

SUBSTITUTE OFFERED BY Mr. Towns
TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE

Strike all after the enacting clause and insert the following:

1

2 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
4 “Community Revitalization and Brownfield Cleanup Act
5 of 1999”.

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

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.

TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL
CLEANUP

- Sec. 101. Definitions.
- Sec. 102. Inventory and site assessment.
- Sec. 103. Grants for revolving loan programs.
- Sec. 104. Limitations on use of funds.
- Sec. 105. Reports.
- Sec. 106. Effect on other laws.
- Sec. 107. Regulations.
- Sec. 108. Authorizations of appropriations.

TITLE II—INNOCENT LANDOWNER, PROSPECTIVE PURCHASER,
AND CONTIGUOUS PROPERTY OWNER LIABILITY

- Sec. 201. Innocent landowners.
- Sec. 202. Limitations on liability for response costs for prospective purchasers.
- Sec. 203. Contiguous or nearby properties.

TITLE III—SELLER LIABILITY RELIEF AND STATE VOLUNTARY
RESPONSE PROGRAMS

- Sec. 301. State voluntary response programs.

TITLE IV—LIABILITY RELIEF

- Sec. 401. Ratification of municipal solid waste settlement policy.
Sec. 402. Small business and homeowner municipal solid waste exemption.
Sec. 403. De micromis exemption.
Sec. 404. Ability to pay.
Sec. 405. Recycling transactions.

TITLE V--STUDY

- Sec. 501. Study of future funding needs.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Brownfields are parcels of land that contain
4 or contained abandoned or under-used commercial or
5 industrial facilities, the expansion or redevelopment
6 of which is complicated by the presence or potential
7 presence of hazardous substances, pollutants, or con-
8 taminants.

9 (2) Brownfields, which may number in the hun-
10 dreds of thousands nationwide, threaten the environ-
11 ment, devalue surrounding property, erode local tax
12 bases, and prevent job growth.

13 (3) Despite potentially great productive value,
14 prospective developers may avoid brownfields be-
15 cause of the uncertainty of cleanup and development
16 costs, which leads to construction on undeveloped so-
17 called greenfield sites, creating infrastructure prob-
18 lems and reducing the amount of open spaces.

19 (4) Cleanup and redevelopment of brownfields
20 would reduce environmental contamination, encour-

1 age job growth, and curb the development of green-
2 fields.

3 (5) State voluntary programs to address envi-
4 ronmental contamination, and addressing liability
5 concerns to encourage developers and current owners
6 to invest in brownfield sites, can be very effective in
7 promoting the cleanup and redevelopment of
8 brownfields.

9 **TITLE I—BROWNFIELD REMEDI-**
10 **ATION AND ENVIRONMENTAL**
11 **CLEANUP**

12 **SEC. 101. DEFINITIONS.**

13 In this title:

14 (1) ADMINISTRATOR.—The term “Adminis-
15 trator” means the Administrator of the Environ-
16 mental Protection Agency.

17 (2) BROWNFIELD SITE.—The term “brownfield
18 site” means a parcel of land that contains or con-
19 tained abandoned or under-used commercial or in-
20 dustrial facilities, the expansion or redevelopment of
21 which may be complicated by the presence or poten-
22 tial presence of hazardous substances, pollutants, or
23 contaminants.

24 (3) ENVIRONMENT.—The term “environment”
25 has the meaning given the term in section 101 of the

1 Comprehensive Environmental Response, Compensation,
2 tion, and Liability Act of 1980 (42 U.S.C. 9601).

3 (4) FACILITY.—The term “facility” has the
4 meaning given the term in section 101 of the Com-
5 prehensive Environmental Response, Compensation,
6 and Liability Act of 1980 (42 U.S.C. 9601).

7 (5) GRANT.—The term “grant” includes a co-
8 operative agreement.

9 (6) HAZARDOUS SUBSTANCE.—The term “haz-
10 arduous substance” has the meaning given the term
11 in section 101 of the Comprehensive Environmental
12 Response, Compensation, and Liability Act of 1980
13 (42 U.S.C. 9601).

14 (7) INDIAN TRIBE.—The term “Indian tribe”
15 has the meaning given the term in section 101 of the
16 Comprehensive Environmental Response, Compensation,
17 tion, and Liability Act of 1980 (42 U.S.C. 9601).

18 (8) LOCAL GOVERNMENT.—The term “local
19 government” means any city, county, town, town-
20 ship, parish, village, regional council, or other gen-
21 eral purpose political subdivision of a State; any In-
22 dian tribe; Guam, the Northern Mariana Islands, the
23 Virgin Islands, American Samoa, the District of Co-
24 lumbia, and the Trust Territory of the Pacific Is-
25 lands, or any general purpose political subdivision

1 thereof; any redevelopment agency that is chartered
2 or otherwise sanctioned by a State or other unit of
3 local government; or any combination of local gov-
4 ernments.

5 (9) PERSON.—The term “person” has the
6 meaning given the term in section 101 of the Com-
7 prehensive Environmental Response, Compensation,
8 and Liability Act of 1980 (42 U.S.C. 9601).

9 (10) POLLUTANT OR CONTAMINANT.—The term
10 “pollutant or contaminant” has the meaning given
11 the term in section 101 of the Comprehensive Envi-
12 ronmental Response, Compensation, and Liability
13 Act of 1980 (42 U.S.C. 9601).

14 (11) RELEASE.—The term “release” has the
15 meaning given the term in section 101 of the Com-
16 prehensive Environmental Response, Compensation,
17 and Liability Act of 1980 (42 U.S.C. 9601).

18 (12) RESPONSE ACTION.—The term “response
19 action” has the meaning given the term “response”
20 in section 101 of the Comprehensive Environmental
21 Response, Compensation, and Liability Act of 1980
22 (42 U.S.C. 9601).

23 (13) SITE ASSESSMENT.—

24 (A) IN GENERAL.—The term “site assess-
25 ment” means an investigation that determines

1 the nature and extent of a release or potential
2 release of a hazardous substance or pollutant or
3 contaminant at a brownfield site and meets the
4 requirements of subparagraph (B).

5 (B) INVESTIGATION.—For the purposes of
6 this paragraph, an investigation that meets the
7 requirements of this subparagraph—

8 (i) shall include—

9 (I) an onsite evaluation; and

10 (II) if necessary, sufficient test-
11 ing, sampling, and other field-data-
12 gathering activities to accurately de-
13 termine whether the brownfield site is
14 contaminated and whether threats to
15 human health and the environment
16 are posed by the release of hazardous
17 substances, pollutants, or contami-
18 nants at the brownfield site; and

19 (ii) may include—

20 (I) review of such information re-
21 garding the brownfield site and pre-
22 vious uses as is available at the time
23 of the review;

24 (II) an offsite evaluation, if ap-
25 propriate; and

1 (III) a marketing analysis.

2 (14) STATE.—The term “State” has the mean-
3 ing given the term in section 101 of the Comprehen-
4 sive Environmental Response, Compensation, and
5 Liability Act of 1980 (42 U.S.C. 9601).

6 **SEC. 102. INVENTORY AND SITE ASSESSMENT.**

7 (a) IN GENERAL.—The Administrator shall establish
8 a program to award grants to local governments to inven-
9 tory brownfield sites, which may include associated rivers,
10 streams, or lakes or mine-scarred land, and to conduct site
11 assessments of such brownfield sites.

12 (b) SCOPE OF PROGRAM.—

13 (1) GRANT AWARDS.—To carry out subsection
14 (a), the Administrator may, on approval of an appli-
15 cation, provide financial assistance to a local govern-
16 ment.

17 (2) GRANT APPLICATION PROCEDURE.—The
18 Administrator shall establish a grant application
19 procedure for this section. The Administrator may
20 include in such procedure requirements of the Na-
21 tional Contingency Plan, to the extent that those re-
22 quirements are relevant and appropriate to the pro-
23 gram under this section.

24 (3) APPROVAL OF APPLICATION.—

1 (A) IN GENERAL.—In making a decision
2 whether to approve an application under this
3 subsection, the Administrator shall—

4 (i) consider the need of the local gov-
5 ernment for financial assistance to carry
6 out inventories and site assessments under
7 this section;

8 (ii) consider the ability of the appli-
9 cant to carry out inventories and site as-
10 sessments under this section;

11 (iii) consider the ability of the appli-
12 cant to manage a grant; and

13 (iv) consider such other factors as the
14 Administrator considers relevant to carry
15 out this section.

16 (B) GRANT CONDITIONS.—As a condition
17 of awarding a grant under this section, the
18 Administrator—

19 (i) shall require the recipient of the
20 grant to notify the State in which the re-
21 cipient is located of the receipt of the
22 grant; and

23 (ii) may, on the basis of the criteria
24 considered under subparagraph (A), attach

1 such other conditions to the grant as the
2 Administrator determines appropriate.

3 (4) GRANT AMOUNT.—The amount of a grant
4 awarded to any local government under this section
5 for inventory and site assessment of one or more
6 brownfield sites shall not exceed \$500,000.

7 (5) TERMINATION OF GRANTS.—If the Admin-
8 istrator determines that a local government that re-
9 ceives a grant under this section is in violation of a
10 condition of a grant, the Administrator may termi-
11 nate the grant made to the local government and re-
12 quire full or partial repayment of the grant.

13 (6) AUTHORITY TO AWARD GRANTS TO
14 STATES.—The Administrator may award a grant to
15 a State under the program established under this
16 section if the Administrator determines that a grant
17 to the State is necessary in order to facilitate the re-
18 ceipt of funds by one or more local governments that
19 otherwise do not have the capabilities, such as per-
20 sonnel and other resources, to manage grants under
21 the program.

22 (c) TRAINING AND TECHNICAL ASSISTANCE.—The
23 Administrator may provide training and technical assist-
24 ance to individuals and organizations, as appropriate, to

1 inventory brownfield sites and conduct site assessments or
2 cleanup of brownfield sites.

3 **SEC. 103. GRANTS FOR REVOLVING LOAN PROGRAMS.**

4 (a) IN GENERAL.—

5 (1) ESTABLISHMENT.—The Administrator shall
6 establish a program to award grants to be used by
7 local governments to capitalize revolving loan funds
8 for the cleanup of brownfield sites.

9 (2) LOANS.—The loans may be provided by the
10 local government to finance cleanups of eligible
11 brownfield sites by the local government, or by an
12 owner or developer of an eligible brownfield site (in-
13 cluding a local government).

14 (b) SCOPE OF PROGRAM.—

15 (1) IN GENERAL.—

16 (A) GRANTS.—In carrying out subsection
17 (a), the Administrator may award a grant to a
18 local government that submits an application
19 that is approved by the Administrator.

20 (B) USE OF GRANT.—The grant shall be
21 used by the local government to capitalize a re-
22 volving loan fund to be used for cleanup of one
23 or more brownfield sites, which may include as-
24 sociated rivers, streams, or lakes or mine-
25 scarred land.

