2 site. In any case where the petition is filed more
3 than 30 days after initiation of the remedial inves-
4 tigation study (or its equivalent), all governmental
5 response costs incurred or contracted for prior to the
6 filing of the petition shall be allocated entirely to the
7 orphan share.

8 “(3) CONTENTS OF PETITION.—The petition to
9 initiate the binding allocation of responsibility pro-
10 ceeding shall identify the petitioner and shall include
11 all relevant information reasonably available con-
12 cerning—

13 “(A) the identity, location, history, current
14 status, and environmental condition of the Na-
15 tional Priority List site;

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

19 “(C) any proposed questions and document
20 requests that the petitioner believes should be
21 included in the allocation panel’s first informa-
22 tion request and document request; and

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

1 “(4) SERVICE.—A copy of the petition shall be
2 served by mail, publication, or otherwise on the Ad-
3 ministrator, the State where the site is located, and
4 each potentially responsible party identified in the
5 petition. Within 20 days after the filing of the peti-
6 tion, the Hearing Clerk of the Office of Administra-
7 tive Law Judges shall cause a notice of the filing of
8 the petition, together with a brief description of the
9 site and a list of all potentially responsible parties
10 identified in the petition, to be published in the Fed-
11 eral Register. The petitioner shall cause a similar
12 notice, description, and list to be published in a
13 newspaper of general circulation within the State
14 where the site is located.

15 “(5) PRIOR INVESTIGATION AND SEARCH.—The
16 Administrator or the State, as the case may be,
17 shall, prior to filing a petition, conduct a thorough
18 investigation and search, under section 104(e) or
19 any other relevant Federal or State statutory or reg-
20 ulatory authority, for all potentially responsible par-
21 ties. All information, answers, and documents dis-
22 covered in such investigation or search and relevant
23 to any aspect of the binding allocation of responsibil-
24 ity shall, simultaneously with the filing of the peti-
25 tion, be filed in the document repository for the

1 binding allocation of responsibility. If the allocation
2 panel determines that the Administrator or the
3 State failed to conduct a diligent search for poten-
4 tially responsible parties in accordance with this
5 paragraph, and if another party performs additional
6 investigations and successfully identifies additional
7 potentially responsible parties, then the allocation
8 panel shall credit all of the reasonable costs of such
9 additional search against the assigned share, if any,
10 of the party that performed such additional inves-
11 tigation or search.

12 “(6) APPOINTMENT OF GUARDIAN FOR THE
13 HAZARDOUS SUBSTANCE SUPERFUND.—Any petition
14 filed by the Administrator shall include the name
15 and address of the person appointed to serve as the
16 guardian for the Hazardous Substance Superfund
17 for that binding allocation of responsibility. In any
18 case where a petition is initiated by a State, the Ad-
19 ministrator shall notify the Hearing Clerk of the Of-
20 fice of the Administrative Law Judges within 10
21 days after the petition is filed of the name and ad-
22 dress of the person designated by the Administrator
23 as the guardian for the Hazardous Substance
24 Superfund. If the Environmental Protection Agency
25 is also a potentially responsible party or a liable

1 party with respect to the National Priority List site
2 concerned, then the agency may participate in the
3 binding allocation of responsibility with regard to
4 such liability, but the person designated as the
5 guardian shall not represent the agency with regard
6 to the agency's status as a potentially responsible
7 party or liable party.

8 “(b) IDENTIFICATION OF POTENTIALLY RESPON-
9 SIBLE PARTIES.—

10 “(1) INITIAL STATEMENT.—(A) Not later than
11 30 days after receipt of a copy of a petition or after
12 publication in the Federal Register of a notice of the
13 filing of an initial petition (whichever is earlier)
14 under subsection (a)(4), the guardian, the State and
15 any potentially responsible party may file an initial
16 statement setting forth—

17 “(i) any defenses to liability;

18 “(ii) any equitable considerations pertain-
19 ing to any party's potential liability;

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

22 “(iv) any proposed questions or document
23 requests that the person filing the statement
24 believes should be included in the first informa-
25 tion request issued by the allocation panel; and

1 “(v) the name and address of any addi-
2 tional person or persons that the person filing
3 the statement believes may be a liable party at
4 the National Priority List site and all reason-
5 ably available information as to the relationship
6 between each proposed additional party and the
7 site.

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

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

21 “(B) Within 45 days after a person receives
22 any information request or request for production of
23 documents, such person shall file a response with the
24 Hearing Clerk. For good cause shown, the allocation
25 panel may grant a single 45-day extension for the

1 filing of any such response. Each party shall have a
2 continuing obligation to supplement its response
3 upon the receipt of additional relevant information.

