107TH CONGRESS
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HOUSE OF REPRESENTATIVES

REPT. 107–70
Part 2

SMALL BUSINESS LIABILITY PROTECTION ACT

MAY 21, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 1831]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 1831) to provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY AND PURPOSE

H.R. 1831, the "Small Business Liability Protection Act" amends the Superfund statute to provide an exemption from Superfund liability for "de micromis" parties and households, small businesses, and small nonprofit organizations that sent only "municipal solid waste" to a Superfund site.

BACKGROUND AND NEED FOR LEGISLATION

Under the Comprehensive Environmental Response, Compensation and Liability Act (commonly referred to as Superfund), persons can be held liable for the costs of cleaning up a Superfund site if they sent any material containing hazardous substances to that site. As a result, under Superfund, a person can be held liable for cleanup costs even if they sent only a miniscule amount of waste to the site or if the hazardous substances they sent to the site were contained in ordinary household garbage.

Too often, small volume contributors of wastes at a Superfund site, and households, small businesses, and small nonprofit organizations that sent ordinary trash to a Superfund site have been sued to contribute to Superfund cleanups. Absent legislation, the

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only way to protect these entities from lawsuits is for the Environmental Protection Agency (EPA) to first sue, and then reach a settlement, with each party on a case-by-case basis. Under its Superfund program administrative reforms, EPA has tried to get smaller parties out of Superfund litigation through de minimis settlements. However, this approach can consume a great deal of agency resources and can cause these small parties to incur attorneys' fees. In addition, many small parties do not understand that the legal process to obtain protection from further lawsuits, a de minimis settlement, requires that a lawsuit be filed that names them as a party. In testimony before the Water Resources and Environment Subcommittee in the 106th Congress, a representative of the National Federation of Independent Business described this process, as utilized at the Quincy Landfill Superfund Site, as an "ongoing nightmare for small businesses, their families, friends, and neighbors in Quincy, Illinois."

This legislation addresses this matter by providing statutory exemptions from liability for certain parties, and by adjusting the burden of proof in actions against these parties, as described below in the section-by-section analysis of the bill.

DISCUSSION OF COMMITTEE BILL AND SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 of the bill specifies that the short title is the "Small Business Liability Protection Act."

Section 2. Small business liability relief

Section 2 of the bill makes amendments to section 107 and section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act.

(a) Exemptions. Subsection (a) of the bill amends section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act by adding a new subsection (o) "De Micromis Exemption," and a new subsection (p) "Municipal Solid Waste Exemption."

New subsection (o) exempts persons from Superfund liability for generating or transporting only a "de micromis" volume of waste disposed of at a facility on the National Priorities List (a Superfund site).

Paragraph (1) of new subsection (o) specifies that a person is not liable for response costs for generating or transporting wastes that are disposed of at a Superfund site under section 107(a)(3) or section 107(a)(4) if a person can demonstrate that the person sent only 110 gallons (the equivalent of two drums of liquid waste) or 200 pounds of material containing hazardous substances to the facility. This exemption only applies to activities that occurred before April 1, 2001.

Paragraph (2)(A)(i) specifies that the exemption in paragraph (1) does not apply if the President determines that a party's wastes have contributed or could contribute significantly, either individually or in the aggregate, to response costs or natural resource damages with respect to the facility. The Committee intends that the phrase "in the aggregate" refer to all of the material containing hazardous substances that is generated and sent to the facility by

the party that is otherwise eligible for the "de micromis" exemption. The Committee does not intend that the phrase "in the aggregate" be interpreted to encompass all of the material containing hazardous substances disposed of at the facility by different parties.

Paragraph (2)(A)(ii) specifies that the exemption in paragraph (1) does not apply if the President determines that a party has failed to comply with an information request or subpoena issued by the President under the Comprehensive Environmental Response, Compensation, and Liability Act. The Committee intends that this determination lie solely within the discretion of the President and that the President will exercise this discretion as appropriate to the facts and circumstances presented in each case.

Paragraph (2)(A)(ii) also specifies that the exemption in paragraph (1) does not apply if the President determines that a party has impeded or is impeding the response action or natural resource restoration with respect to the facility.

Finally, paragraph (2)(B) specifies that the exemption in paragraph (1) does not apply if a party's waste disposal activities are the basis for a criminal conviction that has not been vitiated on appeal or otherwise.

Paragraph (3) of new subsection (o) provides that any determinations made by the President under paragraph (2)(A) are not subject to judicial review.