1 (C) GRANT APPLICATION PROCEDURE.—

2 The Administrator shall establish a grant appli-
3 cation procedure for this section. The Adminis-
4 trator may include in such procedure require-
5 ments of the National Contingency Plan, to the
6 extent that those requirements are relevant and
7 appropriate to the program under this section.

8 (2) GRANT APPROVAL.—In determining wheth-
9 er to award a grant under this section, the Adminis-
10 trator shall consider—

11 (A) the need of the local government for fi-
12 nancial assistance to clean up brownfield sites,
13 taking into consideration the financial resources
14 available to the local government;

15 (B) the ability of the local government to
16 ensure that the applicants repay the loans in a
17 timely manner;

18 (C) the extent to which the cleanup of
19 brownfield sites would reduce health and envi-
20 ronmental risks caused by the release of haz-
21 ardous substances, pollutants, or contaminants
22 at, or from, brownfield sites;

23 (D) the demonstrable potential of
24 brownfield sites for stimulating economic devel-

1 opment or creation of recreational areas on
2 completion of cleanup;

3 (E) the demonstrated ability of the local
4 government to administer such a loan program;

5 (F) the demonstrated experience of the
6 local government regarding brownfield sites and
7 the reuse of contaminated land, including
8 whether the local government has received any
9 grant under the Comprehensive Environmental
10 Response, Compensation, and Liability Act of
11 1980 (42 U.S.C. 9601 et seq.) to assess
12 brownfield sites, except that applicants who
13 have not previously received such a grant may
14 be considered for awards under this section;

15 (G) the experience of administering any
16 loan programs by the entity, including the loan
17 repayment rates; and

18 (H) such other factors as the Adminis-
19 trator considers relevant to carry out this sec-
20 tion.

21 (3) GRANT AMOUNT.—The amount of a grant
22 made to an applicant under this section shall not ex-
23 ceed \$500,000. The Administrator may make an
24 award under this section in an amount up to
25 \$1,000,000 if the Administrator determines that

1 such action would achieve particularly significant en-
2 vironmental and economic benefits.

3 (c) GRANT AGREEMENTS.—Each grant under this
4 section for a revolving loan fund shall be made pursuant
5 to a grant agreement. At a minimum, the grant agreement
6 shall include provisions that ensure the following:

7 (1) COMPLIANCE WITH LAW.—The local govern-
8 ment will include in all loan agreements a require-
9 ment that the loan recipient shall comply with all
10 laws applicable to the cleanup, and shall ensure that
11 the cleanup protects human health and the environ-
12 ment.

13 (2) REPAYMENT.—The local government will
14 require repayment of the loan consistent with this
15 section.

16 (3) USE OF FUNDS.—The local government will
17 use the funds, including repayment of principal, in-
18 terest, and fees, solely for purposes of establishing
19 and capitalizing a loan program in accordance with
20 this title and of cleaning up brownfield sites.

21 (4) REPAYMENT OF FUNDS.—The local govern-
22 ment will require in each loan agreement, and take
23 necessary steps to ensure, that the loan recipient will
24 use the loan funds solely for cleaning up brownfield
25 sites, and will require the return of any excess funds

1 immediately on a determination by the appropriate
2 local official that the cleanup has been completed.

3 (5) NONTRANSFERABILITY.—A local govern-
4 ment receiving a grant under this section may not
5 transfer funds received under the grant to any other
6 local government unless the Administrator agrees to
7 the transfer in writing.

8 (6) NOTICE TO STATE.—The local government
9 will notify the State in which the local government
10 is located of the receipt of the grant and of the iden-
11 tity of recipients of loans made under the revolving
12 loan fund.

13 (d) AUDITS.—

14 (1) IN GENERAL.—The Inspector General of
15 the Environmental Protection Agency shall audit a
16 portion of the grants awarded under this section to
17 ensure that all funds provided under those grants
18 are used for the purposes set forth in this section.

19 (2) FUTURE GRANTS.—The result of the audit
20 shall be taken into account in awarding any future
21 grants to the local government.

22 (e) TERMINATION OF GRANTS.—If the Administrator
23 determines that a local government that receives a grant
24 under this section is in violation of a condition of a grant,
25 the Administrator may terminate the grant made to the

1 local government and require full or partial repayment of
2 the grant.

3 (f) AUTHORITY TO AWARD GRANTS TO STATES.—
4 The Administrator may award a grant to a State under
5 the program established under this section at the request
6 of a local government in the State if the Administrator
7 determines that a grant to the State is necessary in order
8 to facilitate the receipt of funds by one or more local gov-
9 ernments that otherwise do not have the capabilities, such
10 as personnel and other resources, to manage grants under
11 the program.

12 **SEC. 104. LIMITATIONS ON USE OF FUNDS.**

13 (a) EXCLUDED FACILITIES.—

14 (1) FACILITIES.—A grant for site inventory and
15 assessment under section 102 or to capitalize a re-
16 volving loan fund under section 103 may not be used
17 for any activity involving—

18 (A) a facility or portion of a facility that
19 is the subject of an order or other action under
20 section 106(a) of the Comprehensive Environ-
21 mental Response, Compensation, and Liability
22 Act of 1980 (42 U.S.C. 9606(a)), or a response
23 action under section 104 of the Comprehensive
24 Environmental Response, Compensation, and
25 Liability Act of 1980 (42 U.S.C. 9604);

1 (B) a facility included, or proposed for in-
2 clusion, on the National Priorities List main-
3 tained by the President under the Comprehen-
4 sive Environmental Response, Compensation,
5 and Liability Act of 1980 (42 U.S.C. 9601 et
6 seq.);

7 (C) an NPL-caliber facility, as defined in
8 paragraph (2);

9 (D) a facility that is subject to corrective
10 action under section 3004(u) or 3008(h) of the
11 Solid Waste Disposal Act (42 U.S.C. 6924(u)
12 or 6928(h)) to which a corrective action permit
13 or order has been issued or modified to require
14 the implementation of corrective measures;

15 (E) any land disposal unit with respect to
16 which a closure notification under subtitle C of
17 the Solid Waste Disposal Act (42 U.S.C. 6921
18 et seq.) has been submitted and closure require-
19 ments have been specified in a closure plan or
20 permit;

21 (F) a facility at which there has been a re-
22 lease of a polychlorinated biphenyl and that is
23 subject to the Toxic Substances Control Act (15
24 U.S.C. 2601 et seq.);

1 (G) a facility with respect to which an ad-
2 ministrative or judicial order or decree requir-
3 ing cleanup has been issued or entered into by
4 the President under—

5 (i) the Comprehensive Environmental
6 Response, Compensation, and Liability Act
7 of 1980 (42 U.S.C. 9601 et seq.);

8 (ii) the Solid Waste Disposal Act (42
9 U.S.C. 6901 et seq.);

10 (iii) the Federal Water Pollution Con-
11 trol Act (33 U.S.C. 1251 et seq.);

12 (iv) the Toxic Substances Control Act
13 (15 U.S.C. 2601 et seq.); or

14 (v) the Safe Drinking Water Act (42
15 U.S.C. 300f et seq.);

16 (II) the portion of a facility at which as-
17 sistance for response activities may be obtained
18 under subtitle I of the Solid Waste Disposal Act
19 (42 U.S.C. 6991 et seq.) from the Leaking Un-
20 derground Storage Tank Trust Fund estab-
21 lished by section 9508 of the Internal Revenue
22 Code of 1986; or

23 (I) a facility owned or operated by a de-
24 partment, agency, or instrumentality of the

1 United States, except for land held in trust by
2 the United States for an Indian tribe.

3 (2) DEFINITION.—For purposes of paragraph
4 (1), the term “NPL-caliber facility” means a facility
5 for which the President, in consultation with the
6 State concerned, has prepared or is preparing a haz-
7 ardous ranking system scoring package or that satis-
8 fies such other definition as the Administrator may
9 promulgate by regulation. The term does not include
10 a facility for which the President—

11 (A) has obtained a score under the hazard-
12 ous ranking system; and

13 (B) based on that score, has made a deter-
14 mination not to list on the National Priorities
15 List.

16 (3) EXCEPTION.—Notwithstanding paragraph
17 (1), the President may, on a facility-by-facility basis,
18 allow a grant under section 102 to be used for an
19 activity involving any facility listed in subparagraph
20 (D), (E), (F), (G)(ii), (G)(iii), (G)(iv), (G)(v), (H),
21 or (I) of paragraph (1) if the President finds that
22 such use would promote economic development while
23 still protecting human health and the environment.
24 In the case of a facility listed in subparagraph (I),
25 the President may use the authority in the preceding

1 sentence only if the facility is not a facility described
2 in subparagraph (A), (B), (C), or (G)(i).

3 (b) FINES AND COST-SHARING.—A grant made
4 under this title may not be used to pay any fine or penalty
5 owed to a State or the Federal Government, or to meet
6 any Federal cost-sharing requirement.

7 (c) RESPONSIBILITY FOR CLEANUP ACTION.—Funds
8 made available under this title may not be used to relieve
9 a local government of the commitment or responsibilities
10 of the local government under State law to assist or carry
11 out cleanup actions at brownfield sites.

12 **SEC. 105. REPORTS.**

13 (a) IN GENERAL.—Not later than one year after the
14 date of enactment of this Act, and not later than January
15 31 of each of the 3 calendar years thereafter, the Adminis-
16 trator shall prepare and submit a report describing the
17 results of each program established under this title to—

18 (1) the Committees on Commerce and on
19 Transportation and Infrastructure of the House of
20 Representatives; and

21 (2) the Committee on Environment and Public
22 Works of the Senate.

23 (b) CONTENTS OF REPORT.—Each report shall, with
24 respect to each of the programs established under this
25 title, include a description of—

1 (1) the number of applications received by the
2 Administrator during the preceding calendar year;

3 (2) the number of applications approved by the
4 Administrator during the preceding calendar year;
5 and

6 (3) the allocation of assistance under sections
7 102 and 103 among the local governments.

8 **SEC. 106. EFFECT ON OTHER LAWS.**

9 Nothing in this title changes, modifies, or otherwise
10 affects the liability of any person or the obligations im-
11 posed or authorities provided under any other law or regu-
12 lation, including—

13 (1) the Comprehensive Environmental Re-
14 sponse, Compensation, and Liability Act of 1980 (42
15 U.S.C. 9601 et seq.);

16 (2) the Solid Waste Disposal Act (42 U.S.C.
17 6901 et seq.);

18 (3) the Federal Water Pollution Control Act
19 (33 U.S.C. 1251 et seq.);

20 (4) the Toxic Substances Control Act (15
21 U.S.C. 2601 et seq.); and

22 (5) the Safe Drinking Water Act (42 U.S.C.
23 300f et seq.).

1 **SEC. 107. REGULATIONS.**

2 (a) IN GENERAL.—The Administrator may issue
3 such regulations as are necessary to carry out this title.