4 “(3) ADDITIONAL NOMINATIONS OF POTEN-
5 Tentially RESPONSIBLE PARTIES.—The parties may
6 identify and nominate additional potentially respon-
7 sible parties until the expiration of the 120-day pe-
8 riod beginning on the date of filing of the petition.
9 Any nominations received by the Hearing Clerk after
10 that period may be disregarded by the allocation
11 panel. Each nomination shall include all reasonably
12 available information supporting the assertion that
13 the nominee is a liable party and shall be made at
14 the earliest possible time. Any party making an ad-
15 ditional nomination shall serve notice of such nomi-
16 nation on the nominated party and file a copy of
17 such notice with the Hearing Clerk. The nominated
18 party may file its initial response not later than 30
19 days after receipt of the notice. The allocation panel
20 may issue information requests and requests for the
21 production of documents to any nominated party at
22 any time.

23 “(4) INITIAL LIST OF ALL POTENTIALLY RE-
24 sponsible PARTIES.—Within six months after the
25 filing of the petition, the allocation panel shall cause

1 to be published in the Federal Register and a news-
2 paper of general circulation in the State where the
3 site is located a list identifying all parties that the
4 allocation panel preliminarily deems to be potentially
5 responsible parties with respect to the site. The allo-
6 cation panel also shall attempt to mail a copy of the
7 list to all parties to the binding allocation of respon-
8 sibility. The allocation panel shall reject the nomina-
9 tion of any person as a liable party or potentially re-
10 sponsible party if it finds that the nomination al-
11 leges no connection between the nominated person
12 and the site. The allocation panel may also identify,
13 on its own motion or the motion of a potentially re-
14 sponsible party, additional potentially responsible
15 parties at any time before issuance of the final bind-
16 ing allocation of responsibility.

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

1 evaluation of all evidence received at the time of the issu-
2 ance of the list with respect to the amount of hazardous
3 substances contributed by potentially responsible parties.

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

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

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

17 “(1) FIRST ALLOCATION ADVOCACY PAPER.—

18 Unless the allocation panel determines that it would
19 unduly delay the process, the guardian, the State,
20 and any potentially responsible party may file an al-
21 location advocacy paper with the Hearing Clerk not
22 later than 30 days after the publication of the initial
23 list of potentially responsible parties in the Federal
24 Register. Any such allocation advocacy paper, which
25 shall be served on the guardian, the State, and each

1 potentially responsible party, shall be a concise
2 statement, together with citations to relevant sup-
3 porting evidence and law, of the party's position
4 with regard to—

5 “(A) the legal and factual criteria that
6 should be used in determining whether a poten-
7 tially responsible party at the site is a liable
8 party; and

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

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

1 “(3) SECOND ALLOCATION ADVOCACY PAPER.—

2 The guardian, the State, and each potentially re-
3 sponsible party may file an allocation advocacy
4 paper with the Hearing Clerk not later than 60 days
5 after receipt of the first allocation report. The allo-
6 cation advocacy paper, which shall be served on the
7 guardian, the State, and each potentially responsible
8 party, shall be the primary opportunity for the
9 guardian, the State, and each potentially responsible
10 party to present evidence and argument regarding
11 how the liability criteria and the allocation factors
12 should be applied to such party and, if desired by
13 the person filing the paper, how those criteria and
14 factors should be applied to other potentially respon-
15 sible parties at the site.

16 “(4) HEARING.—Any potentially responsible
17 party may request a hearing on the determination
18 that such party is a liable party and on the deter-
19 mination of its assigned share. The allocation panel
20 may hold such a hearing if the allocation panel de-
21 termines that it would expedite or materially assist
22 in the resolution of disputed factual or legal issues.
23 The allocation panel shall have broad discretion in
24 managing the conduct of any such hearing, including
25 limiting the time available to each party and requir-

1 ing that parties with generally similar interests be
2 represented by a single spokesperson or common
3 counsel. The allocation panel may allow or prohibit
4 the cross-examination of witnesses.

5 “(5) RULE OF DECISION.—Any party may
6 present written evidence or argument on whether it,
7 or any other potentially responsible party, is a liable
8 party and on the appropriate assigned share for it-
9 self or any other potentially responsible party. A po-
10 tentially responsible party shall be deemed a liable
11 party if the allocation panel determines that the pre-
12 ponderance of the evidence supports the conclusion
13 that such party is liable.

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

1 on the guardian, the State, all potentially responsible
2 parties, and all liable parties.