Paragraph (4) of new subsection (o) specifies where the burden of proof lies in third-party contribution actions. Under paragraph (1), the burden of demonstrating that a party is eligible for an exemption generally falls on the party seeking the exemption, where the plaintiff is a Federal, State, or local government. Under paragraph (4) the burden shall be on all other plaintiffs in contribution actions to demonstrate that a party is not eligible for the exemption.

New subsection (p) exempts certain persons from Superfund liability for generating "municipal solid waste" disposed of at a Superfund site.

Paragraph (1) of new subsection (p) specifies that a person is not liable for response costs under section 107(a)(3) for generating municipal solid waste disposed of at a Superfund site if the person can demonstrate that the person is a household (and the waste came from the household), a business with not more than 100 employees (and the waste came from the small business), or a nonprofit organization with not more than 100 employees (at the location that generated the waste).

Paragraph (2)(A) of new subsection (p) specifies that the exemption in paragraph (1) does not apply if the President determines that a party's municipal solid waste has contributed or could contribute significantly, either individually or in the aggregate, to response costs or natural resource damages with respect to the facility. The Committee intends that the phrase "in the aggregate" refer to all of the municipal solid waste that is generated and sent to the facility by the party that is otherwise eligible for the "municipal solid waste" exemption. The Committee does not intend that the phrase "in the aggregate" be interpreted to encompass all of the municipal solid waste contained in a landfill disposed of by different parties.

Paragraph (2)(B) specifies that the exemption in paragraph (1) does not apply if the President determines that a party has failed to comply with an information request or subpoena issued by the President under the Comprehensive Environmental Response, Compensation, and Liability Act. The Committee intends that this determination lie solely within the discretion of the President and that the President will exercise this discretion as appropriate to the facts and circumstances presented in each case.

Paragraph (2)(C) specifies that the exemption in paragraph (1) does not apply if the President determines that a party has impeded or is impeding the response action or natural resource restoration with respect to the facility.

Paragraph (3) of new subsection (p) provides that any determinations made by the President under paragraph (2) are not subject to judicial review.

Paragraph (4) of new subsection (p) defines "municipal solid waste" as waste material that is generated by a household or waste that is generated by a commercial, industrial, or institutional entity that is essentially the same as household waste, is collected and disposed as part of normal municipal solid waste collection services, and contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household. The relative quantity refers to the percentage of hazardous substances to total municipal solid waste. The Committee intends that the percentage of hazardous substances in the municipal solid waste for commercial, institutional and industrial entities that qualify for this exemption should be no greater than the percentage of hazardous substances in municipal solid waste that a typical single-family household generates and sends to a landfill.

Paragraph (5) of new subsection (p) specifies where the burden of proof lies for certain actions. Under paragraph (1), the burden of demonstrating that a party is eligible for the exemption generally falls on the party seeking the exemption. However, paragraph (5) specifies when this general rule does not apply. First, it does not apply to actions for response costs brought under section 107 or actions for contribution to response costs under 113 relating to wastes disposed of on or after April 1, 2001, if a party (other than a Federal, State, or local government) brings the action. Second, it does not apply to any action for response costs under section 107 or action for contribution to response costs under section 113 relating to wastes disposed of before April 1, 2001. In these actions, the plaintiff has the burden of demonstrating that a defendant is not eligible for the municipal solid waste exemption.

Paragraph (6) of new subsection (p) prohibits contribution actions, other than actions brought by a Federal, State, or local government, against households for municipal solid waste disposal.

Paragraph (7) of new subsection (p) specifies that nongovernmental plaintiffs must pay the attorneys' fees and expert witness fees if they bring a contribution action against a person who is not liable for contribution based on the "municipal solid waste" exemption in new subsection (p) or the "de micromis" exemption in new subsection (o).

(b) Expedited Settlement.- Subsection (b) of the bill amends section 122(g) of the Comprehensive Environmental Response, Com-

pensation, and Liability Act to add provisions concerning expedited settlements based on a limited ability to pay.

Sec. 3. Effect on concluded actions

Section (3) of the bill provides that the amendments made by this Act shall not apply to or affect any preexisting settlement or administrative order.

The Committee does not intend that the Small Business Liability Protection Act give rise to negative implications with respect to the Agency's existing settlement authorities for potentially responsible parties that are ineligible for the Act's exemptions. In particular, although the "de micromis" and "municipal solid waste" exemptions do not apply at sites that are not on the National Priorities List, the Committee does not intend to affect the authority to reach settlements with other potentially responsible parties under the Act.