4 (b) PROCEDURES AND STANDARDS.—The regulations
5 shall include such procedures and standards as the Admin-
6 istrator considers necessary, including procedures and
7 standards for evaluating an application for a grant sub-
8 mitted under this title or for a loan under a revolving loan
9 program for which a grant is provided under section 103.

10 **SEC. 108. AUTHORIZATIONS OF APPROPRIATIONS.**

11 (a) SITE ASSESSMENT PROGRAM.—To carry out sec-
12 tion 102, there is authorized to be appropriated to the Ad-
13 ministrator \$35,000,000 for each of fiscal years 2000
14 through 2004.

15 (b) GRANTS FOR REVOLVING LOAN PROGRAMS.—To
16 carry out section 103, there is authorized to be appro-
17 priated to the Administrator \$65,000,000 for each of fis-
18 cal years 2000 through 2004.

19 (c) STATE VOLUNTARY RESPONSE PROGRAMS.—For
20 each of the first 5 fiscal years commencing after the date
21 of enactment of this Act, \$15,000,000 is authorized to be
22 appropriated to the Administrator for assistance to States
23 to develop or enhance State voluntary response programs
24 pursuant to title III.

1 (d) AVAILABILITY OF FUNDS.—Amounts appro-
2 priated under this section shall remain available until ex-
3 pended.

4 **TITLE II—INNOCENT LAND-**
5 **OWNER, PROSPECTIVE PUR-**
6 **CHASER, AND CONTIGUOUS**
7 **PROPERTY OWNER LIABILITY**

8 **SEC. 201. INNOCENT LANDOWNERS.**

9 (a) ENVIRONMENTAL SITE ASSESSMENT.—Section
10 107 of the Comprehensive Environmental Response, Com-
11 pensation, and Liability Act of 1980 (42 U.S.C. 9607) is
12 amended by adding at the end the following new sub-
13 section:

14 “(a) INNOCENT LANDOWNERS.—

15 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
16 MENT.—A person who has acquired real property
17 after April 15, 1994, shall have made all appropriate
18 inquiry within the meaning of subparagraph (B) of
19 section 101(35) only if such person establishes that,
20 within 180 days prior to the time of acquisition, an
21 environmental site assessment of the real property
22 was conducted which meets the requirements of
23 paragraph (2).

24 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
25 SESSMENT.—For purposes of this subsection, the

1 term 'environmental site assessment' means an as-
2 sessment conducted in accordance with the stand-
3 ards set forth in the American Society for Testing
4 and Materials (ASTM) Standard E1527-94, titled
5 'Standard Practice for Environmental Site Assess-
6 ments: Phase I Environmental Site Assessment
7 Process' or with alternative standards issued by rule
8 by the Administrator or promulgated or developed
9 by others and designated by rule by the Adminis-
10 trator. Before issuing or designating alternative
11 standards, the Administrator shall first conduct a
12 study of commercial and industrial practices con-
13 cerning environmental site assessments in the trans-
14 fer of real property in the United States. Any such
15 standards issued or designated by the Administrator
16 shall also be deemed to constitute commercially rea-
17 sonable and generally accepted standards and prac-
18 tices for purposes of this title. In issuing or des-
19 ignating any such standards, the Administrator shall
20 consider requirements governing each of the follow-
21 ing:

22 (A) Interviews of owners, operators, and
23 occupants of the property to determine informa-
24 tion regarding the potential for contamination.

1 “(B) Review of historical sources as nec-
2 essary to determine previous uses and occupan-
3 cies of the property since the property was first
4 developed. For purposes of this subparagraph,
5 the term ‘historical sources’ means any of the
6 following, if they are reasonably ascertainable:
7 recorded chain of title documents regarding the
8 real property, including all deeds, easements,
9 leases, restrictions, and covenants, aerial photo-
10 graphs, fire insurance maps, property tax files,
11 USGS 7.5 minute topographic maps, local
12 street directories, building department records,
13 zoning/land use records, and any other sources
14 that identify past uses and occupancies of the
15 property.

16 “(C) Determination of the existence of re-
17 corded environmental cleanup liens against the
18 real property which have arisen pursuant to
19 Federal, State, or local statutes.

20 “(D) Review of reasonably ascertainable
21 Federal, State, and local government records of
22 sites or facilities that are likely to cause or con-
23 tribute to contamination at the real property,
24 including, as appropriate, investigation reports
25 for such sites or facilities; records of activities

1 likely to cause or contribute to contamination at
2 the real property, including landfill and other
3 disposal location records, underground storage
4 tank records, hazardous waste handler and gen-
5 erator records and spill reporting records; and
6 such other reasonably ascertainable Federal,
7 State, and local government environmental
8 records which could reflect incidents or activi-
9 ties which are likely to cause or contribute to
10 contamination at the real property.

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

18 “(F) Any specialized knowledge or experi-
19 ence on the part of the landowner.

20 “(G) The relationship of the purchase
21 price to the value of the property if
22 uncontaminated.

23 “(H) Commonly known or reasonably as-
24 certainable information about the property.

1 “(I) The obviousness of the presence or
2 likely presence of contamination at the prop-
3 erty, and the ability to detect such contamina-
4 tion by appropriate investigation.

5 If a copy or reasonable facsimile of a record is pub-
6 licly available by request (within reasonable time and
7 cost constraints) and the record is practically review-
8 able, the record shall be considered to be reasonably
9 ascertainable for purposes of this paragraph.

10 “(3) APPROPRIATE INQUIRY.—A person shall
11 not be treated as having made all appropriate in-
12 quiry under paragraph (1) unless—

13 “(A) the person has maintained a compila-
14 tion of the information reviewed and gathered
15 in the course of the environmental site assess-
16 ment;

17 “(B) the person exercised appropriate care
18 with respect to hazardous substances found at
19 the facility by taking reasonable steps to stop
20 on-going releases, prevent threatened future re-
21 leases of hazardous substances, and prevent or
22 limit human or natural resource exposure to
23 hazardous substances previously released into
24 the environment; and

1 “(C) the person provides full cooperation,
2 assistance, and facility access to persons au-
3 thorized to conduct response actions or natural
4 resource restoration at the facility, including
5 the cooperation and access necessary for the in-
6 stallation, integrity, operation, and maintenance
7 of any complete or partial response action or
8 natural resource restoration at the facility.”.

9 (b) EXCEPTION.—Section 107(b)(3)(a) of the Com-
10 prehensive Environmental Response, Compensation, and
11 Liability Act of 1980 (42 U.S.C. 9606(b)(3)(a)) is amend-
12 ed by inserting “(except as provided in subsection (o))”
13 after “exercised due care”.

14 (c) CONFORMING AMENDMENTS.—Section 101(35)
15 of the Comprehensive Environmental Response, Com-
16 pensation, and Liability Act of 1980 (42 U.S.C. 9601(35))
17 is amended—

18 (1) in subparagraph (A), by striking “, unless
19 the real property” and inserting “. A defendant
20 owner or operator of a facility may only assert under
21 section 107(b)(3) that an act or omission of a pre-
22 vious owner or operator of that facility did not occur
23 in connection with a contractual relationship if the
24 real property”; and

25 (2) in subparagraph (B)—

1 (A) by inserting “(as specified in section
2 107(o))” after “all appropriate inquiry”; and

3 (B) by striking “For purposes of the pre-
4 ceding sentence” and inserting “For purposes
5 of the application of the preceding sentence to
6 acquisitions occurring on or before April 15,
7 1994.”.

8 **SEC. 202. LIMITATIONS ON LIABILITY FOR RESPONSE**
9 **COSTS FOR PROSPECTIVE PURCHASERS.**

10 (a) **LIMITATIONS ON LIABILITY.**—Section 107 of the
11 Comprehensive Environmental Response, Compensation,
12 and Liability Act of 1980 (42 U.S.C. 9607) is further
13 amended by adding at the end the following new sub-
14 section:

15 “(p) **LIMITATIONS ON LIABILITY FOR PROSPECTIVE**
16 **PURCHASERS.**—To the extent the liability of a person,
17 with respect to a release or the threat of a release from
18 a facility, is based solely on subsection (a)(1), the person
19 shall not be liable under this Act if the person—

20 “(1) is a bona fide prospective purchaser of the
21 facility or an operator of a facility owned by such a
22 bona fide prospective purchaser;

23 “(2) does not impede the performance of any
24 response action or natural resource restoration at a
25 facility;

1 “(3) provided all legally required notices with
2 respect to the discovery or release of any hazardous
3 substances at the facility;

4 “(4) exercised appropriate care with respect to
5 hazardous substances found at the facility by taking
6 reasonable steps to—

7 “(A) stop ongoing releases;

8 “(B) prevent threatened future releases of
9 hazardous substances; and

10 “(C) prevent or limit human or natural re-
11 source exposure to hazardous substances pre-
12 viously released into the environment;

13 “(5) provides full cooperation, assistance, and
14 facility access to such persons as are authorized to
15 conduct response actions at the facility, including
16 the cooperation and access necessary for the installa-
17 tion, integrity, operation, and maintenance of any
18 complete or partial response action at the facility;
19 and

20 “(6) is not liable, or is not affiliated with any
21 other person that is liable, for response costs at the
22 facility, through any direct or indirect familial rela-
23 tionship, or any contractual, corporate, or financial
24 relationship other than that created by the instru-

1 ments by which title to the facility is conveyed or fi-
2 nanced.”.

3 (b) PROSPECTIVE PURCHASER AND WINDFALL
4 LIEN.—Section 107 of the Comprehensive Environmental
5 Response, Compensation, and Liability Act of 1980 (as
6 amended by subsection (a)) is amended by adding after
7 subsection (p) the following new subsection:

8 “(q) PROSPECTIVE PURCHASER AND WINDFALL
9 LIEN.—

10 “(1) IN GENERAL.—In any case in which the
11 United States has incurred unrecovered costs of re-
12 sponse not inconsistent with the National Contingency
13 Plan at a facility for which an owner of the
14 facility is not liable by reason of subsection (p), and
15 the conditions described in paragraph (3) are met,
16 the United States shall have a lien on the facility,
17 or may obtain, from the appropriate responsible
18 party or parties, a lien on other property or other
19 assurances of payment satisfactory to the Adminis-
20 trator, for the unrecovered costs.

21 “(2) AMOUNT; DURATION.—The lien—

22 “(A) shall be for an amount not to exceed
23 the lesser of the amount of the United States
24 costs of response not inconsistent with the Na-
25 tional Contingency Plan or the amount of the

1 increase in fair market value of the property at-
2 tributable to the response action at the time of
3 a subsequent sale or other disposition of the
4 property;

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

8 “(C) shall be subject to the requirements
9 for notice and validity specified in subsection
10 (D)(3); and

11 “(D) shall continue until the earlier of sat-
12 isfaction of the lien or recovery of all United
13 States costs of response not inconsistent with
14 the National Contingency Plan incurred at the
15 facility, notwithstanding any statute of limita-
16 tions provided in section 113.