3 “(e) DETERMINATION OF ORPHAN SHARE.—

4 “(1) ORPHAN SHARE ADVOCACY PAPER.—Un-
5 less the allocation panel determines that it would un-
6 duly delay the process, the guardian, the State, and
7 each liable party may file an orphan share advocacy
8 paper with the Hearing Clerk not later than the 30-
9 day period beginning on the date of issuance of the
10 second allocation report. The orphan share advocacy
11 paper shall be the primary opportunity for the
12 guardian, the State, and each liable party to present
13 written evidence and argument as to which liable
14 parties are orphan parties whose assigned share
15 should, in whole or in part, be assigned to the
16 orphan share.

17 “(2) ORPHAN SHARE REPORT.—Following the
18 expiration of the 30-day period referred to in para-
19 graph (1), the allocation panel shall issue an orphan
20 share allocation report identifying the orphan share.
21 The orphan share report shall be served on the
22 guardian, the State, all potentially responsible par-
23 ties, and all liable parties.

24 “(f) DETERMINATION OF NONLIABLE PARTIES.—(1)
25 At any time during the period beginning six months after

1 the filing of the petition and ending 18 months after the
2 filing of the petition, the allocation panel shall issue a list
3 identifying all potentially responsible parties that the allo-
4 cation panel determines did not contribute any amount of
5 hazardous substances to the National Priority List site.
6 The allocation panel shall base the determination on an
7 evaluation of all evidence received at the time of the issu-
8 ance of the list with respect to the amount of hazardous
9 substances contributed by potentially responsible parties.

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

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

19 “(g) FINAL BINDING ALLOCATION OF RESPONSIBIL-
20 ITY DECISION.—

21 “(1) DECISION.—(A) Not later than the dead-
22 line set forth in subparagraph (B), the allocation
23 panel shall issue a final binding allocation of respon-
24 sibility decision (in this subsection referred to as the
25 ‘final BAR decision’) based on the allocation factors

1 listed in paragraph (2). The panel shall include the
2 Government's costs of carrying out the allocation as
3 part of the response costs to be included in the final
4 BAR decision. The decision shall include a list of
5 all potentially responsible parties, a list of all liable
6 parties and the assigned share for each (including
7 all de minimis parties as determined under para-
8 graph (3)), a list of all orphan parties and the por-
9 tion of the assigned share of each orphan party that
10 is assigned to the orphan share, and the total or-
11 phan share assigned to the Revolving Fund. Where
12 an orphan party is able to pay only a portion of its
13 assigned share, the allocation panel shall allocate to
14 the orphan share the portion of the assigned share
15 that the party is unable to pay and require the party
16 to pay the remainder. The final BAR decision shall
17 provide a concise explanation of the basis for the de-
18 cision. The decision may consist, in whole or in part,
19 of a compilation of the first allocation report, the
20 second allocation report, and the orphan share re-
21 port.

22 “(B) The final BAR decision shall be issued not
23 later than 18 months after the date of publication
24 under section 503(a)(4) of notice that a petition for
25 a binding allocation of responsibility has been filed,

1 except that, in a case of exceptional complexity, the
2 final decision shall be issued not later than 24
3 months after such date.

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

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

10 “(B) The amount of hazardous substances
11 contributed by the liable party at the site con-
12 cerned, compared to the total amount of haz-
13 ardous substances at that site. The amount of
14 nonhazardous substances contributed by the lia-
15 ble party may not be considered.

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

18 “(D) The degree of involvement by the lia-
19 ble party in the generation, transportation,
20 treatment, storage, or disposal of the hazardous
21 substance.

22 “(E) The degree of care exercised by the
23 liable party with respect to the hazardous sub-
24 stance concerned, taking into account the char-
25 acteristics of such hazardous substance, and the

1 relative culpability of that party for the threat
2 to human health and the environment associ-
3 ated with the hazardous substance.

4 “(F) The degree of cooperation by the lia-
5 ble party with Federal, State, or local officials
6 to prevent any harm to the public health or the
7 environment.

8 “(G) The weight of the evidence as to the
9 liability and the appropriate share of the liable
10 party.

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

20 “(B) Not later than 60 days after issuance of
21 the final BAR decision or the issuance of the list of
22 de minimis parties under subparagraph (A), which-
23 ever is earlier, the Administrator shall make a firm
24 written offer of settlement to all de minimis parties.

25 The amount of the settlement offer for a de minimis

1 party shall be stated in dollars, not a percentage
2 share of the cleanup costs, and shall be based on the
3 Environmental Protection Agency's estimate of the
4 total cleanup cost at the site multiplied by the de
5 minimis party's allocated share as determined by the
6 allocation panel and may be increased by a reason-
7 able premium (not exceeding 100 per cent of the de
8 minimis party's allocated share) to reflect the benefit
9 of an early and complete resolution of liability, in-
10 cluding consideration of whether the remedy at the
11 site will entail multiple phases or operable units. All
12 settlement offers by the Administrator to de minimis
13 parties at the same site shall be based on the same
14 estimate of cleanup costs and the same premium.
15 The settlement offer under this subparagraph is not
16 subject to judicial review.