HEARINGS

The Water Resources and Environment Subcommittee held hearings on proposals to provide Superfund liability relief for small businesses as part of broader Superfund reform proposals in the 104th, 105th and 106th Congresses. On October 29, 1997, the Subcommittee received testimony regarding third- and fourth-party contribution actions brought against small businesses at the Keystone Landfill Superfund site in Pennsylvania. On May 12, 1999, the Subcommittee received testimony regarding direct EPA actions against small businesses at the Quincy Landfill Superfund site in Illinois.

COMMITTEE CONSIDERATION

On May 16, 2001, the Committee met in open session and ordered the bill reported to the House by unanimous voice vote.

ROLLCALL VOTES

Clause 3(b) of Rule XIII of the House of Representatives requires each Committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 1831 reported. A motion to order H.R. 1831 reported to the House, without amendment, was unanimously agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been time-

ly submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that H.R. 1831 contains no measure that authorizes funding, so no statement of general performance and objectives for which any measure authorizes funding is required.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1831 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2001.

Hon. DON YOUNG,
Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1831, the Small Business Liability Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), Victoria Heid Hall (for the state and local impact), and Lauren Marks (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1831—Small Business Liability Protection Act

Summary: H.R. 1831 would establish two new exemptions from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, commonly known as the Superfund Act, which governs the cleanup of sites contaminated with hazardous substances. A "de micromis" liability exemption would apply to those who generate or transport very small volumes of waste; the second new exemption would apply to certain small businesses and organizations that dispose of municipal solid waste. A "de minimus" settlement under CERCLA refers to a settlement between the Environmental Protection Agency (EPA) and parties who are responsible for only a comparatively small amount and comparatively low toxicity of hazard substances at a Superfund site. "De micromis" settlements are a subset of de minimus settlements that may be available to parties who are responsible for a miniuscule amount of waste at a Superfund site.

CBO estimates that enacting H.R. 1831 would result in no significant impact on the federal budget. Because enactment of this bill could affect offsetting receipts (a form of direct spending), pay-as-you-go procedures would apply, but CBS estimated that any such effects would not be significant.

H.R. 1831 contains no intergovernmental or private-sector mandates as defined in the unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Major Provisions: Under the de micromis exemption that would be established under the bill, those who generate or transport less than 200 pounds of waste, or 110 gallons of material containing hazardous waste disposed of at a National Priorities List (NPL) site before April 1, 2001, would be released from Superfund liability. This exemption would not apply to those whose waste could significantly contribute to cleanup costs or natural resource damages, those who fail to comply with government requests or subpoenas for information, those who impede cleanup work at the site, or anyone who has been convicted of a criminal violation related to waste disposal activities at the site.

Under the municipal solid waste exemption that would be established under the bill, households, and businesses or nonprofit organizations with not more than 100 employees would be released from Superfund liability for generating municipal solid waste (which includes household waste and other waste containing little or no hazardous substances) disposed of at a NPL site. This exemption would not apply to those whose waste could significantly contribute to cleanup costs or natural resource damages, those who fail to comply with government requests or subpoenas for information, or those who impede cleanup work at the site. Unlike the de micromis exemption, this exemption would apply regardless of when the waste was generated.

Estimated cost to the Federal Government: The Environmental Protection Agency's enforcement program attempts to recover any costs the agency incurs at Superfund cleanup projects that are the responsibility of private parties (known as potentially responsible parties, or PRPs). Under H.r. 1831, CBO estimates that such future cost recoveries could be reduced because the Superfund liability of some PRPs would be eliminated. PRPs who have generated or transported small volumes of waste or who have generated municipal solid waste, however, are rarely pursued to recover cleanup expenses under EPA's current enforcement practices. EPA does not consider the pursuit of these types of PRPs to be consistent with the intent of CERCLA, nor a cost-effective use of government enforcement resources.