17 Nothing in this subsection prevents the United
18 States and a purchaser from entering into a settle-
19 ment at any time that extinguishes a lien under this
20 subsection.

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

23 “(A) RESPONSE ACTION.—An action for
24 which the United States has incurred unre-
25 covered costs of response not inconsistent with

1 the National Contingency Plan is carried out at
2 the facility.

3 “(B) FAIR MARKET VALUE.—The response
4 action increases the fair market value of the fa-
5 cility.”.

6 (c) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
7 CHASER.—Section 101 of the Comprehensive Environ-
8 mental Response, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9601) is amended by adding at the end
10 the following:

11 “(39) BONA FIDE PROSPECTIVE PURCHASER.—
12 The term ‘bona fide prospective purchaser’ means a
13 person who acquires ownership of a facility after the
14 date of enactment of the Community Revitalization
15 and Brownfield Cleanup Act of 1999 who can estab-
16 lish each of the following by a preponderance of the
17 evidence:

18 “(A) DISPOSAL PRIOR TO ACQUISITION.—
19 All active disposal of hazardous substances at
20 the facility occurred before the person acquired
21 the facility.

22 “(B) INQUIRY.—

23 “(i) IN GENERAL.—The person made
24 all appropriate inquiry as provided in sec-
25 tion 101(35)(B) into the previous owner-

1 ship and uses of the facility in accordance
2 with generally accepted good commercial
3 and customary standards and practices.

4 “(ii) STANDARDS.—The ASTM stand-
5 ards described in section 107(o)(2) or the
6 alternative standards issued or designated
7 by the President pursuant to that section
8 shall satisfy the requirements of this sub-
9 paragraph.

10 “(iii) RESIDENTIAL PROPERTY.—In
11 the case of property in residential or other
12 similar use at the time of purchase by a
13 nongovernmental or noncommercial entity,
14 a site inspection and title search that re-
15 veal no basis for further investigation shall
16 satisfy the requirements of this subpara-
17 graph.”.

18 “(C) NOTICES.—The person provided all
19 legally required notices with respect to the dis-
20 covery or release of any hazardous substances
21 at the facility.

22 “(D) CARE.—The person exercised appro-
23 priate care with respect to hazardous sub-
24 stances found at the facility by taking reason-
25 able steps to—

1 “(i) stop ongoing releases;

2 “(ii) prevent threatened future re-
3 releases of hazardous substances; and

4 “(iii) prevent or limit human or natu-
5 ral resource exposure to hazardous sub-
6 stances previously released into the envi-
7 ronment.

8 “(E) COOPERATION, ASSISTANCE, AND AC-
9 CESS.—The person provides full cooperation,
10 assistance, and facility access to such persons
11 as are authorized to conduct response actions at
12 the facility, including the cooperation and ac-
13 cess necessary for the installation, integrity, op-
14 eration, and maintenance of any complete or
15 partial response action at the facility.

16 “(F) RELATIONSHIP.—The person is not
17 potentially liable, or is not affiliated with any
18 other person that is potentially liable, for re-
19 sponse costs at the facility, through any direct
20 or indirect familial relationship, or any contrac-
21 tual, corporate, or financial relationship other
22 than that created by the instruments by which
23 title to the facility is conveyed or financed.”.

1 **SEC. 203. CONTIGUOUS OR NEARBY PROPERTIES.**

2 Section 107 of the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9607) is further amended by adding at the end
5 the following new subsection:

6 “(r) CONTIGUOUS PROPERTIES.—(1) A person who
7 owns or operates real property, that is contiguous to or
8 otherwise similarly situated with respect to other real
9 property not owned or operated by that person, and that
10 is or may be contaminated by a release or threatened re-
11 lease of hazardous substances from such other real prop-
12 erty, shall not be considered to be an owner or operator
13 of a facility under subsection (a)(1) or (2) solely by reason
14 of such contamination, if such person establishes by a pre-
15 ponderance of the evidence that—

16 “(A) such person exercised appropriate care
17 with respect to those hazardous substances on or
18 under such person’s property by taking reasonable
19 steps to—

20 “(i) stop ongoing releases;

21 “(ii) prevent threatened future releases of
22 hazardous substances; and

23 “(iii) prevent or limit human, environ-
24 mental, or natural resource exposure to hazard-
25 ous substances previously released into the envi-
26 ronment;

1 “(B) such person did not cause, contribute to,
2 consent to, or exacerbate the release;

3 “(C) such person provided all legally required
4 notices with respect to the discovery of the release;

5 “(D) such person is not otherwise potentially
6 liable and is not affiliated with any other person
7 that is potentially liable for response costs at the fa-
8 cility, through any direct or indirect familial rela-
9 tionship, or any contractual, corporate, or financial
10 relationship other than that created by the instru-
11 ments by which title to the real property is conveyed
12 or financed;

13 “(E) at the time the person acquired the prop-
14 erty, the person conducted all appropriate inquiry
15 within the meaning of subparagraph (B) of section
16 101(35) and did not know and had no reason to
17 know of the presence of such contamination on the
18 property being acquired; and

19 “(F) such person provides full cooperation, as-
20 sistance, and access to such other persons as are au-
21 thorized to conduct response actions or natural re-
22 source restoration at the real property, including the
23 cooperation and access necessary for the installation,
24 integrity, operation, and maintenance of any com-

1 plete or partial response action or natural resource
2 restoration at the real property.

3 “(2) With respect to hazardous substances in ground-
4 water beneath such person’s property solely as a result
5 of subsurface migration in an aquifer from a source or
6 sources outside the property, appropriate care under para-
7 graph (1)(A) shall not require that such person either con-
8 duct groundwater investigations or install groundwater re-
9 mediation systems, except in accordance with the Environ-
10 mental Protection Agency’s May 24, 1995, “Policy To-
11 ward Owners of Property Containing Contaminated
12 Aquifers”.

13 “(3) Any person who at the time of acquisition of
14 real property had, or had reason to have had, the knowl-
15 edge specified in paragraph (1)(E) may nonetheless qual-
16 ify as a bona fide prospective purchaser under section
17 101(39) if such person otherwise would fall within that
18 definition.

19 “(4) Nothing in this subsection shall limit defenses
20 to liability that otherwise may be available to such persons
21 nor shall be construed to impose liability not otherwise im-
22 posed by section 107(a) on such persons.

23 “(5) The President may issue an assurance of no en-
24 forcement action under this Act to any such person and
25 may grant any such person protection against cost recov-

1 ery, and contribution actions pursuant to section
2 113(f)(2).”.

3 **TITLE III—SELLER LIABILITY**
4 **RELIEF AND STATE VOL-**
5 **UNTARY RESPONSE PRO-**
6 **GRAMS**

7 **SEC. 301. STATE VOLUNTARY RESPONSE PROGRAMS.**

8 Title I of the Comprehensive Environmental Re-
9 sponse, Compensation, and Liability Act of 1980 (42
10 U.S.C. 9601 et seq.) is amended by adding at the end
11 the following new section:

12 **“SEC. 127. STATE VOLUNTARY RESPONSE PROGRAMS.**

13 “(a) **PURPOSES AND OBJECTIVES.**—The purposes
14 and objectives of this section are—

15 “(1) to significantly increase the pace of re-
16 sponse activities at contaminated sites by promoting
17 and encouraging the creation, development, and en-
18 hancement of State voluntary response programs;
19 and

20 “(2) to benefit the public health and welfare
21 and the environment by cleaning up and returning
22 contaminated sites to economically productive or
23 other beneficial uses.

24 “(b) **ASSISTANCE TO STATES.**—The Administrator
25 shall provide technical, financial, and other assistance to

1 States to establish and enhance voluntary response pro-
2 grams. The Administrator shall encourage the States to
3 develop risk sharing pools, indemnity pools, or insurance
4 mechanisms to provide financing for response actions
5 under their voluntary response programs.

6 “(c) LIMITATION ON FEDERAL AUTHORITY TO LIST
7 ON NATIONAL PRIORITIES LIST.—Except as provided in
8 subsection (e), the President shall not list on the National
9 Priorities List the portion of a facility subject to a re-
10 sponse action plan approved under a State program quali-
11 fied under subsection (i)—

12 “(1) while substantial and continuous voluntary
13 response activities are being conducted in compliance
14 with the plan at that portion of the facility; or

15 “(2) after response activities conducted in com-
16 pliance with the plan at that portion of the facility
17 have been certified by the State as complete.

18 “(d) LIMITATION ON FEDERAL AUTHORITY TO RE-
19 COVER COSTS.—(1) Except as provided in subsection (e),
20 if substantial and continuous voluntary response activities
21 are being conducted at a voluntary response action site
22 in compliance with a response action plan approved under
23 a State program qualified under subsection (i) or if re-
24 sponse activities conducted at such a site in compliance
25 with the plan have been certified by the State as complete,

1 then the Administrator may not bring a claim under sec-
2 tion 107(a) for response costs incurred with respect to a
3 release or substantial threat of release of a hazardous sub-
4 stance addressed by the response action plan unless one
5 or more of the following conditions is met:

6 “(A) The Administrator determines that the re-
7 lease or threat of release may present an imminent
8 and substantial endangerment to the public health
9 or welfare or the environment.

10 “(B) The State requests the Administrator to
11 take action.

12 “(C) Conditions at the site that were unknown
13 to the State at the time the response action plan
14 was approved by the State are discovered, and such
15 conditions indicate, as determined by the Adminis-
16 trator or the State, that the response action does not
17 protect human health or the environment.

18 “(D) The cleanup of the site under the response
19 action plan of the State program no longer protects
20 human health or the environment, as determined by
21 the Administrator or the State, because of a change
22 or a proposed change in the use of the site.

23 “(2) For purposes of this subsection, the term ‘vol-
24 untary response action site’ means a site subject to a re-

1 response action plan under a State program qualified under
2 subsection (i).

3 “(3) Nothing in this subsection shall preclude the Ad-
4 ministrator from recovering costs incurred by the Admin-
5 istrator at a site before State approval of a response action
6 plan for that site.

7 “(e) FACILITIES INELIGIBLE FOR LIMITATIONS.—

8 “(1) FACILITIES.—The limitations on Federal
9 authority provided under subsections (c) and (d) do
10 not apply to any of the following facilities:

11 (A) a facility or portion of a facility that
12 is the subject of an order or other action under
13 section 106(a) of this Act, or a response action
14 under section 104 of this Act;

15 “(B) A facility included, or proposed for
16 inclusion, on the National Priorities List main-
17 tained by the President under this Act.

18 “(C) An NPL-caliber facility, as defined in
19 paragraph (2).

20 “(D) A facility that is subject to corrective
21 action under section 3004(u) or 3008(h) of the
22 Solid Waste Disposal Act (42 U.S.C. 6924(u)
23 or 6928(h)) to which a corrective action permit
24 or order has been issued or modified to require
25 the implementation of corrective measures.