17 “(C) A de minimis party may accept or decline
18 a settlement offer, but any acceptance of the offer
19 must be made within 60 days after receipt of the
20 offer. A de minimis party that accepts the offer may
21 resolve its liability to the United States by paying
22 the amount of the offer to the Hazardous Substance
23 Revolving Fund. Such settlement may not be re-
24 opened after payment is made, except on grounds of
25 fraud.

1 “(D) De minimis parties that accept the settle-
2 ment offer and pay the amount of the offer shall
3 have no other liability, under Federal or State law,
4 to any person for response actions or for any past,
5 present, or future costs incurred at the site, provided
6 that they take no other actions after making such
7 settlement payment that would give rise to a sepa-
8 rate basis for their liability under this Act.

9 “(E) All proceeds from de minimis settlements
10 under this paragraph that represent the allocated
11 shares of de minimis parties at a site shall be held
12 by the Administrator for timely payment directly to
13 the person performing the response action at the
14 site. All proceeds from de minimis settlements under
15 this paragraph that represent premiums paid by de
16 minimis parties at the site shall be earmarked in the
17 Hazardous Substance Revolving Fund to be used
18 specifically for costs of response action at the site.
19 Any amounts of such settlements remaining in the
20 Revolving Fund after completion of the response ac-
21 tion shall be available in the Revolving Fund for
22 general use.

23 “(4) SERVICE AND PUBLICATION.—The binding
24 allocation of responsibility decision shall be served
25 on the guardian, the State, and all liable parties.

1 The Hearing Clerk shall cause a notice of the bind-
2 ing allocation of responsibility decision to be pub-
3 lished in the Federal Register and in a newspaper of
4 general publication in the State where the site is
5 located.

6 “(5) BINDING EFFECT.—The binding allocation
7 of responsibility decision shall be binding as to all
8 past, present, or future liability (i) for response
9 costs incurred under section 107(a)(4)(A), (B), or
10 (D), and (ii) for contribution under section 113. The
11 binding allocation of responsibility decision shall be
12 binding on all persons, including, without limitation,
13 the United States, any affected State or local gov-
14 ernmental agency or Indian Tribe, any alleged or
15 nominated potentially responsible party (regardless
16 of whether such party participates in the binding al-
17 location of responsibility), and the public.

18 “(6) EFFECT ON OTHER PROCEEDINGS.—A de-
19 termination that a person is a liable party under a
20 binding allocation of responsibility proceeding is ap-
21 plicable only with respect to liability being assigned
22 in the proceeding and not with respect to liability
23 being determined in any other criminal, civil, or ad-
24 ministrative proceeding.

1 **“SEC. 504. DUTY TO ANSWER INFORMATION REQUESTS AND**
2 **REQUESTS FOR PRODUCTION OF DOCU-**
3 **MENTS.**

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

9 “(b) CERTIFICATION OF DOCUMENTS.—Answers to
10 information requests and requests for production of docu-
11 ments shall include a certification by a responsible rep-
12 resentative who meets the criteria established in section
13 270.11(a) of title 40 of the Code of Federal Regulations
14 that the answers—

15 “(1) are true and correct to the best of their
16 knowledge;

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

20 “(3) are based on a reasonable inquiry of the
21 current and former officers, directors, employees,
22 and agents of the person to whom the request was
23 directed;

24 “(4) accurately reflect information obtained in
25 the course of conducting such search and such
26 inquiry;

1 “(5) that the person executing the certification
2 understands that there is a duty to supplement any
3 such answers if, during the binding allocation of re-
4 sponsibility, any significant additional, new, or dif-
5 ferent information becomes known or available to
6 the answerer; and

7 “(6) that the person executing the certification
8 understands that there are significant penalties for
9 submitting false information, including the possibil-
10 ity of fine and imprisonment for knowing violations.

11 “(c) SANCTION.—In addition to any other penalty or
12 sanction, any person who fails to answer an information
13 request or request for production of documents, and who
14 is determined to be a liable party, shall be assigned an
15 assigned share of up to 500 percent of whatever its as-
16 signed share would otherwise have been, or up to 50 per-
17 cent of the total liability at the site, whichever is greater.
18 If this results in a binding allocation of responsibility that
19 allocates more than 100 percent of the total liability, then
20 the excess shall be deposited into the Hazardous Sub-
21 stance Revolving Fund.