Based on information from EPA, CBO estimates that only a negligible amount of funds are recovered by EPA each year from generators of municipal solid waste who seek settlements with EPA under CERCLA. Under EPA's current policy, such, PRPs seeking settlements with EPA can pay $5.30 per ton of municipal solid waste disposed of at the site to the agency and be relived of any future liability. Enacting this bill would eliminate the need for some PRPs to seek such a settlement. However, because there are so few of these settlements and because EPA does not pursue the recovery of costs from PRPs who generate or transport very small amounts of waste disposed of at a site, CBO estimates that any re-

duction in the amount of funds recovered for the Treasury would be less than $500,000 each year. Furthermore, to the extent EPA could recover the exempted PRP's share of the costs from any other remaining PRPs at a particular site, there would be no reduction in costs recovered.

pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 1831 could affect direct spending, however, CBO estimates any additional costs would be negligible.

Estimated impact on state local, and tribal governments: H.R. 1831 contains no intergovernmental mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments. The bill would amend current law concerning the liability under CERCLA of persons generating or transporting small amounts of waste. These changes in liability are not preemptions of state law. They could make it more difficult for any states that currently rely on CERCLA to recover costs and damages under their own cleanup programs from parties whose liability now would be eliminated by the bill. However, these changes could benefit state, local, and tribal government if their liability would be eliminated. On balance, because EPA's current policy under CERCLA is not to pursue the small parties affected by this bill, such effects would not be significant.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On May 17, 2001, CBO transmitted a cost estimate for H.R. 1831, the Small Business Liability Protection Act, as ordered reported by the House Committee on Energy and Commerce on May 17, 2001. The two versions of H.R. 1831 are identical, as are the cost estimates.

Estimate prepared by: Federal Costs: Susanne S. Mehlman. Impact on State, Local, and Tribal Governments: Victoria Heid Hall. Impact on the Private Sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1.)

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

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TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

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LIABILITY

SEC. 107. (a) * * *

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(o) DE MICROMIS EXEMPTION.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this Act if liability is based solely on paragraph (3) or (4) of subsection (a), and the person, except as provided in paragraph (4) of this subsection, can demonstrate that—

(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

(2) EXCEPTIONS.—Paragraph (1) shall not apply in a case in which—

(A) the President determines that—

(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response ac-

tion or natural resource restoration with respect to the facility; or

(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

(4) NONGOVERNMENTAL THIRD-PARTY CONTRIBUTION ACTIONS.—In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this Act, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

(p) MUNICIPAL SOLID WASTE EXEMPTION.—

(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is—

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

(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

(C) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term "affiliate" has the meaning of that term provided in the definition of "small business concern" in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

(2) EXCEPTION.—Paragraph (1) shall not apply in a case in which the President determines that—

(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act; or

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

(3) NO JUDICIAL REVIEW.—A determination by the President under paragraph (2) shall not be subject to judicial review.

(4) DEFINITION OF MUNICIPAL SOLID WASTE.—

(A) IN GENERAL.—For purposes of this subsection, the term "municipal solid waste" means waste material—

(i) generated by a household (including a single or multifamily residence); and

(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material—

(I) is essentially the same as waste normally generated by a household;

(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

(B) EXAMPLES.—Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

(C) EXCLUSIONS.—The term "municipal solid waste" does not include—

(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

(5) BURDEN OF PROOF.—In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under section 107 or 113 by—

(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemp-

tion for entities and organizations described in paragraph (1)(B) and (C) are not met.

(6) CERTAIN ACTIONS NOT PERMITTED.—No contribution action may be brought by a party, other than a Federal, State, or local government, under this Act with respect to circumstances described in paragraph (1)(A).

(7) COSTS AND FEES.—A nongovernmental entity that commences, after the date of the enactment of this subsection, a contribution action under this Act shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o).

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SEC. 122. SETTLEMENTS.

(a) * * *

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(g) DE MINIMIS SETTLEMENTS.—

(1) * * *

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(7) REDUCTION IN SETTLEMENT AMOUNT BASED ON LIMITED ABILITY TO PAY.—

(A) IN GENERAL.—The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

(B) CONSIDERATIONS.—In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

(C) INFORMATION.—A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

(D) ALTERNATIVE PAYMENT METHODS.—If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

(8) ADDITIONAL CONDITIONS FOR EXPEDITED SETTLEMENTS.—

(A) WAIVER OF CLAIMS.—The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this Act) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

(B) FAILURE TO COMPLY.—The President may decline to offer a settlement to a potentially responsible party under

this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

(C) RESPONSIBILITY TO PROVIDE INFORMATION AND ACCESS.—A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 104(e).

(9) BASIS OF DETERMINATION.—If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

(10) NOTIFICATION.—As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.

(11) NO JUDICIAL REVIEW.—A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

(12) NOTICE OF SETTLEMENT.—After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.

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