1 “(E) Any land disposal unit with respect
2 to which a closure notification under subtitle C
3 of the Solid Waste Disposal Act (42 U.S.C.
4 6921 et seq.) has been submitted and closure
5 requirements have been specified in a closure
6 plan or permit.

7 “(F) A facility at which there has been a
8 release of a polychlorinated biphenyl and that is
9 subject to the Toxic Substances Control Act (15
10 U.S.C. 2601 et seq.).

11 “(G) A facility with respect to which an
12 administrative or judicial order or decree re-
13 quiring cleanup has been issued or entered into
14 by the President under—

15 “(i) this Act;

16 “(ii) the Solid Waste Disposal Act (42
17 U.S.C. 6901 et seq.);

18 “(iii) the Federal Water Pollution
19 Control Act (33 U.S.C. 1251 et seq.);

20 “(iv) the Toxic Substances Control
21 Act (15 U.S.C. 2601 et seq.); or

22 “(v) the Safe Drinking Water Act (42
23 U.S.C. 300f et seq.).

24 “(H) The portion of a facility at which as-
25 sistance for response activities may be obtained

1 under subtitle I of the Solid Waste Disposal Act
2 (42 U.S.C. 6991 et seq.) from the Leaking Un-
3 derground Storage Tank Trust Fund estab-
4 lished by section 9508 of the Internal Revenue
5 Code of 1986.

6 “(I) A facility owned or operated by a de-
7 partment, agency, or instrumentality of the
8 United States, except for land held in trust by
9 the United States for an Indian tribe.

10 “(2) DEFINITION.—For purposes of paragraph
11 (1), the term ‘NPL-caliber facility’ means a facility
12 for which the President, in consultation with the
13 State concerned, has prepared or is preparing a haz-
14 ardous ranking system scoring package or that satis-
15 fies such other definition as the Administrator may
16 promulgate by regulation. The term does not include
17 a facility for which the President—

18 “(A) has obtained a score under the haz-
19 ardous ranking system; and

20 “(B) based on that score, has made a de-
21 termination not to list on the National Prior-
22 ities List.

23 “(3) EXCEPTION.—Notwithstanding paragraph
24 (1), the President may, on a facility-by-facility basis
25 and pursuant to an agreement with the State con-

1 cerned, apply the limitations on authority provided
2 under subsections (c) and (d) to any facility listed
3 in subparagraph (D), (E), (F), (G)(ii), (G)(iii),
4 (G)(iv), (G)(v), (H), or (I) of paragraph (1) if the
5 President finds that such use would promote eco-
6 nomic development while still protecting human
7 health and the environment. In the case of a facility
8 listed in subparagraph (I), the President may use
9 the authority in the preceding sentence only if the
10 facility is not a facility described in subparagraph
11 (A), (B), (C), or (G)(i).

12 “(f) EPA ASSISTANCE TO STATES FOR STATE VOL-
13 UNTARY RESPONSE PROGRAMS.—The Administrator shall
14 assist States to establish and administer State voluntary
15 response programs that—

16 “(1) provide for voluntary response actions that
17 ensure adequate site assessment and protect human
18 health and the environment;

19 “(2) provide opportunities for technical assist-
20 ance with respect to voluntary response actions;

21 “(3) provide meaningful opportunities for public
22 participation on issues that affect the community,
23 which shall include prior notice and opportunity for
24 comment in the selection or significant modification
25 of response actions and which may include involve-

1 ment of State and local health officials during site
2 assessment;

3 “(4) provide streamlined procedures to ensure
4 expeditious voluntary response actions;

5 “(5) provide adequate oversight, enforcement
6 authorities, resources, and practices—

7 “(A) to ensure that voluntary response ac-
8 tions protect human health and the environ-
9 ment and are conducted in a timely manner in
10 accordance with a State-approved response ac-
11 tion plan or other instrument; and

12 “(B) to ensure completion of voluntary re-
13 sponse actions if the person conducting the vol-
14 untary response action fails or refuses to com-
15 plete the necessary voluntary response actions
16 that protect human health and the environ-
17 ment, including operation and maintenance or
18 long-term monitoring activities;

19 “(6) provide mechanisms for the approval of a
20 response action plan or other instrument; and

21 “(7) provide mechanisms for a certification or
22 similar documentation to the person who conducted
23 the response action indicating that the response is
24 complete.

1 “(g) FINANCIAL ASSISTANCE FOR DEVELOPMENT
2 AND ENHANCEMENT OF STATE VOLUNTARY RESPONSE
3 PROGRAMS AND REPORTING REQUIREMENT.—

4 “(1) PUBLIC RECORD.—To assist the Adminis-
5 trator in determining the needs of States for assist-
6 ance under this section, the Administrator shall en-
7 courage the States to maintain a public record of fa-
8 cilities, by name and location, that have been or are
9 planned to be addressed under a State voluntary re-
10 sponse program.

11 “(2) REPORTING REQUIREMENT.—Each State
12 receiving financial assistance under this section shall
13 submit to the Administrator a report at the end of
14 each calendar year on the progress of its voluntary
15 response program, which shall include the following
16 information with respect to that calendar year:

17 “(A) The number of sites, if any, under-
18 going voluntary cleanup, with the number of
19 sites in each stage of such cleanup set forth
20 separately.

21 “(B) The number of sites, if any, entering
22 voluntary cleanup.

23 “(C) The number of sites, if any, that re-
24 ceived a certification from the State indicating
25 that a response action is complete.

1 “(h) EPA REVIEW OF STATE PROGRAMS.—At any
2 time after the date of enactment of this section, a State
3 may submit, for review by the Administrator, documenta-
4 tion that the State considers appropriate to describe a
5 State voluntary response program, together with a certifi-
6 cation that the program is consistent with the elements
7 set forth in subsection (f), and, if such program is devel-
8 oped by administrative action, executive order, or regula-
9 tion, documentation of public comment and State response
10 to comment on the adequacy of the State voluntary re-
11 sponse program.

12 “(i) QUALIFICATION OF STATE PROGRAM.—

13 “(1) APPROVAL OR DISAPPROVAL.—(A) The
14 Administrator shall approve a State voluntary re-
15 sponse program submitted under subsection (h)
16 within 180 days after the Administrator receives
17 documentation and certification under subsection (h)
18 if the Administrator determines that the State’s sub-
19 mission is consistent with the elements set forth in
20 subsection (f). A program so approved by the Ad-
21 ministrator shall be considered a qualified program
22 under this section.

23 “(B) The Administrator shall publish in the
24 Federal Register the reasons for the approval or dis-
25 approval of any such program.

1 “(C) If the Administrator needs additional in-
2 formation, the 180-day time period referred to in
3 subparagraph (A) shall be extended until 30 days
4 after the Administrator is satisfied that enough ad-
5 ditional information has been obtained in order to
6 make a determination.

7 “(2) WITHDRAWAL OF QUALIFICATION.—When-
8 ever the Administrator determines that a State is
9 not administering and enforcing a qualified program
10 in accordance with subsection (f), the Administrator
11 shall notify the State in writing of such determina-
12 tion. If appropriate corrective action is not taken by
13 the State within 120 days after receipt of the notice,
14 the Administrator shall propose within 60 days
15 thereafter to withdraw approval of the program and
16 publish a notice of such proposed withdrawal in the
17 Federal Register. The Administrator shall not with-
18 draw approval of any such program unless the Ad-
19 ministrator provides to the State in writing and pub-
20 lishes in the Federal Register the reasons for such
21 withdrawal. If the State subsequently completes the
22 necessary corrective measures as determined by the
23 Administrator, the Administrator shall reinstate the
24 program as a qualified program under this section.

1 “(j) EFFECT OF RESPONSE.—Performance of a vol-
2 untary response action pursuant to this section shall not
3 constitute an admission of liability under any Federal,
4 State, or local law or regulation or in any citizens suit
5 or other private action.

6 “(k) COMPLIANCE WITH NCP.—Solely for the pur-
7 pose of private cost recovery and contribution claims
8 under this Act, response actions conducted pursuant to
9 a qualified program shall be presumed to be consistent
10 with the National Contingency Plan.

11 “(l) ANNUAL REPORTING.—

12 “(1) REPORTS BY STATE.—Each State with a
13 qualified program under this section shall submit to
14 the Administrator a report at the end of each cal-
15 endar year describing whether the program contin-
16 ues to be consistent with the elements set forth in
17 subsection (f).

18 “(2) REPORT BY ADMINISTRATOR.—The Ad-
19 ministrator shall report, not later than two years
20 after the enactment of this section, and annually
21 thereafter, to the Congress on the status of State
22 voluntary response programs. The report shall in-
23 clude an analysis of whether qualified State vol-
24 untary response programs continue to be consistent
25 with the elements set forth in subsection (f).

1 “(m) EFFECT ON EXISTING STATE PROGRAMS.—

2 This section is not intended to impose any requirement
3 on any State voluntary response program, including a pro-
4 gram existing on or before the date of the enactment of
5 the Community Revitalization and Brownfield Cleanup
6 Act of 1999. A program shall not be considered to be a
7 qualified program under this section unless the program
8 is approved in accordance with this section.

9 “(n) EFFECT ON AGREEMENTS BETWEEN STATE

10 AND EPA.—This section is not intended to modify or oth-
11 erwise affect a memorandum of agreement, or a coopera-
12 tive agreement, under this Act between a State agency and
13 the Environmental Protection Agency in effect on or be-
14 fore the date of the enactment of the Community Revital-
15 ization and Brownfield Cleanup Act of 1999. Such an
16 agreement shall remain in effect, subject to the terms of
17 the agreement. This section is not intended to restrict or
18 limit the President’s discretionary authority to enter into
19 or modify an agreement with a State or other person relat-
20 ing to the President’s implementation of authorities under
21 this Act, nor to modify or otherwise affect an existing
22 agreement between the President and any person relating
23 to the President’s implementation of those authorities.

24 “(o) EFFECT ON OTHER LAWS.—Except as provided

25 in subsections (c) and (d), this section does not change,

1 Liability Act of 1980 (42 U.S.C. 9622(g)(1)) is
2 amended—

3 (1) by striking “either of the following subpara-
4 graph (A) or (B)” and inserting “1 or more of the
5 following subparagraphs”; and

6 (2) by inserting after subparagraph (B) the fol-
7 lowing:

8 “(C) CONTRIBUTION OF MUNICIPAL SOLID
9 WASTE AND SEWAGE SLUDGE.—

10 “(i) IN GENERAL.—The potentially re-
11 sponsible party’s liability for response costs
12 is based on paragraph (3) or (4) of section
13 107(a), and the person can demonstrate
14 that it arranged for disposal or treatment
15 of, arranged with a transporter for trans-
16 port for disposal or treatment of, or ac-
17 cepted for transport for disposal or treat-
18 ment, municipal solid waste or sewage
19 sludge at a facility listed on the National
20 Priorities List.