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

23 “(a) CIVIL PENALTIES.—Any person who fails to
24 submit a complete and timely answer to an allocation pan-
25 el’s information request or request for production of docu-

1 ments or other discovery request, or who submits (after
2 being notified of the requirement for a certification) a re-
3 sponse that lacks the certification required under section
4 504(b), or who makes any false or misleading material
5 statement or representation in any submission to the allo-
6 cation panel during the binding allocation of responsibility
7 process, including statements or representations in con-
8 nection with the nomination of another potentially respon-
9 sible party, shall be subject to civil penalties of up to
10 \$10,000 per day of violation. The violation shall be
11 deemed a continuing one until such time as the request
12 is answered or the necessary certification is submitted or
13 the false or misleading statement or representation is cor-
14 rected. Such penalties may be assessed by the President
15 in accordance with section 109.

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

1 **“SEC. 506. DOCUMENT REPOSITORY; CONFIDENTIALITY; NO**
2 **WAIVER.**

3 “(a) DOCUMENT REPOSITORY.—The allocation panel
4 shall establish and maintain a document repository where
5 copies of all petitions, initial statements, advocacy papers,
6 reports, answers to information requests and requests for
7 production of documents by the allocation panel, answers
8 to Federal or State information requests or requests for
9 the production of documents issued prior to the filing of
10 the petition, produced documents, and all other similar
11 material shall be maintained and organized. The docu-
12 ments and information in the document repository shall
13 be available only to the parties to the binding allocation
14 of responsibility for review and copying at their own ex-
15 pense, subject only to the confidentiality provisions of sub-
16 section (b). All responses to any information request or
17 request for production of documents by the allocation
18 panel shall be filed with the clerk for the document reposi-
19 tory and need not be served on other potentially respon-
20 sible parties, the State, or the guardian.

21 “(b) CONFIDENTIALITY.—(1) All pleadings, docu-
22 ments, and materials submitted to the allocation panel or
23 placed in the document repository, together with the
24 record of any depositions or testimony adduced during the
25 binding allocation of responsibility, shall be confidential
26 and shall not be subject to release under section 552 of

1 title 5, United States Code (the Freedom of Information
2 Act). The Hearing Clerk and each party to the binding
3 allocation of responsibility proceeding shall maintain such
4 pleadings, documents, and materials, together with the
5 record of any depositions or testimony adduced during the
6 binding allocation of responsibility, as confidential. Such
7 material shall not be discoverable or admissible in any
8 other Federal, State or local judicial, administrative, or
9 legislative proceeding of any kind whatsoever, except—

10 “(A) to the extent necessary to collect or other-
11 wise enforce in court the assigned share of a liable
12 party as determined by the binding allocation of
13 responsibility;

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

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

18 “(D) in any binding allocation of responsibility
19 involving a different site where the allocation panel
20 determines that the sites are related and that speci-
21 fied documents from the first binding allocation of
22 responsibility could materially assist the second
23 binding allocation of responsibility.

24 “(2) Notwithstanding paragraph (1)(D), if the origi-
25 nal of any document or material submitted to the alloca-

1 tion panel or placed in the document repository during the
2 binding allocation of responsibility was, while in the pos-
3 session of the party which provided it, otherwise discover-
4 able or admissible, then such original document, if subse-
5 quently sought from such party, shall remain discoverable
6 or admissible. If a fact covered in any deposition or testi-
7 mony adduced during the binding allocation of responsibil-
8 ity was, in the knowledge of the witness or deponent, oth-
9 erwise discoverable or admissible, then such testimony, if
10 subsequently sought from such other party, shall remain
11 discoverable or admissible.

12 “(c) NO WAIVER OF PRIVILEGE.—The submission of
13 documents or information pursuant to the binding alloca-
14 tion of responsibility proceeding shall not be deemed to
15 be a waiver of any privilege, applicable to the original doc-
16 ument or fact, under any Federal or State law, regulation,
17 or rule of discovery or evidence.

18 “(d) DISCOVERY.—In any case where a party to a
19 binding allocation of responsibility receives any request for
20 any pleading, document, or material, or for the record of
21 any depositions or testimony adduced in a binding alloca-
22 tion of responsibility, such party shall promptly notify the
23 person who originally submitted such item and shall pro-
24 vide such submitting person the opportunity to assert and
25 defend the confidentiality of such item. No party to the

1 binding allocation of responsibility shall release or provide
2 a copy of any pleading, document, or material, or the
3 record of any depositions or testimony adduced therein,
4 to any person not a party to such binding allocation of
5 responsibility, except in compliance with an order from a
6 court.

7 “(e) CIVIL PENALTY FOR VIOLATION OF CONFIDEN-
8 TIALITY REQUIREMENTS.—Any person who fails to main-
9 tain the confidentiality of any pleadings, documents, or
10 materials, or the record of any deposition or testimony ad-
11 duced during the binding allocation of responsibility, or
12 who releases any such information in violation of this sec-
13 tion, shall be subject to a civil penalty of up to \$25,000
14 per violation. Such a penalty may be assessed by the Presi-
15 dent in accordance with section 109.

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

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

22 “(b) JUDICIAL REVIEW.—

23 “(1) IN GENERAL.—No Federal or State court
24 shall have jurisdiction to review, modify, or enjoin
25 any aspect of any binding allocation of responsibility

1 proceeding except as expressly set forth in this sub-
2 section. No aspect of any action, decision, ruling, or
3 determination by an allocation panel in any binding
4 allocation of responsibility proceeding shall be sub-
5 ject to administrative or judicial review in any Fed-
6 eral or State court until after the final binding allo-
7 cation of responsibility decision (in this subsection
8 referred to as the ‘final BAR decision’) is issued by
9 the allocation panel. Any person determined by the
10 allocation panel to be a liable party, other than the
11 Administrator and the guardian, may obtain judicial
12 review of a final BAR decision by filing a petition
13 for review with the United States Court of Appeals
14 for the Circuit in which the facility is located or for
15 the District of Columbia.

16 “(2) PETITION.—Any such petition for review
17 must be filed within 60 days after the date of the
18 final BAR decision by the allocation panel. The peti-
19 tion shall set forth either the specific assigned share
20 of liability that the petitioner believes should have
21 been assigned to it (or, in the case of a petition filed
22 by the guardian, the assigned share that the guard-
23 ian believes should have been assigned to the orphan
24 share) in the binding allocation of responsibility, or
25 stating specifically that the petitioner believes it

1 should not have been found to have any liability at
2 all.

3 “(3) REVIEW.—Judicial review of the final
4 BAR decision shall be conducted on the administra-
5 tive record, which shall include all materials relating
6 to the issues raised on appeal by the petitioner that
7 are contained in the document repository described
8 in section 506(a). The court shall set aside the bind-
9 ing allocation of responsibility only if it is found to
10 be unsupported by substantial evidence.

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.

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

10 “(i) The petitioner shall reimburse all
11 other parties that participated in the appeal for
12 the actual attorneys’ fees and costs that they
13 incurred in defending the binding allocation of
14 responsibility decision.

15 “(ii) The petitioner may participate in the
16 settlement based on its assigned share if the pe-
17 titioner notifies the court of such intention
18 within 10 days after the court’s decision on the
19 petition.

20 “(iii) If the petitioner does not give notice
21 as described in clause (ii), the petitioner is con-
22 sidered to have not resolved its liability to the
23 United States and is subject to civil action
24 under section 106, 107(a), and 113 for the fol-

1 lowing response costs with respect to the Na-
2 tional Priority List site concerned:

3 “(I) The assigned share of the peti-
4 tioner, as determined in the final BAR de-
5 cision, plus

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

7 “(iv) A petitioner covered by clause (ii) is
8 subject to claims for contribution from, and
9 may make claims for contribution against, other
10 unsuccessful petitioners with respect to the Na-
11 tional Priority List site concerned.

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

21 **“SEC. 508. COLLECTION, ENFORCEMENT, AND IMPLEMEN-**
22 **TATION.**

23 “(a) COLLECTION.—

24 “(1) AMOUNT RECOVERABLE.—After a final
25 binding allocation of responsibility decision is made

1 with respect to a National Priority List site, any
2 creditor party may, in accordance with paragraph
3 (2), recover from any debtor party the following:

4 “(A) With respect to a debtor party who is
5 a liable party, that party’s assigned share, as
6 determined under the binding allocation of re-
7 sponsibility.

8 “(B) With respect to a debtor party which
9 is the Hazardous Substance Revolving Fund,
10 the orphan share, as determined under the
11 binding allocation of responsibility.

12 “(C) With respect to a debtor party who is
13 either a liable party or the Hazardous Sub-
14 stance Revolving Fund, any attorneys’ fees in-
15 curred by the creditor party in a judicial action
16 seeking to recover costs from the debtor party.

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

20 “(A) The creditor party shall file a cer-
21 tified copy of the final decision of the binding
22 allocation of responsibility in the United States
23 District Court for the district in which the site
24 is located.

1 “(B) The creditor party shall file a verified
2 statement with the same court specifying the
3 actions taken and the costs incurred by the
4 creditor party, and stating that such actions
5 and costs are not inconsistent with the National
6 Contingency Plan.