21 “(ii) SETTLEMENT AMOUNT.—To the
22 extent that liability is based on municipal
23 solid waste or sewage sludge, the President
24 shall offer a settlement to such a party
25 under this subparagraph on the basis of a

1 payment of \$5.30 per ton of municipal
2 solid waste or sewage sludge that the
3 President estimates is attributable to such
4 party. Where the party has been forthcom-
5 ing with requested information, but the in-
6 formation is nonetheless incomplete, the
7 President shall estimate the party's quan-
8 tity of municipal solid waste or sewage
9 sludge by incorporating reasonable as-
10 sumptions based on relevant information,
11 such as census data and national per cap-
12 ita solid waste generation information.
13 Such a settlement shall pertain only to the
14 party's liability with respect to municipal
15 solid waste or sewage sludge under para-
16 graph (3) or (4) of section 107.

17 “(iii) CONDITIONS.—In order for a
18 municipality to be eligible for the settle-
19 ment described in this subparagraph (C),
20 the acts or omissions giving rise to liability
21 must have occurred before a date 2 years
22 after the date of enactment of this sub-
23 paragraph, or the municipality asserting
24 the limitation must institute or participate
25 in a qualified household hazardous waste

1 disposal program before a date 2 years
2 after the date of enactment of this sub-
3 paragraph.

4 “(iv) EXCLUSION OF CERTAIN FACILI-
5 TIES.—A potentially responsible party de-
6 scribed in clause (i) shall not be eligible for
7 a settlement described in this subpara-
8 graph if the facility at which the disposal
9 or treatment occurred contains only munic-
10 ipal solid waste or sewage sludge.

11 “(v) EXCEPTION FOR CERTAIN SEW-
12 AGE SLUDGE.—The President may decline
13 to offer a settlement under this subsection
14 to a person that arranged for disposal or
15 treatment of, arranged with a transporter
16 for transport for disposal or treatment of,
17 or accepted for transport for disposal or
18 treatment, sewage sludge, if the President
19 determines that the sewage sludge contrib-
20 uted or could contribute significantly to
21 the cost of response.

22 “(vi) ADJUSTMENT FOR INFLATION.—
23 The settlement rate per ton of municipal
24 solid waste or sewage sludge under this
25 subparagraph (C) shall be adjusted annu-

1 ally for inflation. Such adjustments shall
2 take effect on July 1 of each year after the
3 enactment of this subparagraph. The infla-
4 tion adjustment shall be determined by in-
5 creasing the settlement rate per ton of mu-
6 nicipal solid waste or sewage sludge under
7 this subparagraph (C) by the cost-of-living
8 adjustment. The cost-of-living adjustment
9 shall be the percentage difference by which
10 the Consumer Price Index for the month
11 of the June preceding a settlement exceeds
12 the Consumer Price Index for the imme-
13 diate prior month of June.

14 “(vii) OTHER MATERIALS.—Notwith-
15 standing clause (i), a potentially respon-
16 sible party that arranged for disposal or
17 treatment of, arranged with a transporter
18 for transport for disposal or treatment of,
19 or accepted for transport for disposal or
20 treatment, municipal solid waste or sewage
21 sludge and other materials containing haz-
22 ardous substances shall be eligible for the
23 per-ton settlement rate described in this
24 subparagraph as to the municipal solid
25 waste or sewage sludge only if the poten-

1 tially responsible party demonstrates to the
2 President's satisfaction the quantity of the
3 municipal solid waste and sewage sludge
4 contributed by such party and the quantity
5 and composition of the other materials
6 containing hazardous substances contrib-
7 uted by such party. Where such party
8 demonstrates to the President's satisfac-
9 tion that the material other than municipal
10 solid waste or sewage sludge contributed
11 by such party is eligible for the de micro-
12 mis exemption under section 107(u) or a
13 de minimis settlement under subparagraph
14 (A), such party shall be eligible for the
15 per-ton settlement rate as to its municipal
16 solid waste or municipal sewage sludge in
17 an expedited settlement under this para-
18 graph. In other cases, the President shall
19 offer to resolve the party's liability with re-
20 spect to the municipal solid waste or sew-
21 age sludge at the per-ton settlement rate
22 described in this paragraph at such time as
23 the party also agrees to a settlement with
24 respect to other materials containing haz-

1 ardous substances on terms and conditions
2 acceptable to the President.

3 “(viii) MUNICIPAL OWNERS AND OP-
4 ERATORS.—Where a municipality is eligible
5 for the per-ton settlement rate under this
6 subparagraph, and is also eligible for a set-
7 tlement under section 107(s) with respect
8 to the same facility, the President shall
9 offer a settlement to such municipality for
10 an amount equal to the settlement amount
11 under clause (ii) with respect to its con-
12 tribution of municipal solid waste or sew-
13 age sludge, plus the amount provided in
14 section 107(s) as to the liability of the mu-
15 nicipality under paragraph (1) or (2) of
16 section 107(a). Notwithstanding any other
17 requirement in this section, such a settle-
18 ment offer shall be made at such time as
19 the President determines is appropriate.

20 “(ix) EXPIRATION OF OFFER.—The
21 President’s obligation to offer a settlement
22 at the rate provided under this subpara-
23 graph shall expire if the party to which the
24 offer has been made fails to accept such an
25 offer within a reasonable time period.”.

1 (b) MUNICIPAL OWNERS AND OPERATORS.—Section
2 107 of such Act (42 U.S.C. 9607) is further amended by
3 adding at the end the following new subsection:

4 “(s) MUNICIPAL OWNERS AND OPERATORS.—

5 “(1) IN GENERAL.—A municipality that is lia-
6 ble for response costs under paragraph (1) or (2) of
7 subsection (a) on the basis of ownership or operation
8 of a municipal landfill that is listed on the National
9 Priorities List on or before September 1, 1999 (as
10 identified by the President), shall be eligible for a
11 settlement under this subsection.

12 “(2) SETTLEMENT AMOUNT.—(A) The Presi-
13 dent shall offer a settlement to a party with respect
14 to such liability on the basis of a payment or other
15 obligation equivalent in value to no more than 20
16 percent of the total response costs in connection with
17 the facility. The President may increase this per-
18 centage to no more than 35 percent of the total re-
19 sponse costs in connection with the facility if the
20 President determines—

21 “(i) the municipality exacerbated environ-
22 mental contamination or exposure with respect
23 to the facility; or

24 “(ii) the municipality, during the period of
25 ownership or operation of the facility, received

1 operating revenues substantially in excess of the
2 sum of the waste system operating costs plus
3 20 percent of total estimated response costs in
4 connection with the facility.

5 “(B) Such a settlement shall pertain to only the
6 party’s liability under paragraph (1) or (2) of sub-
7 section (a).

8 “(3) PERFORMANCE OF RESPONSE ACTIONS.—
9 Subject to the limitations of paragraph (2), the
10 President may require, as a condition of a settle-
11 ment with a municipality under this subsection, that
12 the municipality perform, or participate in the per-
13 formance of, the response actions at the site.

14 “(4) JOINT OWNERSHIP OR OPERATION.—A
15 combination of 2 or more municipalities that jointly
16 owned or operated the facility at the same time or
17 during continuous operations under municipal con-
18 trol, shall be considered a single owner/operator for
19 the purpose of calculating a settlement offer pursu-
20 ant to this subsection.

21 “(5) WAIVER OF CLAIMS.—The President may
22 require, as a condition of a settlement under this
23 subsection, that the municipality waive some or all
24 of the claims or causes of action that such munici-
25 pality may have against other potentially responsible

1 parties relating to the site, including claims for con-
2 tribution under section 113.

3 “(6) CONDITIONS.—In order for a municipality
4 to be eligible for the limited liability described in this
5 subsection, the acts or omissions giving rise to liabil-
6 ity must have occurred before a date 2 years after
7 the date of enactment of this subsection, or the mu-
8 nicipality asserting the limitation must institute or
9 participate in a qualified household hazardous waste
10 disposal program before a date 2 years after the
11 date of enactment of this subsection.

12 “(7) EXCEPTIONS.—The President may decline
13 to offer a settlement under this subsection where the
14 President determines—

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

17 “(B) all other identified potentially respon-
18 sible parties are insolvent, defunct, or eligible
19 for a settlement under this subsection or under
20 section 122(g);

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

1 “(D) the municipality has impeded or is
2 impeding, through action or inaction, the per-
3 formance of a response action or a natural re-
4 source restoration with respect to the facility.

5 “(8) EXPIRATION OF OFFER.—The President’s
6 obligation to offer a settlement under this section
7 shall expire if the municipality to which the offer is
8 made fails to accept such an offer within a reason-
9 able time period.”.

10 **SEC. 402. SMALL BUSINESS AND HOMEOWNER MUNICIPAL**
11 **SOLID WASTE EXEMPTION.**

12 (a) MUNICIPAL SOLID WASTE EXEMPTION.—Section
13 107 of such Act (42 U.S.C. 9607) is further amended by
14 adding at the end the following new subsection:

15 “(t) MUNICIPAL SOLID WASTE EXEMPTION.—

16 “(1) IN GENERAL.—Notwithstanding para-
17 graphs (1) through (4) of subsection (a), a person
18 shall not be liable under this Act to the extent
19 that—

20 “(A) liability is based solely on paragraph
21 (3) or (4) of subsection (a);

22 “(B) the person can demonstrate that it
23 arranged for disposal or treatment of, arranged
24 with a transporter for transport for disposal or

1 treatment of, or accepted for transport for dis-
2 posal or treatment, municipal solid waste; and
3 “(C) the person is—
4 “(i) the owner, operator, or lessee of
5 residential property from which all of the
6 municipal solid waste attributable to such
7 person was generated;
8 “(ii) a business entity that, including
9 its parents, subsidiaries, and other affili-
10 ates, during the tax year of the entity pre-
11 ceeding the date of transmittal to the entity
12 of written notification from the President
13 of its potential liability under this Act, em-
14 ployed no more than 100 individuals and is
15 a ‘small business concern’ as defined under
16 the Small Business Act (15 U.S.C. 631 et
17 seq.); or
18 “(iii) a small nonprofit organization
19 where the particular chapter, office, or de-
20 partment employing fewer than 100 indi-
21 viduals was the location from which all of
22 the municipal solid waste attributable to
23 such organization with respect to the facil-
24 ity was generated.

1 For purposes of this subsection, the term ‘affiliate’
2 has the meaning of that term provided in the defini-
3 tion of ‘small business concern’ in regulations pro-
4 mulgated by the Small Business Administration in
5 accordance with the Small Business Act (15 U.S.C.
6 631 et seq.).

7 “(2) EXCEPTION.—The exemption pursuant to
8 paragraph (1) shall not apply in a case in which the
9 President determines that—

10 “(A) the person has failed to comply fully
11 and completely with information requests, ad-
12 ministrative subpoenas, or discovery requests
13 issued by the President; or

14 “(B) the person has impeded or is imped-
15 ing, through action or inaction, the performance
16 of a response action or natural resource res-
17 toration with respect to the facility.”.