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

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

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

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

1 est thereon and damages of up to the amount equal to
2 2 times the sum specified in the demand notice.

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

23 “(d) SUBSEQUENT ADDITIONS TO ORPHAN
24 SHARE.—If good faith collection and enforcement efforts,
25 whether by the Federal or State government or by any

1 other creditor party, against a liable party results in a ju-
2 dicial or administrative determination that such liable
3 party is an orphan party, then such liable party's share
4 will be added to the orphan share amount and will be re-
5 coverable from the Hazardous Substance Revolving Fund.

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

15 **“SEC. 509. TRANSITION PROVISIONS.**

16 “(a) IN GENERAL.—Except as provided in subsection
17 (b), no person may initiate any administrative or judicial
18 action under section 106, subparagraph (A), (B), or (D)
19 of section 107(a)(4), or section 113, or under any other
20 Federal or State law or regulation, for the recovery of re-
21 sponse costs, contribution, or performance of response ac-
22 tions regarding any National Priority List site until 90
23 days after a final binding allocation of responsibility is
24 issued.

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

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

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

21 “(c) STAY OF EXISTING ACTIONS.—

22 “(1) STAY OF PENDING ENFORCEMENT AC-
23 TIONS.—In any case where, as of the date of enact-
24 ment of this title, the Administrator or the State has
25 already initiated any administrative or judicial en-

1 enforcement action regarding the liability of any party
2 under section 106, subparagraph (A), (B), or (D) of
3 section 107(a)(4), or section 113, or under any other
4 Federal or State law or regulation for the response
5 costs, contribution, or performance of response ac-
6 tions, an allocation panel or court may issue a stay
7 of such action. Any such stay may last until 90 days
8 after a binding allocation of responsibility is issued,
9 any judicial review of such allocation is completed,
10 and a final administrative or judicial allocation deci-
11 sion is rendered.

12 “(2) STAY OF PENDING PRIVATE PARTY LITIGA-
13 TION.—In any case where, as of the date of enact-
14 ment of this title, any private person has initiated
15 any administrative or judicial action regarding the
16 liability of any party at a National Priority List site
17 under section 106, subparagraph (A), (B), or (D) of
18 section 107(a)(4), or section 113, or under any other
19 Federal or State law or regulation for the response
20 costs, contribution, or performance of response ac-
21 tions, such action shall be automatically stayed until
22 90 days after a binding allocation of responsibility is
23 issued, any judicial review of such allocation is com-
24 pleted, and a final administrative or judicial alloca-
25 tion decision is rendered.

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

14 “(e) LIMITATIONS ON EXISTING ACTIONS.—(1) The
15 time period described in paragraph (2) shall not be count-
16 ed in determining the statute of limitations applicable to
17 any administrative or judicial action under section 106,
18 subparagraph (A), (B), or (D) of section 107(a)(4), or sec-
19 tion 113, or under any other Federal or State law or regu-
20 lation, for the recovery of costs, for contribution, or for
21 the investigation, cleanup, or remediation of any National
22 Priority List site.

23 “(2) The time period referred to in paragraph (1) is
24 the period beginning on the date that any person first files
25 a petition for the initiation of a binding allocation of re-

1 sponsibility for that site and ending on the date that a
2 binding allocation of responsibility is issued.

3 **“SEC. 510. VOLUNTARY SETTLEMENTS.**

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

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

16 “(2) The voluntary binding allocation of respon-
17 sibility shall not allocate any costs or require-
18 ments—

19 “(A) to the orphan share, unless the
20 guardian agrees, in writing, to such allocation;
21 or

22 “(B) to any person who is not a signatory
23 to the voluntary binding allocation of respon-
24 sibility.

1 “(3) Signatories to the voluntary binding alloca-
2 tion of responsibility shall be entitled to contribution
3 protection as specified in section 508(e). Such sig-
4 natories shall be prohibited from pursuing any cost
5 recovery action or contribution against any non-sig-
6 natory, but may seek additional recovery against
7 non-signatories based on a contract for insurance or
8 indemnification.

9 “(4) Signatories to the voluntary binding alloca-
10 tion of responsibility shall be entitled to enforce it in
11 the same manner as any binding allocation of re-
12 sponsibility final decision by the allocation panel.