18 (b) DEFINITIONS.—Section 101 of such Act (42
19 U.S.C. 9601) is further amended by adding at the end
20 the following new paragraphs:

21 “(40) MUNICIPAL SOLID WASTE.—(A) The
22 term ‘municipal solid waste’ means waste materials
23 generated by households, including single and multi-
24 family residences. The term also includes waste ma-

1 materials generated by commercial, institutional, or in-
2 dustrial sources, to the extent such wastes—

3 “(i) are essentially the same as waste nor-
4 mally generated by households; or

5 “(ii) are collected and disposed of with
6 other municipal solid waste or sewage sludge as
7 part of normal municipal solid waste collection
8 services, and, with respect to each source from
9 which the waste materials were collected, quali-
10 fies for the de minimis exemption set forth in
11 section 107(u).

12 “(B) Examples of municipal solid waste under
13 subparagraph (A) include food and yard waste,
14 paper, clothing, appliances, consumer product pack-
15 aging, disposable diapers, office supplies, cosmetics,
16 glass and metal food containers, elementary or sec-
17 ondary school science laboratory waste, and house-
18 hold hazardous waste. The term does not include
19 combustion ash generated by resource recovery fa-
20 cilities or municipal incinerators, or waste from
21 manufacturing or processing (including pollution
22 control) operations not essentially the same as waste
23 normally generated by households.

24 “(41) MUNICIPALITY.—The term ‘municipality’
25 means a political subdivision of a State, including a

1 city, county, village, town, township, borough, par-
2 ish, school, school district, sanitation district, water
3 district, or other public entity performing local gov-
4 ernmental functions. The term also includes a natu-
5 ral person acting in the capacity of an official, em-
6 ployee, or agent of any entity referred to in the pre-
7 ceding sentence in the performance of governmental
8 functions.

9 “(42) OWNER, OPERATOR, OR LESSEE OF RESI-
10 DENTIAL PROPERTY.—The term ‘owner, operator, or
11 lessee of residential property’ means a person who
12 owns, operates, manages, or leases residential prop-
13 erty and who uses or allows the use of the residen-
14 tial property exclusively for residential purposes. The
15 term ‘residential property’ means single or multifam-
16 ily residences, including accessory land, buildings, or
17 improvements incidental to such dwellings, that are
18 exclusively for residential use.

19 “(43) QUALIFIED HOUSEHOLD HAZARDOUS
20 WASTE COLLECTION PROGRAM.—The term ‘qualified
21 household hazardous waste collection program’
22 means a program established by an entity of the
23 Federal Government, a State, a municipality, or an
24 Indian tribe that provides, at a minimum, for annual

1 collection of household hazardous wastes at acces-
2 sible, well-publicized collection points.

3 “(44) SMALL NONPROFIT ORGANIZATION.—The
4 term ‘small nonprofit organization’ means any orga-
5 nization that, at the time of disposal, did not distrib-
6 ute any part of its income or profit to its members,
7 directors, or officers, employed no more than 40
8 paid individuals at the chapter, office, or depart-
9 ment, and was an organization described in section
10 501(c) of the Internal Revenue Code of 1986 and
11 exempt from taxation under section 501(a) of such
12 Code.

13 “(45) SEWAGE SLUDGE.—The term ‘sewage
14 sludge’ means solid, semisolid, or liquid residue re-
15 moved during the treatment of municipal waste
16 water, domestic sewage, or other waste water at or
17 by publicly owned or federally owned treatment
18 works.”.

19 **SEC. 403. DE MICROMIS EXEMPTION.**

20 Section 107 of such Act (42 U.S.C. 9607) is further
21 amended by adding at the end the following new sub-
22 section:

23 “(u) DE MICROMIS EXEMPTION.—

24 “(1) IN GENERAL.—Notwithstanding para-
25 graphs (1) through (4) of subsection (a), a person

1 shall not be liable under this Act if liability is based
2 solely on paragraph (3) or (4) of subsection (a), and
3 the person can demonstrate that the total amount of
4 the material containing hazardous substances that
5 the person arranged for disposal or treatment of, ar-
6 ranged with a transporter for transport for disposal
7 or treatment of, or accepted for transport for dis-
8 posal or treatment, at the facility was less than 110
9 gallons of liquid materials or less than 200 pounds
10 of solid materials (or such greater or lesser amounts
11 as the Administrator may determine by regulation).

12 “(2) EXCEPTIONS.—The exemption pursuant to
13 paragraph (1) shall not apply in a case in which—

14 “(A) all or part of the disposal or treat-
15 ment concerned occurred after September 1,
16 1999; or

17 “(B) the President, in his sole discretion,
18 determines that—

19 “(i) the materials containing hazard-
20 ous substances referred to in paragraph
21 (1) have contributed significantly or could
22 contribute significantly, either individually
23 or in the aggregate, to the cost of the re-
24 sponse action or natural resource restora-
25 tion with respect to the facility; or

1 “(ii) the person has failed to comply
2 fully and completely with information re-
3 quests, administrative subpoenas, or dis-
4 covery requests issued by the President or
5 has impeded or is impeding, through action
6 or inaction, the performance of a response
7 action or natural resource restoration with
8 respect to the facility.”.

9 **SEC. 404. ABILITY TO PAY.**

10 Section 122(g)(1) of the Comprehensive Environ-
11 mental Response, Compensation, and Liability Act of
12 1980 (42 U.S.C. 9622(g)(1)), as amended by section 401
13 of this Act, is further amended by adding at the end the
14 following:

15 “(D) ABILITY TO PAY.—

16 “(i) IN GENERAL.—The potentially re-
17 sponsible party is a natural person, a small
18 business, or a municipality and dem-
19 onstrates to the United States an inability
20 or a limited ability to pay response costs.

21 “(ii) SMALL BUSINESS.—For purposes
22 of this subparagraph, each of the following
23 provisions apply:

24 “(I) DETERMINATION.—The
25 small business shall demonstrate the

1 amount of its ability to pay response
2 costs. If the small business employs
3 fewer than 20 employees and has
4 gross income revenues of less than
5 \$1,800,000, the President shall per-
6 form any analysis that the President
7 determines may assist in demonstrat-
8 ing the impact of a settlement upon
9 the small business's ability to main-
10 tain its basic operations. The Presi-
11 dent, in his discretion, may perform
12 such analysis for any other party or
13 require such other party to perform
14 the analysis.

15 “(II) ALTERNATIVE PAYMENT
16 METHODS.—If the President deter-
17 mines that a small business is unable
18 to pay its total settlement amount im-
19 mediately, the President shall consider
20 such alternative payment methods as
21 may be necessary or appropriate. The
22 methods to be considered may include
23 installment payments, to be paid dur-
24 ing a period not to exceed 10 years,
25 and the provision of in-kind services.

1 “(iii) MUNICIPALITIES.—For purposes
2 of this subparagraph, each of the following
3 provisions apply:

4 “(I) CONSIDERATIONS.—In the
5 case of a municipality, the President
6 shall consider, to the extent that in-
7 formation is provided by the
8 municipality—

9 “(aa) the general obligation
10 bond rating and information
11 about the most recent bond issue
12 for which the rating was pre-
13 pared;

14 “(bb) the amount of total
15 available funds (other than dedi-
16 cated funds or State assistance
17 payments for remediation of inac-
18 tive hazardous waste sites);

19 “(cc) the amount of total
20 operating revenues (other than
21 obligated or encumbered reve-
22 nues);

23 “(dd) the amount of total
24 expenses;

- 1 “(ee) the amounts of total
- 2 debt and debt service;
- 3 “(ff) per capita income and
- 4 cost of living;
- 5 “(gg) real property values;
- 6 “(hh) unemployment infor-
- 7 mation; and
- 8 “(ii) population information
- 9 of the municipality.

10 “(II) EVALUATION OF IMPACT.—

11 A municipality may also submit for
12 consideration by the President an
13 evaluation of the potential impact of
14 the settlement on the provision of es-
15 sential municipal services and the fea-
16 sibility of making delayed payments or
17 payments over time. If a municipality
18 asserts that it has additional environ-
19 mental obligations besides its poten-
20 tial liability under this Act, the mu-
21 nicipality may create a list of the obli-
22 gations, including an estimate of the
23 costs of complying with such obliga-
24 tions.

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“(III) RISK OF DEFAULT OR VIOLATION.—A municipality may establish an inability to pay for purposes of this subparagraph through an affirmative showing that such payment of its liability under this Act would—

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

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

1 “(IV) ADDITIONAL FACTOR REL-
2 EVANT TO SETTLEMENTS WITH MU-
3 NICIPALITIES.—In any settlement
4 with a municipality pursuant to this
5 title, the President may consider the
6 fair-market value of any in-kind serv-
7 ices that the party may provide to
8 support the response action at the fa-
9 cility in determining an appropriate
10 settlement amount.

11 “(iv) EFFECT ON AUTHORITY.—This
12 subparagraph shall not be construed to
13 limit or affect the President’s authority to
14 evaluate any person’s ability to pay or to
15 enter into settlements with any person
16 based on that person’s inability to pay.

17 “(E) ADDITIONAL CONDITIONS FOR EXPE-
18 DITED SETTLEMENTS.—

19 “(i) WAIVER OF CLAIMS.—The Presi-
20 dent may require, as a condition of a set-
21 tlement under this paragraph (1), that the
22 potentially responsible party waive some or
23 all of the claims or causes of action that
24 such party may have against other poten-
25 tially responsible parties relating to the

1 site, including claims for contribution
2 under section 113.

3 “(ii) EXCEPTION.—The President
4 may decline to offer a settlement under
5 this paragraph (1) where the President
6 determines—

7 “(I) the person has failed to com-
8 ply fully and completely with informa-
9 tion requests, administrative subpoe-
10 nas, or discovery requests issued by
11 the United States; or

12 “(II) the person has impeded or
13 is impeding, through action or inac-
14 tion, the performance of a response
15 action or natural resource restoration
16 with respect to the facility.

17 “(iii) BASIS OF DETERMINATION.—If
18 the President determines that a party is
19 not eligible for a settlement pursuant to
20 this subsection, the basis for that deter-
21 mination shall be explained in writing to
22 any person who requests such a settlement.
23 Such a determination shall not be subject
24 to judicial review.”.

1 **SEC. 405. RECYCLING TRANSACTIONS.**

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

6 **“SEC. 128. RECYCLING TRANSACTIONS.**

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

12 “(2) A determination of whether or not any person
13 shall be liable under section 107(a)(3) or (4) for any mate-
14 rial that is not a recyclable material as that term is used
15 in subsection (b), (c), (d), (e), or (f) of this section shall
16 be made without regard to subsection (b), (c), (d), (e),
17 or (f) of this section.

18 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
19 poses of this section, the term ‘recyclable material’ means
20 scrap paper, scrap plastic, scrap glass, scrap textiles,
21 scrap rubber (other than whole tires), scrap metal, or
22 spent lead-acid, spent nickel-cadmium, and other spent
23 batteries, as well as minor amounts of material incident
24 to or adhering to the scrap material as a result of its nor-
25 mal and customary use prior to becoming scrap; except
26 that such term shall not include shipping containers of a

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

5 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
6 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
7 involving scrap paper, scrap plastic, scrap glass, scrap tex-
8 tiles, or scrap rubber (other than whole tires) shall be
9 deemed to be arranging for recycling if the person who
10 arranged for the transaction (by selling recyclable material
11 or otherwise arranging for the recycling of recyclable ma-
12 terial) can demonstrate by a preponderance of the evi-
13 dence that all of the following criteria were met at the
14 time of the transaction:

15 “(1) The recyclable material met a commercial
16 specification grade.

17 “(2) A market existed for the recyclable mate-
18 rial.

19 “(3) A substantial portion of the recyclable ma-
20 terial was made available for use as feedstock for the
21 manufacture of a new saleable product.

22 “(4) The recyclable material could have been a
23 replacement or substitute for a virgin raw material,
24 or the product to be made from the recyclable mate-
25 rial could have been a replacement or substitute for

1 a product made, in whole or in part, from a virgin
2 raw material.

3 “(5) For transactions occurring 90 days or
4 more after the date of enactment of this section, the
5 person exercised reasonable care to determine that
6 the facility where the recyclable material was han-
7 dled, processed, reclaimed, or otherwise managed by
8 another person (hereinafter in this section referred
9 to as a ‘consuming facility’) was in compliance with
10 substantive (not procedural or administrative) provi-
11 sions of any Federal, State, or local environmental
12 law or regulation, or compliance order or decree
13 issued pursuant thereto, applicable to the handling,
14 processing, reclamation, storage, or other manage-
15 ment activities associated with recyclable material.

16 “(6) For purposes of this subsection, ‘reason-
17 able care’ shall be determined using criteria that in-
18 clude (but are not limited to)—

19 “(A) the price paid in the recycling trans-
20 action;

21 “(B) the ability of the person to detect the
22 nature of the consuming facility’s operations
23 concerning its handling, processing, reclama-
24 tion, or other management activities associated
25 with recyclable material; and

1 “(C) the result of inquiries made to the ap-
2 propriate Federal, State, or local environmental
3 agency (or agencies) regarding the consuming
4 facility’s past and current compliance with sub-
5 stantive (not procedural or administrative) pro-
6 visions of any Federal, State, or local environ-
7 mental law or regulation, or compliance order
8 or decree issued pursuant thereto, applicable to
9 the handling, processing, reclamation, storage,
10 or other management activities associated with
11 the recyclable material. For the purposes of this
12 paragraph, a requirement to obtain a permit
13 applicable to the handling, processing, reclama-
14 tion, or other management activity associated
15 with the recyclable materials shall be deemed to
16 be a substantive provision.

17 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

18 “(1) Transactions involving scrap metal shall be
19 deemed to be arranging for recycling if the person
20 who arranged for the transaction (by selling recycla-
21 ble material or otherwise arranging for the recycling
22 of recyclable material) can demonstrate by a prepon-
23 derance of the evidence that at the time of the
24 transaction—

1 “(A) the person met the criteria set forth
2 in subsection (e) with respect to the scrap
3 metal;

4 “(B) the person was in compliance with
5 any applicable regulations or standards regard-
6 ing the storage, transport, management, or
7 other activities associated with the recycling of
8 scrap metal that the Administrator promulgates
9 under the Solid Waste Disposal Act subsequent
10 to the enactment of this section and with re-
11 gard to transactions occurring after the effec-
12 tive date of such regulations or standards; and

13 “(C) the person did not melt the scrap
14 metal prior to the transaction.

15 “(2) For purposes of paragraph (1)(C), melting
16 of scrap metal does not include the thermal separa-
17 tion of 2 or more materials due to differences in
18 their melting points (referred to as ‘sweating’).

19 “(3) For purposes of this subsection, the term
20 ‘scrap metal’ means bits and pieces of metal parts
21 (e.g., bars, turnings, rods, sheets, wire) or metal
22 pieces that may be combined together with bolts or
23 soldering (e.g., radiators, scrap automobiles, railroad
24 box cars), which when worn or superfluous can be

1 recycled, except for scrap metals that the Adminis-
2 trator excludes from this definition by regulation.

3 “(e) TRANSACTIONS INVOLVING BATTERIES.—
4 Transactions involving spent lead-acid batteries, spent
5 nickel-cadmium batteries, or other spent batteries shall be
6 deemed to be arranging for recycling if the person who
7 arranged for the transaction (by selling recyclable material
8 or otherwise arranging for the recycling of recyclable ma-
9 terial) can demonstrate by a preponderance of the evi-
10 dence that at the time of the transaction—

11 “(1) the person met the criteria set forth in
12 subsection (c) with respect to the spent lead-acid
13 batteries, spent nickel-cadmium batteries, or other
14 spent batteries, but the person did not recover the
15 valuable components of such batteries; and

16 “(2)(A) with respect to transactions involving
17 lead-acid batteries, the person was in compliance
18 with applicable Federal environmental regulations or
19 standards, and any amendments thereto, regarding
20 the storage, transport, management, or other activi-
21 ties associated with the recycling of spent lead-acid
22 batteries;

23 “(B) with respect to transactions involving
24 nickel-cadmium batteries, Federal environmental
25 regulations or standards are in effect regarding the

1 storage, transport, management, or other activities
2 associated with the recycling of spent nickel-cad-
3 mium batteries, and the person was in compliance
4 with applicable regulations or standards or any
5 amendments thereto; or

6 “(C) with respect to transactions involving
7 other spent batteries, Federal environmental regula-
8 tions or standards are in effect regarding the stor-
9 age, transport, management, or other activities asso-
10 ciated with the recycling of such batteries, and the
11 person was in compliance with applicable regulations
12 or standards or any amendments thereto.

13 “(f) EXCLUSIONS.—

14 “(1) The exemptions set forth in subsections
15 (e), (d), and (c) shall not apply if—

16 “(A) the person had an objectively reason-
17 able basis to believe at the time of the recycling
18 transaction—

19 “(i) that the recyclable material would
20 not be recycled;

21 “(ii) that the recyclable material
22 would be burned as fuel, or for energy re-
23 covery or incineration; or

24 “(iii) for transactions occurring before
25 90 days after the date of the enactment of

1 this section, that the consuming facility
2 was not in compliance with a substantive
3 (not procedural or administrative) provi-
4 sion of any Federal, State, or local envi-
5 ronmental law or regulation, or compliance
6 order or decree issued pursuant thereto,
7 applicable to the handling, processing, rec-
8 lamation, or other management activities
9 associated with the recyclable material;

10 “(B) the person had reason to believe that
11 hazardous substances had been added to the re-
12 cyclable material for purposes other than proc-
13 essing for recycling;

14 “(C) the person failed to exercise reason-
15 able care with respect to the management and
16 handling of the recyclable material (including
17 adhering to customary industry practices cur-
18 rent at the time of the recycling transaction de-
19 signed to minimize, through source control, con-
20 tamination of the recyclable material by hazard-
21 ous substances); or

22 “(D) with respect to any item of a recycla-
23 ble material, the item contained polychlorinated
24 biphenyls at a concentration in excess of 50

1 parts per million or any new standard promul-
2 gated pursuant to applicable Federal laws.

3 “(2) For purposes of this subsection, an objec-
4 tively reasonable basis for belief shall be determined
5 using criteria that include (but are not limited to)
6 the size of the person’s business, customary industry
7 practices (including customary industry practices
8 current at the time of the recycling transaction de-
9 signed to minimize, through source control, contami-
10 nation of the recyclable material by hazardous sub-
11 stances), the price paid in the recycling transaction,
12 and the ability of the person to detect the nature of
13 the consuming facility’s operations concerning its
14 handling, processing, reclamation, or other manage-
15 ment activities associated with the recyclable mate-
16 rial.

17 “(3) For purposes of this subsection, a require-
18 ment to obtain a permit applicable to the handling,
19 processing, reclamation, or other management activi-
20 ties associated with recyclable material shall be
21 deemed to be a substantive provision.

22 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
23 this section shall be deemed to affect the liability of a per-
24 son under paragraph (1) or (2) of section 107(a). Nothing
25 in this section shall be deemed to affect the liability of

1 a person under paragraph (3) or (4) of section 107(a) with
2 respect to materials that are not recyclable materials as
3 defined in subsection (b) of this section.

4 “(h) REGULATIONS.—The Administrator has the au-
5 thority, under section 115, to promulgate additional regu-
6 lations concerning this section.

7 “(i) EFFECT ON PENDING OR CONCLUDED AC-
8 TIONS.—The exemptions provided in this section shall not
9 affect any concluded judicial or administrative action or
10 any pending judicial action initiated by the United States
11 prior to enactment of this section.

12 “(j) LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN
13 ACTIONS.—Any person who commences an action in con-
14 tribution against a person who is not liable by operation
15 of this section shall be liable to that person for all reason-
16 able costs of defending that action, including all reason-
17 able attorney’s and expert witness fees.

18 “(k) RELATIONSHIP TO LIABILITY UNDER OTHER
19 LAWS.—Nothing in this section shall affect—

20 “(1) liability under any other Federal, State, or
21 local statute or regulation promulgated pursuant to
22 any such statute, including any requirements pro-
23 mulgated by the Administrator under the Solid
24 Waste Disposal Act; or

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

3 (1) Costs for completion of all non-Federal fa-
4 cilities currently on the National Priorities List.

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

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

11 (4) Costs associated with those Federal facili-
12 ties which the Administrator expects to be added to
13 the National Priorities List over the next 10 years.

14 (5) Costs for operations and maintenance at fa-
15 cilities currently on, or anticipated to be added over
16 the next 10 years to, the National Priorities List.

17 (6) Costs associated with reviews of remedies
18 under section 121(e) of the Comprehensive Environ-
19 mental Response, Compensation, and Liability Act
20 of 1980, and any follow-up activities.

21 (7) Costs for removal activities.

22 The study shall not include costs associated with imple-
23 menting title I of this Act. With respect to the costs de-
24 scribed in paragraph (3), the study shall take into account
25 current and anticipated funding capabilities of State pro-

1 grams and the number and type of facilities the States
2 consider likely to be listed on the National Priorities List.

3 (c) ORGANIZATIONS TO CONDUCT STUDY.—The
4 study under subsection (a) shall be conducted by a neu-
5 tral, nongovernmental organization with expertise in the
6 Comprehensive Environmental Response, Compensation,
7 and Liability Act of 1980, in coordination with the Admin-
8 istrator of the Environmental Protection Agency, the
9 States, and the Comptroller General. In conducting the
10 study, the nongovernmental organization shall collect rel-
11 evant information from experts and other interested per-
12 sons, including experts in public budgeting and account-
13 ing.