13 **“SEC. 511. NEW BINDING ALLOCATIONS OF RESPONSIBIL-**
14 **ITY.**

15 “A binding allocation of responsibility shall constitute
16 a permanent determination of the assigned share of each
17 liable party and of the orphan share and, except for addi-
18 tions to the orphan share pursuant to section 508(d) and
19 judicially mandated changes pursuant to section 507(b),
20 the binding allocation of responsibility shall not be subject
21 to any change or revision for at least 5 years after the
22 date of the binding allocation of responsibility final deci-
23 sion. Thereafter a new binding allocation of responsibility
24 process shall be available only if the party requesting it
25 demonstrates that, due to new information not reasonably

1 available during the first binding allocation of responsibil-
2 ity, a 35 percent or greater increase in total waste-in vol-
3 ume has been discovered. If such a request for a new bind-
4 ing allocation of responsibility is granted, the same rules
5 and procedures described for initial binding allocations of
6 responsibility apply to the new or revised binding alloca-
7 tion of responsibility. New binding allocations of respon-
8 sibility shall only apply to funds actually expended after
9 the effective date of the new binding allocation of respon-
10 sibility decision, with no credits for funds already ex-
11 pended. Subsequent new binding allocations of responsibil-
12 ity requests are prohibited until 5 years after the date of
13 issuance of the prior new binding allocation of responsibil-
14 ity.”.

15 **SEC. 111. SITE REDEVELOPMENT.**

16 Section 107 of the Comprehensive Environmental Re-
17 sponse, Compensation, and Liability Act of 1980 (42
18 U.S.C. 9607), as amended by section 109, is further
19 amended by adding at the end the following:

20 “(s) SITE REDEVELOPMENT.—

21 “(1) EXEMPTION.—No person who is a quali-
22 fied redeveloper shall be liable under this title for
23 costs or damages with respect to the release of any
24 hazardous substance or the threat of any such re-
25 lease from any facility solely by reason of an agree-

1 ment by such person to redevelop such facility after
2 a response action has been completed (as determined
3 by the President) at such facility.

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

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

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

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

20 (2) by adding at the end of paragraph (2) the
21 following: “Such conduct shall be evaluated based on
22 the generally accepted standards and practices in ef-
23 fect at the time and place that the conduct
24 occurred.”.

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

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

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

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

20 (d) INDEMNIFICATION FOR THREATENED RE-
21 LEASES.—Section 119(c)(5) of such Act is amended in
22 subparagraph (A) by inserting “or threatened release”
23 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—FUNDING**

13 **SEC. 201. HAZARDOUS SUBSTANCE REVOLVING FUND.**

14 (a) ESTABLISHMENT OF FUND.—There is estab-
15 lished in the Treasury of the United States a fund to be
16 known as the Hazardous Substance Revolving Fund (here-
17 inafter in this section referred to as the “Revolving
18 Fund”), consisting of such amounts as may be—

19 (1) appropriated, credited, or transferred to the
20 Hazardous Substance Superfund; and

21 (2) credited or transferred to the Revolving
22 Fund.

23 (b) OFFSETTING COLLECTIONS.—For purposes of
24 the Congressional Budget Act of 1974 (2 U.S.C. 601 et
25 seq.) and part C of the Balanced Budget and Emergency

1 Deficit Act of 1985 (2 U.S.C. 900 et seq.), all amounts
2 received in the Revolving Fund shall be treated as offset-
3 ting collections.

4 (c) USE OF REVOLVING FUND.—Amounts in the Re-
5 volving Fund shall be available, as provided in appropria-
6 tion Acts, only for purposes of making expenditures—

7 (1) to carry out the purposes of paragraphs (1)
8 and (2) of section 111(a) of the Comprehensive En-
9 vironmental Response, Compensation, and Liability
10 Act of 1980 (42 U.S.C. 9611(a));

11 (2) to carry out the purposes of paragraphs (3),
12 (4), (5), (6), (8), (9), and (11) of section 111(c) of
13 such Act;

14 (3) to carry out the purposes of section 111(m)
15 of such Act;

16 (4) for reimbursement as provided in section
17 107(n) of such Act (as added by section 102 of this
18 Act); and

19 (5) to carry out the purposes specified in title
20 V of such Act (as added by section 110 of this Act).

21 (d) INVESTMENT.—(1) It shall be the duty of the
22 Secretary of the Treasury to invest such portion of the
23 Revolving Fund as is not, in his judgment, required to
24 meet current withdrawals. Such investments may be made

1 only in interest-bearing obligations of the United States.

2 For such purpose, such obligations may be acquired—

3 (A) on original issue at the issue price, or

4 (B) by purchase of outstanding obligations at
5 the market price.

6 (2) Any obligation acquired by the Revolving Fund
7 may be sold by the Secretary of the Treasury at the mar-
8 ket price.

9 (3) The interest on, and the proceeds from the sale
10 or redemption of, any obligation held in the Revolving
11 Fund shall be credited to and form a part of the Revolving
12 Fund.

13 (e) EFFECTIVE DATE.—This section shall take effect
14 on October 1, 1996.

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